

FIRST PRINT

WATER BOARD (CORPORATISATION) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to establish Sydney Water Corporation Limited ("the Corporation") as 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 stormwater drainage systems and the disposal of waste water in its area of operations.

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

Detailed provision is made regarding the functions of the Corporation. A key feature is the scheme of operating licences, which will be issued to the Corporation to enable it to exercise its functions and which will regulate the exercise of its functions.

The Bill contains other provisions that are described below.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 contains definitions of terms 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 Sydney Water Corporation Limited 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 the Corporation a SOC.

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Clause 5 prohibits the sale or disposal of shares in the Corporation to persons other than eligible Ministers.

Clause 6 provides that the Premier may not nominate as a voting shareholder of the Corporation the Minister who has oversight of the provisions of the proposed Act dealing with any operating licence granted to the Corporation. If a Minister who is a voting shareholder becomes responsible for the administration of the relevant provisions, the Premier is required, as soon as practicable, to revoke the Minister's nomination as a voting shareholder of the Corporation.

PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Clause 7 empowers the Minister to direct the transfer of the business undertaking of the Water Board to the Corporation. On the direction taking effect, the assets of the Water Board vest in the Corporation and the rights and liabilities of the Water Board become those of the Corporation.

Clause 8 empowers the Minister to direct that specified assets, rights and liabilities be excluded from the business undertaking transferred to the Corporation. These are to be transferred instead to the Ministerial Holding Corporation constituted by the State Owned Corporations Act 1989 or another person nominated by the Minister on behalf of the Crown.

Clause 9 empowers the Minister to direct the transfer, to the Corporation or a subsidiary of the Corporation, of other assets, rights or liabilities belonging to the State or an authority of the State and used by the Water Board.

PART 4—AREA OF OPERATIONS

Clause 10 provides that the area of operations of the Corporation is the same as the area of operations of the Water Board immediately before its dissolution. Each operating licence is to describe in a schedule the area of operations, or the part of the area of operations, to which it relates.

The Governor may expand or reduce the area of operations by order and may specify in the order which systems or services the Corporation may carry out in the whole or any part of the area of operations as so varied.

The area of operations must not be reduced unless the Minister is satisfied that similar services to those provided by the Corporation in the area to be excised will be provided by a council, Hunter Water Corporation Limited, a public authority or a Water Supply Authority. Further, the area of operations must not be reduced, or expanded into the area within which a council, Hunter Water Corporation Limited, a public authority or a Water Supply Authority provides the same services as the Corporation, unless consultations have taken place between the Corporation and the other body concerning the proposed reduction or expansion and its implications.

Clause 11 provides that an order made for the purposes of the Part may include provisions to facilitate the giving of effect to the order, such as provisions concerning the transfer of assets, staff and records.

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PART 5—OPERATING LICENCES

Clause 12 states that the Governor may grant one or more operating licences to the Corporation to enable the Corporation, in the area of operations, to provide and maintain systems and services for:

- storing or supplying water; or
- providing sewerage services; or
- providing stormwater drainage services; or
- disposing of waste water.

Operating licences may enable the Corporation to provide all or any of the systems or services in the same or different parts of the area of operations.

While an operating licence is in force, the Corporation is authorised, on behalf of the Water Administration Ministerial Corporation and despite any provision of 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 for the purposes mentioned above and the purposes of extraction and transportation of water.

Clause 13 provides that an operating licence is subject to terms and conditions determined by the Governor. However, an operating licence must (except to the extent that the Governor otherwise directs in an order under clause 10) include terms or conditions requiring the Corporation:

- 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
- to provide, operate, manage and maintain a stormwater drainage service within the capacity of the stormwater 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, pricing and other matters determined by the Governor.

The requirement to provide, operate, manage and maintain a stormwater drainage service is not to be included in an operating licence if the Minister is satisfied that the service is provided by another appropriate body.

Clause 14 provides that an operating licence must also include terms and conditions requiring the Corporation to establish and regularly consult with one or more Customer Councils appointed by it in relation to the provision of the systems and services.

Clause 15 provides that an operating licence may only be amended in the manner specified in the operating licence. Provision is made for the tabling in Parliament of written notice of amendments to an operating licence and for the disallowance of amendments by either House of Parliament.

Clause 16 states that an operating licence is to be for a maximum of 5 years and may be renewed for a maximum of 5 years at a time.

Clause 17 states that an operating licence applies to the whole or a part of the area of operations, as specified in the operating licence.

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Clause 18 provides that, if the Minister is of the opinion that the Corporation has contravened an operating licence, the Minister may require the Corporation to rectify the contravention within a specified time. If, in the opinion of the Minister, the Corporation contravenes an operating licence and whether or not a notice calling for rectification has been served, the Governor may direct that the Corporation be served with a letter of reprimand or pay a penalty (not exceeding \$1 million). The giving of a direction does not prevent the making of another direction by the Governor under the clause if the contravention continues or a fresh contravention occurs.

Clause 19 deals with cancellation of an operating licence. A licence may be cancelled by the Governor only if:

- there is an unauthorised cessation in the provision of services, or any of them, by the Corporation; or
- the Corporation is, in the opinion of the Minister, in material default in complying with the operating licence and has not, within the time specified by the Minister, either remedied the default or shown cause, in a manner satisfactory to the Minister, why the operating licence should not be cancelled; or
- the Corporation is insolvent; or
- the Corporation has been convicted on more than 3 occasions within 12 months of criminal offences punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

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

PART 6—PROVISIONS RELATING TO THE CORPORATION

Division 1—Objectives of Corporation

Clause 20 sets out the principal objectives of the Corporation. These are as follows:

- (a) in accordance with section 8 of the State Owned Corporations Act 1989, to be a successful business with the aims described in the clause;
- (b) to protect the environment by conducting its operations under any operating licence with reference to the principles of ecologically sustainable development enumerated in section 6 (2) of the Protection of the Environment Administration Act 1991;
- (c) to protect public health by supplying safe drinking water in compliance with the requirements of any operating licence.

Division 2—Provisions relating to works

Clause 21 provides that the Corporation owns all works that it installs in or on land or in water and all works in or on land or in water 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.

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Clause 22 provides that authorised persons may enter land on behalf of the Corporation for any of the purposes specified in the clause.

Clause 23 provides for the issue of certificates of authority for the purposes of the proposed Act. The Minister may, by order, impose conditions or restrictions on certificates of authority.

Clause 24 makes provision as to the manner in which a power to enter land may be exercised.

Clause 25 provides that, if damage is caused in the exercise of functions under the Division, compensation is to be provided and may be made by reinstatement, repair, construction of works or payment. If a sewer is installed, compensation is payable only in specified circumstances.

Clause 26 confers power on the Corporation to open the surface of a public road or public reserve subject to conditions such as restoration and removal of rubbish.

Clause 27 specifies the procedure to be adopted by the 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 28 provides that land in or on which a work of the Corporation is installed is taken to be the subject of a covenant in favour of the Corporation under which the owner of the land from time to time must ensure, among other things, 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 if they do so.

Clause 29 specifies other circumstances in which persons involved in causing damage to the Corporation's works are liable to compensate the Corporation.

Clause 30 deals with the procedure to be followed if interference to works is caused by trees.

Division 3—Acquisition of land

Clause 31 provides that the Corporation may acquire land by compulsory process under the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the proposed Act. The Corporation cannot give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the Minister's approval.

Division 4—Offences

Clause 32 creates offences relating to the illegal use or diversion of water.

Clause 33 prohibits discharge of any substance into a work owned by the Corporation without its written agreement or otherwise than in accordance with a customer or other contract or arrangement.

Clause 34 provides that prosecution or conviction of a person for an offence against the proposed Act does not limit other rights of the Corporation in relation to such matters as the recovery of damages or expenses incurred because of the offence.

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Clause 35 provides that certain persons involved in the commission of an offence against the proposed Act are themselves guilty of an offence and liable to the same penalty as the principal offender.

Clause 36 provides for proceedings for an offence against the proposed Act to be taken before a Local Court or the Supreme Court in its summary jurisdiction. Such proceedings may only be taken within 12 months after an offence is committed.

Division 5—Customer contracts

Clause 37 requires the initial terms and conditions of a customer contract relating to the provision by the Corporation of water supply and sewerage services to customers to be set out in an operating licence or licences. The terms and conditions, or a summary of them, must be published in a daily newspaper circulating in the area of operations, and must include particulars of the Corporation's contract charges or the manner of their calculation (except to the extent that the contract charges relate to a government monopoly service within the meaning of the Government Pricing Tribunal Act 1992).

Clause 38 provides that an owner of land connected to a water or sewer main owned by the Corporation is taken to have entered into a customer contract with the Corporation for the provision of services on the terms and conditions set out in the operating licence or licences, as varied from time to time in accordance with clause 42. In addition, if a customer contract contains provisions as to the imposition and payment of availability charges or stormwater drainage charges (as to which, see notes on clauses 47 and 48 below), a person by whom those charges are payable is also taken to have entered into a customer contract. A customer contract is not unjust, unconscionable, harsh or oppressive for the purposes of any law.

Clause 39 provides that an owner of land is not to be taken to have entered into a customer contract under clause 38 in respect of an unauthorised water or sewer main connection.

Clause 40 provides that Division 5 does not apply to a contract or other arrangement the terms and conditions of which have been specifically agreed to by a customer and the Corporation or by a person and a Water Supply Authority.

Clause 41 provides that the jurisdiction of a consumer claims tribunal under the Consumer Claims Tribunals Act 1987 extends to the hearing and determination of claims relating to the provision of services by the Corporation under a customer contract.

Clause 42 states that the 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 before the variation takes effect or within a shorter period approved by the Minister. A copy of the notice is to be given to customers with the next account for service charges issued after the publication date. The clause does not apply to a variation of the level of fees or charges which is in accordance with a determination of the Government Pricing Tribunal.

Division 6—Fees and charges

Clause 43 provides that the Corporation may impose fees and charges for services or things provided by it, including availability charges and stormwater drainage area charges. Fees and charges may be fixed by reference to any factors or combination of

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factors, such as the nature of the service or thing provided, the place where it is provided, usage or estimated usage of the service or thing, land value, land size or any other factor specified in an operating licence or prescribed by the regulations.

Fees and charges may be imposed by customer contracts or other means. However, fees and charges imposed by a customer contract can only be altered in accordance with the contract or as permitted by the relevant operating licence. Further, compulsory fees and charges may only be imposed by a customer contract (except to the extent that an operating licence or the regulations otherwise permit).

An operating licence may regulate the imposition of fees and charges and may specify, among other things, the fees and charges that may or may not be imposed. An operating licence may require the Corporation to fix fees or charges on a basis that is consistent with that employed by the Water Board before the transfer of the business undertaking or on some other basis stipulated in the operating licence.

The proposed section has effect subject to the Government Pricing Tribunal Act 1992.

Clause 44 provides that a new owner of land is liable for contract charges unpaid by the owner's predecessor in title as if the new owner had been a party to a customer contract with the Corporation for provision of the services to which the unpaid charges relate.

Clause 45 permits an occupier of land to pay outstanding contract charges, availability charges or stormwater drainage area charges if not paid by the owner of the land and to recover the amount involved from the owner or to deduct it from the rent or licence or other occupation fee payable to the owner.

Clause 46 provides that, after the transfer of the business undertaking to the Corporation, fees or charges imposed by the Corporation are not to be a charge on the land to which they relate unless otherwise provided by the proposed Act.

Clause 47 provides that the Corporation may and, if required by an operating licence must, require an owner of land to which a water or sewer main is available but is not connected to pay an availability charge in relation to the land. Despite clause 46, an availability charge is a charge on the land to which it relates. An operating licence may require the Corporation to stop imposing availability charges.

Clause 48 provides for the declaration of stormwater drainage areas. The Corporation may, and if required by an operating licence must, make and levy stormwater drainage area charges on owners of land in stormwater drainage areas in the area of operations. Despite clause 46, a stormwater drainage area availability charge is a charge on the land to which it relates.

Clause 49 requires the Corporation, on the making of applications to it, to certify whether any amounts payable to it in relation to particular land have been paid and, if not, to state the amount owing and whether or not it is charged on the land.

Clause 50 provides that the Corporation may not levy service charges on land that is described in Part 1 of Schedule 1 to the proposed Act unless it is land described in Part 2 of that Schedule. This continues the service charge exemptions under the Water Board Act 1987.

Clause 51 provides that the Corporation may enter into special arrangements with the Valuer-General (but not in contravention of an operating licence) for the provision of

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valuations for the purposes of the proposed Act. An operating licence may require the Corporation to terminate or vary any such special arrangement.

Division 7—Development

Clause 52 contains definitions of certain terms used in the Division.

Clause 53 describes compliance certificates that may be issued by the Corporation in relation to development.

Clause 54 provides that an approval given in relation to land in the area of operations may be subject to a condition that a compliance certificate be obtained from the Corporation. Nothing in the clause affects the imposition of conditions on approvals under the Environmental Planning and Assessment Act 1979 or any other Act.

Clause 55 provides for the making of applications for compliance certificates by developers.

Clause 56 makes provision for the grant of compliance certificates by the Corporation. Before granting a compliance certificate, the Corporation may serve a notice under clause 57 on the developer and require compliance with that notice.

Clause 57 provides that a notice served under the clause may require the developer concerned, before an application for a compliance certificate is dealt with, to do any one or more of the following:

- (a) to pay an amount, assessed by the Corporation, to cover the whole or part of relevant costs (as defined in clause 58) of certain works and systems;
- (b) to enter into one or more agreements providing for one or more of the following:
 - (i) the payment of such an amount to the Corporation;
 - (ii) the construction, or the construction and manner of construction, of specified works;
 - (iii) the transfer of works to the Corporation;
- (c) to provide security for due performance of an agreement;
- (d) to attend to additional or ancillary matters to give effect to any one or more of the above.

The clause has effect subject to the Government Pricing Tribunal Act 1992.

Clause 58 describes the meaning of relevant costs for the purposes of clause 57.

Clause 59 provides that compliance certificates may be issued unconditionally or subject to conditions.

Clause 60 provides that compliance certificates may be issued progressively in relation to the stages of a development.

Clause 61 requires consent authorities (except in specified circumstances) to notify the Corporation of development applications or building applications relating to the area of operations or a special area that may increase the demand for water or removal of waste water or that may 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

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authority must have regard to any submissions made by the Corporation when deciding whether to consent to an application or to attach conditions to it.

Clause 62 provides for the recovery by the Corporation of money owing to it as the result of the service of a notice under clause 57.

Division 8—Special areas

Clause 63 defines “joint sponsors” (being the Director-General of National Parks and Wildlife, the Director-General of the Department of Conservation and Land Management and the Corporation) and “public agency” for the purposes of the Division.

Clause 64 enables the Governor, on the Minister’s recommendation, by order to declare an area of land (for example, a catchment area) to be a special area. The Minister may not recommend the making of such an order unless the Minister is satisfied that the making of the order is necessary to protect the quality of stored waters or to maintain the ecological integrity of the land involved, consistent with fulfilment of the Corporation’s obligations under any operating licence, or both.

Clause 65 provides that the Corporation must not dispose of any land in a special area that it owns or is vested in it unless to or in favour of a statutory body or as authorised by an Act of Parliament. A transitional provision in Schedule 8 protects the position of persons who have existing arrangements with the Water Board involving dealings with land in special areas.

Clause 66 provides that the approval of the Corporation must be obtained to any action proposed to be taken under the Crown Lands Act 1989 in relation to a special area. It also gives the Corporation, in relation to a special area, the same powers as a manager of a reserve trust under that Act.

Clause 67 requires notice to be given to the Corporation, and enables the Corporation to make representations, if powers are to be exercised by a public agency in a special area.

Clause 68 provides for the making of regulations in relation to special areas.

Clause 69 provides for the preparation and submission to the Minister of plans of management for each special area by the joint sponsors.

Clause 70 requires the Corporation to carry out and give effect to a plan of management adopted under the proposed Act for a special area.

Division 9—Controlled areas

Clause 71 enables the Governor, on the Minister’s recommendation, by order to declare an area of land to be a controlled area. An order applies only while the land concerned is owned by or vested in the Corporation. Certain lands referred to in Schedule 1 to the Water Board (Special Areas) Regulation 1989 immediately before the commencement of the clause (namely, Prospect Reservoir and surrounding land and certain land in or on which water transfer structures such as tunnels, pipelines, water mains and drainage tunnels are located) are taken to be controlled areas for the purposes of the proposed Act.

Clause 72 provides for the making of regulations in relation to controlled areas.

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Division 10—Activities outside area of operations

Clause 73 provides that, if an operating licence has been issued to the Corporation, the Corporation can exercise, outside the area of operations, on behalf of the Water Administration Ministerial Corporation and despite any provision in the Water Administration Act 1986, the right of the Water Administration Ministerial Corporation to the use and flow, and to the control, of water. This right may be exercised only for the purposes specified in the clause.

Division 11—Other matters

Clause 74 provides that the Corporation may enter into contracts or arrangements with other persons for the provision of systems or services covered by an operating licence. Any such person may, for the purposes covered by the contract or arrangement, exercise on behalf of the Water Administration Ministerial Corporation and despite any provision in the Water Administration Act 1986, the right of the Water Administration Ministerial Corporation to the use and flow, and to the control, of water.

PART 7—MISCELLANEOUS

Clause 75 provides that a reference to a company by a specified name (such as Sydney Water Corporation Limited) includes references to the company under a changed name.

Clause 76 provides for the alteration of Schedule 2 to the State Owned Corporations Act 1989 (so far as the board of the Corporation is concerned) in the manner set out in Schedule 2 to the proposed Act.

Clause 77 provides for the alteration of Schedule 3 to the State Owned Corporations Act 1989 (so far as subsidiaries are concerned) in the manner set out in Schedule 3 to the proposed Act.

Clause 78 declares that the 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. Provision is also made as to protection of unbroken service with the Corporation that is continuous with service with the Water Board for the purposes of the Transferred Officers Extended Leave Act 1961.

Clause 79 provides that the proposed Act binds the Crown.

Clause 80 prohibits persons who do not hold appropriate licences, supervisor certificates or certificates of registration, or who are not appropriately supervised, from doing any water supply, sewerage or stormwater drainage work that is to be connected with works owned by the Corporation. This offence attracts a maximum penalty of 100 penalty units (currently, \$10,000). The prohibition does not apply to employees of the Corporation carrying out work on its behalf or to any other person the Corporation authorises to carry out the work. Regulations may be made under the proposed Act concerning the performance of such work.

Clause 81 makes provision as to the service of notices under the proposed Act.

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Clause 82 specifies that the Corporation must comply with the requirements of Schedule 4 to the proposed Act as to the annual report of its operations in addition to meeting relevant requirements of the State Owned Corporations Act 1989 and the Corporations Law concerning annual reports.

Clause 83 provides that the Freedom of Information Act 1989 applies to the Corporation and any subsidiaries of the Corporation as if they were public authorities.

Clause 84 provides that, despite the State Owned Corporations Act 1989, section 23 of the Independent Commission Against Corruption Act 1988 (dealing with power to enter public premises) applies to the Corporation and its subsidiaries and to persons who are public officials because of their connection with the Corporation or its subsidiaries.

Clause 85 empowers the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 86 repeals the Water Board Act 1987 and all regulations and by-laws under that Act and the Metropolitan Water, Sewerage, and Drainage Act 1924 except as provided in Schedule 8.

Clause 87 is a formal provision giving effect to the amendments to the Government Pricing Tribunal Act 1992 set out in Schedule 5.

Clause 88 is a formal provision giving effect to the amendments of Acts set out in Schedule 6.

Clause 89 is a formal provision giving effect to the amendments of regulations set out in Schedule 7.

Clause 90 is a formal provision giving effect to the savings, transitional and other provisions in Schedule 8.

Clause 91 provides for the review of the proposed Act within 5 years after its commencement.

SCHEDULES

Schedule 1 describes land that is exempt from service charges, and land that is excepted from that exemption, in accordance with clause 50.

Schedule 2 modifies the operation of Part 2 (Articles) of Schedule 2 (Provisions to be included in Memorandum or Articles of Association of State Owned Corporations) to the State Owned Corporations Act 1989, as regards the Corporation, by making provision for a board consisting of specified members selected in a specified manner, including a director with industrial relations experience, and for certain procedural matters to do with the selection of that director.

Schedule 3 modifies the operation of Part 2 (Articles) of Schedule 3 (Provisions to be included in Memorandum or Articles of Association of Subsidiaries) to the State Owned Corporations Act 1989, as regards the 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 the Corporation, and for the transfer of shares is needed only for shares held by Ministers or held by or on behalf of the Corporation.

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Schedule 4 sets out requirements to be complied with in relation to the Corporation's annual report in accordance with clause 82. These include certain of the requirements currently applying to statutory bodies under the Annual Reports (Statutory Bodies) Act 1984 and regulations made under that Act.

Schedule 5 amends the Government Pricing Tribunal Act 1992 by introducing provisions relating to the determination of maximum prices for government monopoly services provided by specified government agencies and by including the Corporation (in place of the Water Board) in the Schedule of government agencies in respect of which the Government Pricing Tribunal has a standing reference.

Schedule 6 makes consequential amendments to various Acts, including amendments to the Valuation of Land Act 1916 to set out the special arrangements for provisions of valuations to the Corporation as referred to in the note to clause 51 above.

Schedule 7 makes consequential amendments to various regulations.

Schedule 8 contains savings, transitional and other provisions.

These include provisions dealing with the dissolution of the Water Board and the vacation of office by Board members. Compensation is payable to members vacating office on the dissolution of the Water Board under Part 8 of the Public Sector Management Act 1988 unless the former member is immediately appointed to the service of the Corporation or one of its subsidiaries. On dissolution of the Water Board, the Corporation is taken for all purposes to be the same legal entity as the Water Board. This provision does not affect a transfer of assets, rights and liabilities under the proposed Act.

Provision is also made for the Governor, on the Minister's recommendation, by order to declare an area of land to be part of the outer catchment of the Corporation. Such an order may be amended or repealed by a State environmental planning policy or a regional environmental planning policy made under the Environmental Planning and Assessment Act 1979. Consent authorities in outer catchment areas must notify the Corporation of any development application that may adversely affect the quality of water from which the Corporation draws its supply and must have regard to any submissions made by the Corporation concerning the development application.

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WATER BOARD (CORPORATISATION) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and stormwater drainage systems and the disposal of waste water in Sydney and other regions and certain other matters; to provide for the transfer of assets, rights and liabilities of the Water Board; to amend the State Owned Corporations Act 1989; to amend the Government Pricing Tribunal Act 1992 in relation to the fixing of maximum prices for government monopoly services; to amend certain other Acts; to repeal the Water Board Act 1987; and for other purposes.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

5 1. This Act may be cited as the Water Board (Corporatisation) Act 1994.

Commencement

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

Definitions

10 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 Part 4;

15 “**availability charge**” means a charge of a kind referred to in section 47;

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

20 “**contract charge**” means any fee or charge payable under a customer contract;

“**controlled area**” means an area of land declared by an order in force under section 71 to be a controlled area;

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

25 “**customer contract**” means a contract of a kind referred to in section 38 (1);

“**excluded undertaking**” means any assets, rights or liabilities of the Water Board that the Minister has directed to be excluded under section 8;

“**exercise**” of a function includes the performance of a duty;

30 “**function**” includes a power, authority or duty;

“**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 or process of a court;

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- “lease”** includes a licence or permit;
- “meter”** includes any measuring device;
- “Ministerial Holding Corporation”** means the Ministerial Holding Corporation constituted by section 37B of the State Owned Corporations Act 1989; 5
- “operating licence”** means an operating licence granted under section 12 or any renewal of it;
- “outer catchment area”** means an area of land declared by an order in force under clause 7 of Schedule 8 to be an outer catchment area;
- “owner”**, in relation to land, includes every person who jointly or severally at law or in equity: 10
- (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 15
 - (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, 20
- 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 declared by the regulations not to be within this definition, either generally or in a particular case or class of cases;
- “public reserve”** has the same meaning as it has in the Local Government Act 1993; 25
- “public road”** means:
- (a) any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law; or 30
 - (b) any road that is declared to be a public road for the purposes of the Roads Act 1993;
- “special area”** means an area of land declared by an order in force under section 64 to be a special area;
- “statutory body”** means a corporation that is incorporated by or under an Act, but does not include: 35
- (a) a company within the meaning of the Corporations Law; or
 - (b) a society within the meaning of the Co-operation Act 1923 or a co-operative within the meaning of the Co-operatives Act 1992; or 40

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(c) an association incorporated under the Associations Incorporation Act 1984; or

(d) a body prescribed by the regulations as not being a statutory body for the purposes of this definition;

5 **“storages”** means dam walls, pumps and other works used for or with respect to the extraction, and storage, of:

(a) water in rivers and lakes; and

(b) water occurring naturally on the surface of the ground; and

(c) sub-surface waters;

10 **“stormwater drainage area charge”** means a charge of a kind referred to in section 48;

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

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

“Water Board” means the Water Board constituted under the Water Board Act 1987;

“works” means:

20 (a) storages, water mains, sewer mains, water and sewerage treatment plants, waste water treatment plants, or stormwater drainage channels; or

(b) monitoring devices in, under, over or near:

(i) any works referred to in paragraph (a); or

25 (ii) any rivers or oceans; or

(c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b).

PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

30 **Establishment of Corporation as SOC**

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

Prohibition on sale or disposal of shares

35 5. Shares in the Corporation cannot be sold or otherwise disposed of except to eligible Ministers.

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Role of Minister having oversight of operating licences

6. (1) The Premier may not nominate the Minister who is responsible for administering the provisions of this Act relating to any operating licence granted to the Corporation as a voting shareholder of the Corporation. 5

(2) If a Minister who is a voting shareholder of the Corporation becomes the Minister responsible for administering the provisions of this Act relating to any operating licence granted to the Corporation, the Premier must, as soon as practicable, revoke the nomination of the Minister as a voting shareholder and nominate another eligible Minister to be a voting shareholder in the Minister's place. 10

PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Direction to transfer business undertaking

7. (1) The Minister may, by order in writing, direct that the business undertaking of the Water Board be transferred to the Corporation, on the date and for the consideration specified in the order. 15

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

(3) On the date specified in the order, the following provisions have effect (subject to the order): 20

(a) the assets of the 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; 25

(b) the rights and liabilities of the 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 Water Board or a predecessor of the Water Board and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation; 30

(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 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; 35

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- 5 (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Water Board or a predecessor of the Water Board is, subject to regulations under clause 1 (1) of Schedule 8, 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
- 10 (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.
- 15 (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 Water Board is required.
- 20 (7) Assets, rights or liabilities may not be transferred under this section to the Corporation unless the Corporation is a State owned corporation.

Excluded undertakings

- 25 8. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Water Board as are specified or referred to in the order be excluded from the Water Board's business undertaking.
- (2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Holding Corporation or such other person on behalf of the Crown as is so specified.
- 30 (3) The functions of the Ministerial Holding Corporation include the following:
- (a) to hold and dispose of assets, rights and liabilities transferred to it under this Act;
- 35 (b) 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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(4) Section 7 applies to the transfer of the excluded undertaking under this section in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

(5) Different parts of any excluded undertaking may be transferred under subsection (2) to different persons. 5

(6) The Ministerial Holding Corporation or other person is authorised to dispose of any excluded undertaking transferred under subsection (2) or to retain it and conduct any business to which it relates.

Transfer of other assets, rights or liabilities

9. (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 Water Board for the supply of water, the provision of sewerage and stormwater drainage systems, 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. 10
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(2) Section 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

PART 4—AREA OF OPERATIONS

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Area of operations

10. (1) The Corporation has, subject to this section, the same area of operations that the Water Board had immediately before its dissolution. Each operating licence is to contain a schedule that details the area of operations or the part of the area of operations to which the operating licence applies. 25

(2) The Governor may, by order published in the Gazette, vary the area of operations and may, by that order, specify which systems and services the Corporation may provide in the whole or a part or parts of the area of operations as so varied. 30

(3) An order under subsection (2) may expand or reduce the area of operations. However, an order must not reduce the area of operations unless the Minister is satisfied that, after the order takes effect, similar services to those provided by the Corporation in the area to be excised from the area of operations are able to, and will, be provided by any one or more of the following: 35

(a) a council of an area; or

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- (b) Hunter Water Corporation Limited;
- (c) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
- 5 (d) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987.

- (4) Despite subsections (2) and (3), the area of operations must not be:
- (a) reduced; or
- 10 (b) expanded to include the whole or part of the area within which any of the bodies referred to in subsection (3) (a)–(d) provides services that are the same services the Corporation is authorised to provide under the operating licence,

15 unless consultations, regarding the proposed reduction or expansion and the implications of the proposed reduction or expansion, have taken place between the Corporation and the council, Hunter Water Corporation Limited, public authority or Water Supply Authority before the order reducing or expanding the area of operations is made.

(5) It does not matter if a reduction or expansion of the area of operations results in parts of the area of operations covered by an operating licence not being contiguous.

20 **Facilitating provisions of orders**

11. (1) An order of the Governor for the purposes of this Part may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to:

- 25 (a) the transfer or apportionment of assets, rights and liabilities;
- (b) the transfer of staff;
- (c) the delivery or retention of records;
- (d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect;
- 30 (e) the preservation or continuance of anything existing before the order takes effect;
- (f) the imposition of fees and charges;
- (g) the recovery of fees and charges.

(2) Such an order may:

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

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- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
or may do any combination of those things.

PART 5—OPERATING LICENCES

Grant of operating licences 5

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

- (a) storing or supplying water; or 10
- (b) providing sewerage services; or
- (c) providing stormwater drainage systems; or
- (d) disposing of waste water.

(2) Operating licences may be granted to enable the Corporation to provide all or any of the systems or services in the same or different parts of the area of operations. 15

(3) While an operating licence is in force, the Corporation is authorised 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 the purposes referred to in subsection (1) and for the purposes of extraction and transportation of water. 20

(4) The authorisation given by subsection (3) in relation to an operating licence applies only so far as is relevant to the ambit of the operating licence and is subject to the terms and conditions of the operating licence. 25

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

Terms and conditions of operating licences

13. (1) An operating licence is subject to the terms and conditions determined by the Governor, but (so far only as is relevant to the ambit of the operating licence) must include terms or conditions under which the Corporation is required: 30

- (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 35

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5 (b) to provide, operate, manage and maintain a stormwater drainage system within the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the Water Board to the Corporation as at the date of the transfer of the business undertaking; and

10 (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, pricing and other matters determined by the Governor and set out in the operating licence.

15 (2) The operating licence granted to the Corporation is to provide, or (if there is more than one such licence) the operating licences granted to the Corporation are to provide collectively, for the provision of the systems and services referred to in subsection (1) (a) and (b) in the area of operations or the relevant part of the area of operations, except to the extent that:

20 (a) the Governor has, by order made under section 10 (2), restricted the systems and services that the Corporation may provide in the area of operations or the relevant part of the area of operations; or

20 (b) this Act otherwise provides.

25 (3) Despite this section, the provision, operation, management or maintenance of the stormwater drainage system described in subsection (1) (b) need not be required as a term or condition of an operating licence if the Minister is satisfied that satisfactory arrangements have been made for the service to be provided by another appropriate body.

Customer Councils

30 14. (1) An operating licence must also include terms or conditions that require the Corporation to establish and regularly consult with one or more Customer Councils, each consisting of persons appointed from time to time by the Corporation.

(2) The Corporation is to consult with the Customer Councils from time to time, as the Corporation thinks fit, in relation to the provision of the systems and services referred to in this Part.

Amendment of operating licences

35 15. (1) An operating licence may only be amended in the manner specified in the operating licence.

(2) Written notice of an amendment to an operating licence must be laid before each House of Parliament within 14 sitting days of that House

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after the amendment has been made, and must be accompanied by a copy of the amendment.

(3) Failure to lay a written notice before each House of Parliament in accordance with this section does not affect the validity of the amendment, but such a notice must nevertheless be laid before each House. 5

(4) Either House of Parliament may pass a resolution disallowing the amendment at any time after the written notice is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the written notice was laid before it. 10

(5) On the passing of a resolution disallowing the amendment, the amendment ceases to have effect.

(6) Section 30 of the Interpretation Act 1987 applies to the disallowance of the amendment in the same way as it applies to the amendment or repeal of a statutory rule. 15

(7) The disallowance of the amendment has the effect of restoring or reviving the operating licence, as it was immediately before the amendment took effect.

(8) This section applies to a portion of an amendment in the same way as it applies to the whole of an amendment. 20

(9) This section applies to the substitution of an operating licence in the same way as it applies to the amendment of an operating licence.

(10) If written notice is given of a proposed amendment of an operating licence, so much of this section as is relevant applies to the proposed amendment, and this section does not again apply to the amendment if it is made in its proposed form and was not disallowed in that form. 25

Term of operating licences

16. (1) The initial term of an operating licence is to be for a maximum of 5 years, as determined by the Governor.

(2) After the initial term, the Governor may renew an operating licence for a maximum of 5 years at a time. 30

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

Area covered by operating licences

17. An operating licence applies to the whole or a part of the area of operations, as specified in the operating licence. 35

Contravention of operating licences

5 **18.** (1) If, in the opinion of the Minister, the Corporation contravenes an operating licence, the Minister may cause a notice to be served on the Corporation requiring it to rectify the contravention within a specified period.

 (2) If, in the opinion of the Minister, the Corporation contravenes an operating licence, and whether or not a notice has been served under subsection (1) or the period specified in the notice has ended, the Governor may direct that either of the following is to apply:

- 10 (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 \$1 million) in an amount to be determined by the Governor.

15 (3) 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.

20 (4) An 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.

 (5) 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 licences

25 **19.** (1) An operating licence may be cancelled by the Governor, but only if:

- (a) the Corporation ceases, otherwise than as authorised by the operating licence or as permitted in accordance with an order made under section 10 (2), to do the things referred to in section 13 (1) or any of them in the area of operations for any reason; or
- 30 (b) the Corporation:
- (i) 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; and
- 35 (ii) has not, within the time specified by the Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled; or
- (c) the Corporation is an externally administered corporation within the meaning of the Corporations Law; or

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- (d) the Corporation has been convicted on more than 3 occasions within a period of 12 months of criminal offences that are punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more. 5
- (2) A notice under section 18 can be regarded also as a notice for the purposes of subsection (1) (b).
- (3) If an 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 recipients of the Corporation's systems and services. 10 15
- (4) 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. 20

PART 6—PROVISIONS RELATING TO THE CORPORATION

Division 1—Objectives of Corporation

Objectives of Corporation

20. The principal objectives of the Corporation are: 25
- (a) to be a successful business and, to this end:
- (i) to operate at least as efficiently as any comparable businesses; and
- (ii) to maximise the net worth of the State's investment in the Corporation; and 30
- (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate these when able to do so; and
- (b) to protect the environment by conducting its operations under an operating licence with reference to the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act 1991; and 35

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- (c) to protect public health by supplying safe drinking water in compliance with the requirements of any operating licence.

Division 2—Provisions relating to works

Ownership of works

5 21. (1) The Corporation is the owner of all works installed in or on land, at sea, in or on the seabed, in rivers and other waterways and in or on the beds of rivers and waterways by the Corporation and of all works in or on land or in water vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).

10 (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.

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

Entry on to land

20 22. (1) The Corporation may, by persons issued with certificates of authority under section 23, enter and occupy land or a building in accordance with this Division for any one or more of the following purposes:

25 (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 material discharged into the Corporation's sewers;

(c) to make a valuation or assessment of the usage of the land or of any building on the land;

30 (d) to find the source of pollution of water supplied by the Corporation and, for this purpose, to dig up and remove material from the land;

35 (e) 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 and, for this purpose, to dig up and remove material from the land;

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- (f) to cut off or restrict the supply of water or other services to the land if any contract charges relating to the supply of water or those services to the land by the Corporation are unpaid;
 - (g) to rectify defective or improper work that has not been rectified in accordance with a notice served by the Corporation under a customer contract or other contract; 5
 - (h) 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, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence; 10
 - (i) 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, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence. 15
- (2) Material that has been excavated from land for the purposes of this section may only be removed from the land by the Corporation: 20
- (a) if this is necessary for the purpose of ascertaining whether an offence has been committed against this Act; or
 - (b) if the owner of the land has consented to its removal.
- Certificates of authority** 25
23. (1) The board of the Corporation may authorise an officer of the Corporation or the holder for the time being of an office in the Corporation's establishment to issue certificates of authority for the purposes of this Act.
- (2) Such an officer or holder of an office may issue certificates of authority. 30
- (3) A certificate of authority must:
- (a) state that it is issued under this Act; and
 - (b) specify the person or class of persons who are authorised to exercise the power of entry under this Act; and 35
 - (c) describe the nature of the powers proposed to be exercised; and
 - (d) state the date (if any) on which it expires; and
 - (e) bear the signature of the person by whom it is issued.

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5 (4) The Minister may, if the Minister thinks fit, by order published in the Gazette, impose conditions or restrictions on 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.

Exercise of powers of entry

10 24. (1) Before a person enters any land or building under a power conferred by this Division, the Corporation or a 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 or days specified in the notice unless:

- 15 (a) entry to the 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
- 20 (c) entry is made solely for the purpose of reading a meter that measures water supplied by the Corporation or material 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.

25 (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:

- 30 (a) is in possession of a certificate of authority issued under section 23; 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.

35 (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 unless 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.

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Compensation

25. (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. 5

(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 causes other physical damage to property or if an access chamber or main ventilator is constructed on the land. 10

Power to open roads

26. (1) The Corporation may, for the purpose of exercising its functions in relation to systems or services in accordance with an operating licence and after giving reasonable notice to persons likely to be affected, including the appropriate roads authority under the Roads Act 1993, open and break up: 15

- (a) the soil and pavement of a public road or public reserve; and
- (b) any pipe, sewer, drain or tunnel in or under or any ground under a public road or public reserve. 20

(2) The person having the control and management of a public road or public reserve may 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. 25

(3) If a public road or public reserve is damaged by a malfunction 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 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. 30

(5) A person desiring to connect premises with a water main or sewer main of the Corporation that is available for connection may (subject to such conditions as may be imposed by or under any Act or law) open and break up the soil and pavement of a public or private road or way or a footpath or public reserve to the extent required to make the connection. 35

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Altering position of conduit

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

- 5 (a) the Corporation, in order to comply with an 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:

- 10 (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.

15 (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.

20 (4) The Corporation may, for the purposes of subsection (3), exercise any powers of the person on whom the notice was served, in addition to or instead of any powers of the Corporation.

(5) Except as provided by subsection (4), this section does not confer on the Corporation or the owner of the conduit any additional powers of entry or powers to carry out works than would be available apart from this section.

25 (6) In this section, “**conduit**” means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

Protection of works

30 28. (1) Land in or on which a work of the Corporation is installed is taken to be the subject 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:

- 35 (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 persons issued with certificates of authority under section 23 are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 21 (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 5
- (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. 10
- (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. 15
- (3) A covenant to which subsection (1) relates is enforceable as a duly created 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 could not reasonably have prevented action taken by any person that would, if capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee. 20
- (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. 25 30
- (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. 35
- Compensation to Corporation for damage**
29. (1) Without limiting section 28, 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 40

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circumstances in which the person should have known that the 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.

5 (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) A reference in this section to a person extends to any person:

 (a) who caused the carrying out of the activity; or

10 (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.

15 (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

20 30. (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.

25 (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:

30 (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

35 (b) the work of the Corporation is located, within the land on which the tree has been planted, on land that was the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes when the tree was planted.

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- (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 the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future. 5
- (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. 10
- (6) The Corporation may recover from an owner the cost of removing a tree under subsection (5), but only if the Corporation establishes: 15
- (a) that the tree was planted during the ownership of that owner; and
 - (b) that:
 - (i) an owner or occupier should have known that the planting of the tree would result in the destruction of, damage to or interference with the work concerned; or 20
 - (ii) the tree was planted on land that was then the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes.
- (7) 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: 25
- (a) an interim conservation order or a permanent conservation order under the Heritage Act 1977; or
 - (b) an order in force under section 130 or 136 of the Heritage Act 1977; or 30
 - (c) an interim protection order under the National Parks and Wildlife Act 1974; or
 - (d) a protection conferred by any similar law.
- (8) 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. 35
- (9) In this section, "tree" includes shrub or other plant.

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Division 3—Acquisition of land

Acquisition of land for purposes of this Act

31. (1) The Corporation may acquire land (including an interest in land) for the purposes of this Act.

5 (2) Land that the Corporation is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.

10 (3) The Corporation may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

Division 4—Offences

Illegal diversion of water

32. A person must not:

15 (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

20 (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).

Offence to discharge into works

25 33. (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).

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

Payment of penalty does not affect other proceedings

34. (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

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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 5
- (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. 10

Persons causing offences

35. (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 15
- (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. 20

Disposal of proceedings for offences

36. (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before: 25

- (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 100 penalty units or the maximum penalty for the offence, whichever is the lesser. 30

(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**

5 **37.** (1) The initial terms and conditions of customer contracts are to be set out in the operating licence or licences that relate to the provision of water supply or sewerage services by the Corporation.

 (2) The Corporation must, before the commencement of section 38, publish, in a daily newspaper circulating in the area of operations, a notice setting out those initial terms and conditions of customer contracts or a summary of them.

10 (3) The terms and conditions 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.

15 (4) Subsection (3) does not apply to the extent that the contract charges relate to a government monopoly service within the meaning of the Government Pricing Tribunal Act 1992.

 (5) If an operating licence so provides, the terms and conditions set out in the notice or the summary must be in a form specified by or authorised under the operating licence or licences.

20 Owner of land taken to have entered into customer contract

38. (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 the terms and conditions set out in the relevant operating licence or licences as varied from time to time in accordance with section 42, for the provision of water supply or sewerage services, or either of them, to the land.

25 (2) In addition, a customer contract may also include terms and conditions relating to the imposition and payment of charges imposed under section 47 or 48. If a customer contract makes provision for such matters, a person by whom one or more of the charges are payable is taken to have entered into a contract with the Corporation on those terms and conditions.

30 (3) A customer contract, or a contract entered into in accordance with subsection (2), is not unjust, unconscionable, harsh or oppressive for the purposes of any law.

35 (4) This section has effect subject to section 39.

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No customer contract for unauthorised connection

39. (1) An owner of land is not to be taken to have entered into a customer contract under section 38 if the connection of the land to a water main or sewer main:

- (a) was not authorised by the Corporation, a predecessor of the Corporation or another appropriate authority; and 5
- (b) has not since been approved by the Corporation, a predecessor of the Corporation or another appropriate authority.

(2) The Corporation may give approvals for the purpose of this section.

Division not to apply to certain contracts 10

40. (1) This Division does not apply to the extent that the terms and conditions of a contract or other arrangement for the provision of water supply or sewerage or stormwater drainage systems, or any of them, have been specifically agreed to by the Corporation and a person who is taken to have entered into a customer contract under section 38. 15

(2) Without limiting subsection (1), nothing in section 38, 47 or 48 affects the operation of:

- (a) a contract between the Corporation and a person (whether or not the person is taken to have entered into a customer contract under section 38); or 20
- (b) a contract between a public authority and a person (whether or not the person is taken to have entered into a customer contract under section 38) relating to the supply of water or the provision of water recycling, effluent treatment, stormwater drainage or similar services within the area of operations. 25

Consumer claims

41. The jurisdiction of a consumer claims tribunal constituted under the Consumer Claims Tribunals Act 1987 extends to the hearing and determination of a consumer claim (within the meaning of that Act) relating to a service supplied by the Corporation under a customer contract. 30

Variation of customer contracts

42. (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation by a notice setting out the variation and published in a daily newspaper circulating in the area of operations. The notice must be published at least 6 months 35

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before the variation becomes effective or within a shorter period approved by the Minister.

5 (2) A copy of the notice published under this section is to be given by the Corporation to the person who is taken to have entered into the customer contract under section 38. The copy is to be given with the next account for service charges issued after the date of publication of the notice. Failure to comply with the requirements of this subsection does not affect the validity of the variation or any contract charge made in accordance with the variation.

10 (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 evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.

15 (4) This section does not apply to the variation of the terms and conditions of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Government Pricing Tribunal.

Division 6—Fees and charges

Fees and charges generally

- 20 43. (1) The Corporation may impose:
- (a) fees and charges for or in connection with any service or thing supplied or provided by the Corporation in the exercise of its functions under this Act; and
 - 25 (b) without affecting the generality of paragraph (a)—availability charges and stormwater drainage area charges.
- (2) Any such fees and charges may be fixed by reference to any factors or combination of factors, including but not limited to the following:
- (a) the nature of the service or thing provided;
 - (b) the place where the service or thing is provided;
 - 30 (c) usage or estimated usage of the service or thing provided;
 - (d) land value or any other value provided for in the Valuation of Land Act 1916 and at such base date as the Corporation determines;
 - (e) land size, meter size or pipe size;
 - 35 (f) any factor specified in an operating licence or prescribed by the regulations.

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- (3) The Corporation may impose any such fees and charges by customer contracts or by any other means. A fee or charge that is imposed by a customer contract cannot be altered except in accordance with the customer contract or an operating licence.
- (4) The Corporation may impose a compulsory fee or charge by means of a customer contract only, except to the extent that an operating licence or the regulations permit a specified compulsory fee or charge or specified class of compulsory fee or charge to be imposed by some other means. The regulations may determine for the purposes of this subsection the kinds of fees or charges that are or are not compulsory in nature.
- (5) An operating licence may regulate the imposition of any fees and charges, and in particular may provide for any or all of the following:
- (a) specified fees and charges must not be imposed or must cease being imposed;
 - (b) specified fees and charges must be imposed;
 - (c) specified fees and charges may be imposed by customer contracts only.
- (6) An operating licence may provide that the Corporation must, in imposing fees or charges or any specified class of fees or charges, do so:
- (a) on a basis that is consistent with the system employed by the Water Board for fixing such fees or charges immediately before the transfer of the business undertaking (including the relevant provisions of clauses 4 and 5 of the Water Board (Finance) Regulation 1988); or
 - (b) on some other basis stipulated in the operating licence.
- (7) This section has effect subject to the Government Pricing Tribunal Act 1992.

Successor in title liable for unpaid contract charges

44. 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, contract charges in certain cases

45. (1) In this section:

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

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“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.

5 (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 or stormwater drainage area charges payable in relation to the land, the occupier may pay to the Corporation any charges that are due but unpaid by the owner and may:

10 (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.

Fees and charges not to be charges on land

15 46. On and after the transfer under Part 3 of the business undertaking of the Water Board to the Corporation, no fees or charges imposed by the Corporation are to be a charge on the land to which they relate, unless expressly provided for by this Act.

Availability charges

20 47. (1) The Corporation may and, if so required by an operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation and available for connection to pay an availability charge.

25 (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 46, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

30 (4) An availability charge is payable in relation to a particular water main to which the land concerned is not connected even if the land is connected to another water main, provided the kinds of water available from the services differ in nature or quality.

(5) Without limiting the generality of section 43 (5), the Corporation must cease imposing availability charges if an operating licence so requires.

Stormwater drainage area charges

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

(2) An order in force under section 28 (3) of the Water Board Act 1987 (as in force immediately before the commencement of section 86 of this Act) declaring an area of land to be a stormwater drainage area is taken to be an order for the purposes of this section. 5

(3) The Corporation may and, if so required by an operating licence must, make and levy stormwater drainage area charges on the owners of land within a stormwater drainage area located in the area of operations. 10

(4) A stormwater drainage area charge 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 46, a stormwater drainage area charge levied under this section is a charge on the land to which the stormwater drainage area charge relates. 15

Certificates as to amounts due

49. (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: 20

- (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 25
- (b) to the effect that there are no such amounts.

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

(3) An application for a certificate must: 30

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

(4) 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. 35

*Water Board (Corporatisation) 1994***Exemptions from service charges**

50. (1) The Corporation may not levy service charges on land described in Part 1 of Schedule 1 unless it is land described in Part 2 of Schedule 1.

5 (2) The Minister may, by order published in the Gazette, amend Schedule 1 by omitting from the Schedule a description of land contained in it or by inserting in the Schedule a description of land.

10 (3) In this section, “**service charge**” means a charge of the kind that was included in the definition of “service charge” in section 3 (1) of the Water Board Act 1987, and includes any kinds of fees and charges prescribed by the regulations as service charges to which this section applies, but does not include any kinds of fees and charges so prescribed as service charges to which this section does not apply.

Special arrangements with Valuer-General

15 51. (1) The Corporation may enter into special arrangements with the Valuer-General under Part 6B of the Valuation of Land Act 1916, but must not do so in contravention of a condition of an operating licence.

20 (2) Any valuations supplied to the Corporation under any such special arrangements may be used for the purposes of this Act, but subject to the terms of an operating licence under that Act.

(3) The Corporation must take all available steps to terminate or vary any such special arrangements if required to do so by an operating licence.

Division 7—Development**Definitions**

52. In this Division:

“**approval**” means:

- 25 (a) an approval under Part 1 of Chapter 7 of the Local Government Act 1993 for the erection of a building; or
- 30 (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; or
- 35 (d) any similar approval, consent or other matter, prescribed by the regulations for the purposes of this definition;

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- “compliance certificate”** means a certificate referred to in this Division;
- “consent authority”** has the meaning given in the Environmental Planning and Assessment Act 1979, and includes a council to which an application for approval for the erection of a building under Part 1 of Chapter 7 of the Local Government Act 1993 may be made; 5
- “developer”** means a person to whom an approval has been given;
- “development”**, in relation to land, means any activity to which an approval relates;
- “works”** has the meaning given by section 3, and includes: 10
- (a) structures on or improvements to land that are designed to facilitate the carrying of water (including, for example, excavations along natural watercourses); or
 - (b) structures on or improvements to land that are designed to facilitate the operation of water and sewerage plants or waste water treatment plants (including, for example, artificial wetlands); or 15
 - (c) monitoring devices in, under, over or near any works referred to in paragraph (a) or (b); or
 - (d) any works ancillary or antecedent to any works referred to in paragraphs (a)–(c). 20

Compliance certificates

- 53. (1)** A compliance certificate is a certificate issued by the Corporation under this Division in relation to a particular development, and certifying: 25
- (a) that the requirements of the Corporation under this Division in relation to the development have been complied with; or
 - (b) that no such requirements were imposed by the Corporation in relation to the development.
- (2)** A compliance certificate can be issued to: 30
- (a) a developer who is subject to a condition requiring that such a certificate be obtained and who applies for a certificate; or
 - (b) a developer who, though not subject to such a condition, nevertheless applies for such a certificate.

Conditions requiring compliance certificates 35

- 54. (1)** It may be a condition of an approval given with respect to land within the Corporation’s area of operations that a compliance certificate be obtained from the Corporation.

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(2) The Corporation may issue guidelines from time to time to assist consent authorities and other authorities in relation to the imposition of conditions of the kind referred to in subsection (1).

5 (3) Nothing in this section affects the generality of the Environmental Planning and Assessment Act 1979 or any other Act with regard to the imposition of conditions on approvals.

Applications for compliance certificates

10 55. (1) If an approval has been given with respect to land within the Corporation's area of operations and the developer to whom the approval has been given is required, or wishes, to obtain a compliance certificate, the developer may apply to the Corporation for a compliance certificate.

(2) The application must be accompanied by a copy of the approval.

Grant of compliance certificates

15 56. If an application is made to the Corporation for a compliance certificate, the Corporation:

- (a) may grant the developer a compliance certificate, without serving a notice on the developer under section 57; or
- 20 (b) must grant the developer a compliance certificate, when the Corporation is satisfied that the requirements of a notice served on the developer under section 57 have been complied with; or
- 25 (c) must, at the developer's request, grant the developer a compliance certificate, if no compliance certificate has been granted to, and no notice under section 57 has been served on, the developer within 60 days after the making of an application under section 55 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.

Notice of requirements before grant of compliance certificate

30 57. (1) If an application is made to the Corporation for a compliance certificate, the Corporation may, before proceeding further with the application, serve a notice on the developer requiring the developer to do any one or more of the following:

- 35 (a) to pay an amount to the Corporation to cover the whole or an appropriate portion of relevant costs (as defined in section 58), as assessed by the Corporation either in the notice or in another notice;
- (b) to enter into one or more agreements providing for any one or more of the following:

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- (i) the payment of such an amount to the Corporation;
 - (ii) the construction, or the construction and the manner of construction, of the works specified in the notice;
 - (iii) the transfer of any such works to the Corporation;
 - (c) to provide reasonable security, in a form approved by the Corporation, for due performance of such an agreement; 5
 - (d) to attend to such additional or ancillary matters as are specified by the Corporation and as are necessary to give effect to any one or more requirements imposed under paragraphs (a)–(c).
- (2) The Corporation may withdraw a requirement contained in a notice under this section, in which case the requirement is treated as not having been made. 10
- (3) This section has effect subject to the Government Pricing Tribunal Act 1992.
- Relevant costs** 15
58. For the purposes of section 57, the relevant costs are:
- (a) the full cost of any or all of the following:
 - (i) works and systems already constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation; 20
 - (ii) works and systems to be constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation, that benefit or are available to the land concerned, based on net present value, historical cost or any other appropriate basis, and having regard (if the Corporation thinks it appropriate) to its expected operating costs and revenues; and 25
 - (b) the full cost of amplification of the Corporation's works and systems in consequence of the proposed development; and
 - (c) the investment costs incurred by the Corporation or a predecessor of the Corporation and by developers in relation to the existing and proposed works and systems referred to in paragraphs (a) and (b); and 30
 - (d) costs of such kinds as are prescribed by the regulations as additional to or in substitution for any or all of the costs referred to in paragraphs (a), (b) and (c). 35

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Conditions of compliance certificates

5 **59.** (1) A compliance certificate may be granted unconditionally or subject to specified conditions, including, for example, a condition to the effect that the grant is conditional on carrying out the terms of an agreement entered into under section 57.

 (2) The requirement to obtain a compliance certificate is taken not to be complied with until the conditions attached to the certificate have been complied with.

10 (3) An unconditional compliance certificate may be granted to replace one already granted subject to conditions.

Grant of compliance certificates in stages

15 **60.** (1) A compliance certificate may, instead of being issued in relation to the whole of the development concerned, be issued progressively in relation to any or all of the stages of the development.

 (2) A compliance certificate may be granted to replace one or more already granted.

Consent authority to notify Corporation of development and building applications

20 **61.** (1) 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) increase the demand for water supplied by the Corporation; or
- (b) increase the amount of waste water that is to be removed by the Corporation; or

25 (c) damage or interfere with the Corporation's works; or

 (d) adversely affect the Corporation's operations; or

 (e) adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,

30 the consent authority must give the Corporation notice of the application, unless it is relieved from doing so under subsection (2).

 (2) The consent authority is not required to give notice of the application if it decides:

 (a) not to approve the application; or

35 (b) to approve the application with a condition that the developer must obtain a compliance certificate from the Corporation.

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(3) The Corporation may issue guidelines from time to time to assist consent authorities to determine which matters should be the subject of notice under subsection (1).

(4) The consent authority must take into account any submissions made by the Corporation in relation to a development application or building application that is the subject of a notice under subsection (1), in determining whether to approve the development application or building application or to attach conditions to it. The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a compliance certificate from the Corporation. 5
10

(5) The consent authority may assume that the Corporation has no submissions to make in relation to a development application or building 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. 15

(6) 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.

Enforcement 20

62. (1) Any money owing to the Corporation as a consequence of a notice referred to in section 57 may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(2) Nothing in this section affects any power or remedy that the Corporation has apart from this section. 25

Division 8—Special areas

Definitions

63. In this Division:

“**joint sponsors**” means the Director-General of National Parks and Wildlife, the Director-General of the Department of Conservation and Land Management, and the Corporation; 30

“**public agency**” means the Governor, a Minister of the Crown or a statutory body.

Special areas

64. (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.

5 (2) The Minister may not recommend the making of such an order unless the Minister certifies that the Minister is satisfied that the making of the order is necessary for either or both of the following purposes:

(a) protecting the quality of stored waters, whether intended for use for drinking or other purposes;

10 (b) maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with the Corporation's obligations to provide, construct, operate, manage or maintain storages under any operating licence.

15 (3) The area of land within any special area (as referred to in the Water Board Act 1987) immediately before the commencement of this section is taken to be the subject of an order declaring it to be a special area under this Act.

20 (4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended or repealed by an order made by the Governor.

Restriction on alienation of land in special areas

65. The Corporation must not alienate, mortgage, charge or demise land in a special area that is owned by or vested in the Corporation unless:

25 (a) to or in favour of a statutory body; or

(b) authorised by an Act of Parliament.

Crown land in special areas

30 66. (1) Action may not be taken under the Crown Lands Act 1989 in relation to land in a special area unless the Corporation has given written approval and any conditions to which the approval is subject are complied with.

(2) The Corporation 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.

Exercise of functions by public agencies in special areas

67. (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 to the Corporation.

(2) On receiving a notice referred to in this section, the Corporation may make such representations to the public agency as the Corporation thinks fit. 5

(3) A public agency may not exercise functions contrary to any such representations unless, before the exercise of the functions, not less than 28 days' notice has been given to the Corporation of the functions intended to be exercised. 10

(4) If a public agency has functions with regard to a development application relating to land within a special area to which an environmental planning instrument applies, the forwarding of the development application or a copy of it to the Corporation, or the giving of any other form of notification of the development application to the Corporation, whether by the public agency or the applicant, is taken also to be the giving of notice for the purposes of this section. 15

(5) This section does not apply to a public agency's functions with regard to the making of an environmental planning instrument in relation to land within a special area. 20

(6) This section does not apply to a public agency's functions with regard to a development application, if an environmental planning instrument applying in the special area prevents the development application from being determined by the granting of consent without the concurrence of the Corporation. 25

(7) This section does not apply to a public agency's functions to the extent that they relate to a matter about which a notice has been given to the Corporation under section 61.

Regulations concerning special areas 30

68. (1) The regulations may make provision for or with respect to special areas, including charges or payments for abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas. 35

(2) A regulation made under this Division 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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Plans of management

5 **69. (1)** The joint sponsors are jointly required to cause a plan of management to be prepared for each special area as soon as practicable after it has been declared to be a special area and to submit it to the Minister.

(2) A plan of management for an area of land referred to in section 64 **(3)** is to be prepared and submitted to the Minister within 24 months after the commencement of this section.

10 **(3)** The Minister may adopt a plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the joint sponsors for further consideration.

(4) If the Minister refers a plan of management back for further consideration, the joint sponsors must resubmit it after considering it further and making any appropriate alterations.

15 **(5)** The Minister may:

 (a) amend or alter a plan of management from time to time; or

 (b) cancel a plan of management; or

 (c) cancel a plan of management and substitute a new plan.

20 **(6)** Before doing any of the things referred to in subsection (5), the Minister may consult with any person or body (including persons or bodies other than the joint sponsors) that the Minister thinks fit.

Operations under plan of management

25 **70. (1)** A plan of management adopted under this Act for a special area must be carried out and given effect to by the Corporation.

(2) Subject to the requirements of any other Act or any instrument under any other Act, no operations are to be undertaken by the Corporation in relation to the lands within the special area unless the operations are in accordance with the plan.

Division 9—Controlled areas**30 Controlled areas**

71. (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 controlled area.

35 **(2)** An order under this section applies to land only while it is owned by or vested in the Corporation.

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(3) The lands referred to in Schedule 1 to the Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this section (but excluding the lands referred to in the first paragraph, including paragraphs (a)–(c), of that Schedule) are taken to be the subject of an order declaring them to be a controlled area, despite anything in section 64 (3). 5

(4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended or repealed by an order made by the Governor.

Regulations concerning controlled areas 10

72. (1) The regulations may make provision for or with respect to controlled areas, including the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas.

(2) A regulation made under this Division 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. 15

Division 10—Activities outside area of operations

Activities outside area of operations 20

73. (1) If an operating licence has been issued to the Corporation under this Act, the Corporation may:

- (a) exercise outside 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; and 25
- (b) undertake activities in the exercise of any such right outside the area of operations,

for the purpose of supplying water to councils or the owners or occupiers of land in the vicinity of the bulk supply lines (or carrying out any other activities previously authorised under section 13 (5) of the Water Board Act 1987). 30

(2) Subsection (1) applies only if the activities are necessary for the purpose of providing systems or services that the Water Board was authorised to provide in accordance with a Ministerial consent under 35

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section 13 (5) of the Water Board Act 1987 that was current on the repeal of that Act.

(3) This section applies to an activity only until the Minister revokes the consent or the activity becomes the subject of an operating licence.

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

Division 11—Other matters

Contracting out

10 74. (1) The Corporation may enter into a contract or other arrangement with any person for the provision, construction, operation, management or maintenance of systems or services that are the subject of an operating licence or for the carrying out of any of its other activities.

15 (2) The person with whom any such contract or other arrangement is entered may (subject to the contract or other arrangement) exercise, 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 the purposes referred to in subsection (1).

20 (3) The power to exercise rights under subsection (2) may be exercised only in relation to activities carried out under an operating licence.

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

PART 7—MISCELLANEOUS

Alteration of names

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

Composition of board

30 76. Schedule 2 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 2 to this Act.

Provisions relating to subsidiaries

77. Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 3 to this Act.

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Provisions relating to certain staff

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

(2) Unbroken service with the Corporation that is continuous with service with the Water Board is to be taken into account in accordance with the Transferred Officers Extended Leave Act 1961, both during and after service with the Corporation. 5

(3) The Transferred Officers Extended Leave Act 1961 does not otherwise apply to members of the staff of the Corporation. 10

Act binds Crown

79. 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 stormwater drainage 15

80. (1) A person must not do any kind of work of water supply, sewerage or stormwater drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

(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 20

(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). 25

Maximum penalty: 100 penalty units. 30

(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) Subsection (1) does not apply to an employee of the Corporation who carries out any such work on behalf of the Corporation or to any 35

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other person who is authorised by the Corporation to carry out any such work.

Service of notices

5 **81. (1)** A notice under this Act to a person liable for payment of a fee or charge, or to a person who is the owner or occupier of land or a building, may be served:

- (a) personally; or
- 10 (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently residing or employed there who seems to be at least 16 years old; or
- (c) by post to the residence or place of business of the person to be served last known to the Corporation; or
- (d) by affixing it to a conspicuous part of the land or building.

15 **(2)** A notice under this Act to a corporation constituted by or under an Act or other law may be served:

- (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old; or
- 20 (b) in any manner authorised by or under the Act or law by which the corporation is constituted or which applies to the corporation.

(3) A notice under this Act to a government department or administrative office may be served:

- (a) in the case of a notice of valuation or a notice of a fee or charge—on the Treasurer or as prescribed by the regulations; or
- 25 (b) in any other case—on the Department Head or as prescribed by the regulations.

30 **(4)** A notice under this Act may be served on a person who appears to be absent from the State, or who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served.

(5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Corporation, it may be served by an advertisement that:

- 35 (a) is published in a newspaper circulating in the locality of the land or premises; and
- (b) states the name of the owner of the land or premises if known to the Corporation; and

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(c) if the notice is notice of a fee or charge—states the amount of the fee or charge, the period (if any) for which it is owing and that a detailed notice of the fee or charge may be obtained by inquiry at an office of the Corporation identified in the advertisement; and

(d) states that the advertisement operates as service of the notice. 5

(6) A notice under this Act may be served on a person in accordance with a means of communication (such as facsimile transmission, telecommunication or another electronic means of communication) notified by the person as being an available means of communication.

(7) A customer contract or the regulations may impose additional requirements in relation to any means of service provided by this section or may provide other means of serving notices. 10

Annual reports

82. (1) The Corporation is to comply with requirements of Schedule 4 regarding the annual report of the operations of the Corporation, in addition to any other relevant requirements of the State Owned Corporations Act 1989 and the Corporations Law. 15

(2) The regulations may amend or replace Schedule 4.

Application of Freedom of Information Act 1989

83. (1) The Freedom of Information Act 1989 applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority. 20

(2) For the purposes of that Act:

(a) the Minister administering this section is the responsible Minister; and 25

(b) the Managing Director of the Corporation, or the holder of another office prescribed by the regulations, is the principal officer of the Corporation; and

(c) the holder of an office prescribed by the regulations is the principal officer of a subsidiary of the Corporation. 30

Application of Independent Commission Against Corruption Act 1988

84. Section 23 of the Independent Commission Against Corruption Act 1988 applies to the Corporation and its subsidiaries and to persons who are public officials by virtue of their connection with the Corporation 35

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or such a subsidiary. This section has effect despite section 36 of the State Owned Corporations Act 1989.

Regulations

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

- 10 (a) the renewal of, and the arrangements to apply pending the renewal of, an operating licence; and
- (b) the classification or valuation of land or other basis or bases for the making of fees or charges, and the procedure for the making and imposing of fees or charges; and
- 15 (c) charges on land and the recovery of amounts charged on land, including applying the provisions (with or without modification) of Divisions 4 and 5 of Part 2 of Chapter 17 of the Local Government Act 1993; and
- 20 (d) any matters to which the regulations referred to in clause 2 of Schedule 8 relate.

(3) 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.

25 **(4)** Regulations may be made for or with respect to:

- (a) authorising the Corporation to make arrangements with another person to collect fees or charges on behalf of the Corporation; and
- (b) the fees to be paid by the person to the Corporation.

Repeals

30 **86.** (1) The Water Board Act 1987 is repealed.

(2) All regulations and by-laws under that Act and the Metropolitan Water, Sewerage, and Drainage Act 1924 are repealed, except as provided in Schedule 8 to this Act.

Amendment of Government Pricing Tribunal Act 1992 No. 39

35 **87.** The Government Pricing Tribunal Act 1992 is amended as set out in Schedule 5.

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Amendment of other Acts

88. The Acts specified in Schedule 6 are amended as set out in that Schedule.

Amendment of regulations

89. The regulations specified in Schedule 7 are amended as set out in that Schedule. 5

Savings, transitional and other provisions

90. Schedule 8 has effect.

Review of Act

91. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 10

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 15

SCHEDULE 1—EXEMPTIONS FROM SERVICE CHARGES

(Sec. 50)

PART 1—LAND EXEMPT FROM SERVICE CHARGES

5 1. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.

2. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a common.

3. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.

10 4. Land which belongs to any public benevolent institution, or public charity, and is used or occupied by the institution or charity for its purposes.

15 5. Land which is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.

6. Land which is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.

7. Land which belongs to a religious body and which is occupied and used in connection with:

20 (a) any church or other building used or occupied in public worship;
or

(b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building; or

25 (c) any building used or occupied for the purposes of religious teaching or training; or

(d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State; or

30 (e) any building used or occupied solely as a hospital and not conducted for private gain.

8. Land which is a public place within the meaning of the Local Government Act 1993.

9. Land which:

(a) is unoccupied; and

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continued

- (b) is not supplied with water from any water-pipe of the Corporation and is not connected to any sewer of the Corporation; and
- (c) has been determined, by the council of the area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip. 5
10. Land which is unoccupied and which is below highwater mark of any tidal water.
11. Land which belongs to and which is occupied and used in connection with any registered non-government school within the meaning of the Education Reform Act 1990, including any playground which belongs to and is used in connection with any such school, and any building occupied as a residence by any caretaker, servant, or teacher of any such school which belongs to and is used in connection with the school. 10
15
12. Drill grounds, sports grounds, gardens, or children's playgrounds provided by the council of an area under the powers conferred by the Local Government Act 1993.
13. Land vested in the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983, being land which is declared under Division 5 of Part 6 of that Act to be exempt from the payment of rates under this Act. 20

PART 2—EXCEPTIONS

- 25
1. Land within a public place, public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business.
2. Land that is vested in the Crown or a public body and is leased to any person for private purposes. 30
3. Land vested in the Crown or an authority (within the meaning of the Public Finance and Audit Act 1983) that:
- (a) is used or occupied by the Crown or such an authority for a purpose specified in item 1, 2, 3, 5 or 6 of Part 1 of this Schedule; or 35
- (b) is land referred to in item 8 of Part 1 of this Schedule (other than a public road or the permanent way of a railway).

*Water Board (Corporatisation) 1994***SCHEDULE 2—BOARD OF CORPORATION**

(Sec. 76)

Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards Sydney Water Corporation Limited, taken to be altered by inserting after clause 1 (6) the following subclauses:

5

(6A) The board is to consist of the following:

(a) a chairman, selected by the voting shareholders;

(b) six directors, selected for their relevant expertise by the voting shareholders;

10

(c) a director with industrial relations experience, selected under subclause (6B), not being an employee of the corporation;

(d) the chief executive of the corporation.

15

(6B) The director with industrial relations experience is to be selected by a selection committee from a panel of 3 persons nominated by the Labor Council of New South Wales.

(6C) The selection committee is to consist of the following:

(a) the chairman of the board (or, if that position is vacant, a person nominated by the voting shareholders);

20

(b) two persons nominated by the Labor Council of New South Wales;

(c) two other persons nominated by the voting shareholders.

25

(6D) Subject to this clause, the procedures for nominating and selecting the director with industrial relations experience and for constituting the Selection Committee are to be as determined by the voting shareholders.

SCHEDULE 3—SUBSIDIARIES OF CORPORATION

(Sec. 77)

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

30

(a) by inserting in clause 1 (5) after the word "director" the words "to be appointed by or on behalf of the State owned corporation";

*Water Board (Corporatisation) 1994***SCHEDULE 3—SUBSIDIARIES OF CORPORATION—*continued***

- (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 State owned corporation, and shares held by eligible Ministers or by or on behalf of the State owned corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

5

SCHEDULE 4—ANNUAL REPORT OF CORPORATION

10

(Sec. 82)

Definition

1. In this Schedule:

“**financial year**” means the financial year of the Corporation.

Budgetary information

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2. The annual report of the operations of the Corporation is to include or be accompanied by:

- (a) a detailed budget for the financial year to which the report relates; and
 (b) an outline budget for the next following financial year.

20

Specific particulars

3. The annual report of the operations of the Corporation is to include the following particulars in relation to the following matters:

- (a) **research and development**—particulars of completed research and continuing research and development activities together with the resources allocated for that research and those activities, unless the inclusion of those particulars would, in the opinion of the Corporation, adversely affect the business or commercial operations of the Corporation;

25

- (b) **human resources:**

30

- (i) the number of employees, by category, with comparison to each of not less than 3 years before the financial year to which the report relates;

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SCHEDULE 4—ANNUAL REPORT OF CORPORATION—*continued*

- (ii) any exceptional movement in wages, salaries or allowances of material effect;
- (iii) personnel policies and practices;
- 5 (iv) industrial relations policies and practices;
- (c) **consultants:**
- (i) in respect of the engagement during the financial year of a consultant by the Corporation the cost of which exceeds \$30,000, the following details relating to the consultant:
- 10 • the name of the consultant;
- if the consultant has been engaged for a particular project, the title of the project;
- the actual cost of engaging the consultant;
- (ii) in respect of the engagement during the financial year of consultants by the Corporation, if the cost of each such engagement is less than \$30,000, the following details relating to the consultants:
- 15 • the total number of engagements costing less than \$30,000;
- 20 • the total cost of all such engagements;
- (iii) if no consultants were engaged by the Corporation during the financial year, a statement of that fact;
- (d) **equal employment opportunity:**
- (i) a statement setting out the equal opportunity achievements of the Corporation during the financial year and the key equal employment opportunity strategies proposed by the Corporation for the following year;
- 25
- (ii) statistical information for the financial year of such kind, and set out in such form, as is determined by the Secretary of the Treasury or, if such information is not currently available, particulars of the arrangements that have been made to obtain and provide such information during the following year;
- 30

Water Board (Corporatisation) 1994

SCHEDULE 4—ANNUAL REPORT OF CORPORATION—*continued*

(e) **promotion:**

- (i) a statement setting out the types of publications and other information available to the public dealing with the functions and activities of the Corporation and indicating those which were published by the Corporation during the financial year; 5
- (ii) overseas visits undertaken with the main purposes highlighted; 10
- (f) **consumer response**—the extent and main features of consumer complaints, indicating any services improved or changed as a result of complaints or consumer suggestions made; 10
- (g) **guarantee of service**—where appropriate, the standard for providing services, together with comment on any variance from the standard or changes made to the standard; 15
- (h) **time for payment of accounts** (in relation to contracts entered into by or on behalf of the Corporation for the supply of goods or services, or both, to the Corporation)—all instances where penalty interest has been paid if payment has not been made within a period and the reason for the delay in making the payment which led to the payment of the interest. 20

Comparison of investment performance

4. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the investment performance of the Corporation in respect of its surplus funds and of the investment performance of the appropriate Treasury Corporation investment facilities. 25

(2) The appropriate Treasury Corporation investment facility is (in respect of any particular surplus funds) the one chosen by the Corporation from among the investment facilities made available under the description “Hour-Glass Investment Facilities” by the Treasury Corporation to public authorities for investment of their surplus funds. 30

(3) The Corporation’s choice of investment facility is to be made on the basis of the nature and term of the underlying liability to which the particular surplus funds relate, as determined in accordance with guidelines issued by the Treasurer. 35

*Water Board (Corporatisation) 1994*SCHEDULE 4—ANNUAL REPORT OF CORPORATION—*continued*

5 (4) The Corporation is to notify the Treasurer of its choice of investment facilities for the purposes of the comparison, giving reasons for its choice, within 1 month after the beginning of the financial year to which the report relates.

(5) The Treasurer can disallow the Corporation's choice of investment facility and substitute the Treasurer's own choice (advising the Corporation accordingly), in which case the comparison is to be based on the Treasurer's choice of investment facility.

10 (6) The following provisions apply to a comparison required by this clause:

(a) investment performance is to be stated as an annual compound percentage rate of return;

15 (b) the investment performance of an investment facility made available by the Treasury Corporation is as advised to statutory bodies by the Treasurer from time to time;

(c) the comparison is to relate to investment performance during the financial year to which the report relates.

20 (7) For the purposes of the comparison, the following matters are to be as determined in accordance with guidelines issued to statutory bodies by the Treasurer from time to time:

(a) which cash assets of the Corporation are to be considered to be its surplus funds;

25 (b) the method of calculating investment return, including the method of calculating an annual return from an actual period of investment of less than a year;

30 (c) the method of calculating and comparing investment return where there is a difference between the period of actual investment of funds and the period over which the return of the relevant Treasury Corporation investment facility is measured.

Comparison of liability management performance

35 5. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the performance of the Corporation's liability portfolio and the performance of the Corporation's benchmark portfolio.

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SCHEDULE 4—ANNUAL REPORT OF CORPORATION—*continued*

(2) The Corporation's benchmark portfolio is a notional portfolio maintained by the Corporation and constructed in accordance with guidelines issued by the Treasurer so as to be risk neutral.

- (3) The comparison required by this clause: 5
- (a) is to be in terms of the measure or measures advised in guidelines issued by the Treasurer; and
- (b) is to relate to liability portfolio performance during the financial year to which the report relates.

SCHEDULE 5—AMENDMENT OF GOVERNMENT PRICING TRIBUNAL ACT 1992 10

(Sec. 87)

- (1) **Section 11 (Investigations and reports by Tribunal—standing reference):**
- In section 11 (1) (a), omit "maximum price", insert instead "pricing". 15
- (2) **Section 12 (Investigations and reports by Tribunal—reference by Minister):**
- (a) In section 12 (1) (a), omit "maximum price", insert instead "pricing". 20
- (b) In section 12 (3), omit "maximum price", insert instead "pricing".
- (c) In section 12 (3), omit "that price", insert instead "that pricing".
- (3) **Section 13 (Investigations and reports by Tribunal—general provisions):** 25
- In section 13 (5), omit "maximum price", insert instead "pricing".
- (4) **Section 13A:**
- After section 13, insert: 30
- Determinations of pricing**
- 13A. (1) In making a determination of the pricing for a government monopoly service, the Tribunal is limited to doing either of the following:

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SCHEDULE 5—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued*

- 5 (a) determining the maximum price for the monopoly service;
- 5 (b) determining the methodology for fixing the maximum price for the monopoly service.
- 10 (2) However, the Tribunal may choose to make a determination in terms of subsection (1) (b) only if the Tribunal is of the opinion that it is impractical to make a determination in terms of subsection (1) (a).
- (3) The Tribunal is to include in its determination a statement of the reasons why it has chosen to make a determination in terms of subsection (1) (b).

(5) Section 14A:

15 After section 14, insert:

Determination of methodology for fixing prices

20 14A. (1) A determination of the Tribunal of the methodology for fixing the price for a government monopoly service may be made in any manner the Tribunal considers appropriate.

(2) In making such a determination, the Tribunal may have regard to such matters as it considers appropriate, including, for example, the following:

- 25 (a) the government agency's economic cost of production;
- (b) past, current or future expenditures in relation to the government monopoly service;
- (c) charges for other monopoly services provided by the government agency;
- 30 (d) economic parameters, such as:
- (i) discount rates; or
- (ii) movements in a general price index (such as the Consumer Price Index), whether past or forecast;
- 35 (e) a rate of return on the assets of the government agency;
- (f) a valuation of the assets of the government agency.

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SCHEDULE 5—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued*

- (6) Section 16 (**Report on financial impact if maximum price not charged**):
- After “service”, insert “or determines a methodology that would or might increase the maximum price for a government monopoly service”. 5
- (7) Section 17 (**Gazettal of determinations**):
- In section 17 (1), omit “maximum price”, insert instead “pricing”. 10
- (8) Section 18 (**Implementation of price determinations and other reports**):
- (a) After section 18 (1), insert:
- (1A) A determination made by the Tribunal of the methodology for fixing the maximum price for a government monopoly service is to be implemented as follows: 15
- (a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology; 20
- (b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology. 25
- (b) In section 18 (2), after “Tribunal”, insert “or calculated in accordance with the determination of the Tribunal”. 30
- (9) Section 31:
- After section 30, insert:
- Disputes regarding application of determination of methodology** 35
31. (1) A customer who is dissatisfied with the way in which a government agency applies the methodology in a

*Water Board (Corporatisation) 1994***SCHEDULE 5—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—continued**

determination referred to in section 14A may complain to the agency.

5 (2) The chief executive of the agency is to review the complaint or cause it to be reviewed.

10 (3) The customer, if still dissatisfied, may request the agency that the matter be reviewed by way of arbitration by an arbitrator, who is to be appointed by agreement between the customer and the agency. The agency is, subject to this section, to comply with any such request.

(4) Costs of the arbitration are to be borne equally by the agency and the customer.

15 (5) The regulations may exclude classes of determinations from the operation of this section and may make provision for or with respect to reviews and arbitration under this section, including:

(a) the times within which complaints and requests are to be made;

20 (b) the circumstances in which complaints and requests may be dismissed without consideration;

(c) the determination of costs of arbitration.

25 (6) Subject to this section and the regulations, the Commercial Arbitration Act 1984 applies to any such arbitration.

(10) Schedule 1 (**Government agencies for which Tribunal has standing reference**):

Omit "Water Board", insert instead "Sydney Water Corporation Limited".

30 **SCHEDULE 6—AMENDMENT OF OTHER ACTS**

(Sec. 88)

Aboriginal Land Rights Act 1983 No. 42

(1) Section 43 (**Exemption of Aboriginal lands from the payment of rates**):

35 From section 43 (1) (b), omit "Metropolitan Water, Sewerage, and Drainage Act 1924", insert instead "Water Board (Corporatisation) Act 1994".

Water Board (Corporatisation) 1994

SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

(2) Section 44 (**Execution etc. against Aboriginal lands barred in certain cases**):

From section 44 (b), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

5

Attachment of Wages Limitation Act 1957 No. 28

Schedule:

Omit “Metropolitan Water, Sewerage and Drainage Board.”.

10

Building Services Corporation Act 1989 No. 147

Section 135 (**Proceedings for certain offences under other Acts**):

Omit section 135 (g), insert instead:

(g) the Water Board (Corporatisation) Act 1994; or

15

Capital Debt Charges Act 1957 No. 1

Schedule:

Omit the matter relating to The Metropolitan Water, Sewerage and Drainage Board.

Clean Waters Act 1970 No. 78

20

Section 5 (**Definitions**):

(a) From the definition of “statutory authority”, omit “the Metropolitan Water Sewerage and Drainage Board,”.

(b) Omit the definition of “Water Board”.

Conveyancing Act 1919 No. 6

25

(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 Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994,”.

30

*Water Board (Corporatisation) 1994*SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*(2) Section 88A (**Easements in gross and easements and restrictions appurtenant to easements**):

Insert in numerical order:

- 5 (6) For the purposes of this section, Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994 is taken to be a public authority constituted by Act of Parliament.

Dams Safety Act 1978 No. 9610 Section 8 (**Members**):

- 15 From section 8 (2) (b), omit “Metropolitan Water Sewerage and Drainage Board constituted under the Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Drainage Act 1939 No. 29Section 5 (**Certain Acts not affected**):

- 20 Omit “the Metropolitan Water, Sewerage and Drainage Act 1924–1937”, insert instead “the Water Board (Corporatisation) Act 1994”.

Electricity Commission Act 1950 No. 22Section 3 (**Definitions**):

- 25 From the definition of “Statutory body” or “Statutory body representing the Crown” in section 3 (1), omit “the Metropolitan Water, Sewerage and Drainage Board”.

Environmental Education Trust Act 1990 No. 26(1) Section 5 (**Membership and procedure of the Trust**):

- 30 From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”.

*Water Board (Corporatisation) 1994***SCHEDULE 6—AMENDMENT OF OTHER ACTS—continued****(2) Section 13 (Environmental Education Trust Fund):**

Omit section 13 (1) (a), insert instead:

- (a) 10 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; and

Environmental Research Trust Act 1990 No. 25**(1) Section 5 (Membership and procedure of the Trust):**

From section 5 (2) (d), omit "Chairperson of the Water Board", insert instead "Managing Director of Sydney Water Corporation Limited".

(2) Section 13 (Environmental Research Trust Fund):

Omit section 13 (1) (a), insert instead:

- (a) 20 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; and

Environmental Restoration and Rehabilitation Trust Act 1990 No. 24**(1) Section 5 (Membership and procedure of the Trust):**

From section 5 (2) (d), omit "Chairperson of the Water Board", insert instead "Managing Director of Sydney Water Corporation Limited".

(2) Section 16 (Environmental Restoration and Rehabilitation Trust Fund):

Omit section 16 (1) (a), insert instead:

- (a) 70 per cent of payments received by the Water Board or Sydney Water Corporation Limited that

*Water Board (Corporatisation) 1994***SCHEDULE 6—AMENDMENT OF OTHER ACTS—continued****Heritage Act 1977 No. 136**(1) Section 123 (**Definitions**):

- (a) From paragraph (c) of the definition of “rating or taxing authority”, omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”. 5
- (b) From the definition of “valuing law”, omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”. 10

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

- From section 126 (d), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”. 15

Justices Act 1902 No. 27Section 100I (**Definitions**):

- From paragraph (a) of the definition of “penalty notice” in section 100I (1), omit “Water Board Act 1987, section 51;”. 20

Local Government Act 1919 No. 41(1) Section 327 (**Conditions to be observed before opening new roads or subdivisions**):

- (a) Omit section 327 (1) (d) (ii) (A), insert instead: 25
 (A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or
- (b) From section 327 (1) (d) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”. 30
- (c) Omit section 327 (2) (b) (ii) (A), insert instead:
 (A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

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SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

- (d) From section 327 (2) (b) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.
- 5 (2) Section 331A (**Subdivision of land within the area of operations of a water authority**):
- (a) Omit section 331A (1) (a) (i), insert instead:
- (i) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or
- 10 (b) From section 331A (1), omit “the Water Board”, insert instead “Sydney Water Corporation Limited”.
- (c) From section 331A (2), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.
- 15 (d) Omit section 331A (3) (a), insert instead:
- (a) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or
- (e) From section 331A (3), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.
- 20

Local Government Act 1993 No. 30

- (1) Section 56 (**Application of Division**):
- Omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.
- 25 (2) Section 68 (**What activities, generally, require the approval of the council?**)
- From section 68 (2), omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.
- (3) Section 555 (**What land is exempt from all rates?**):
- 30 Omit section 555 (1) (c), insert instead:
- (c) land that is within a special area or controlled area (within the meaning of the Water Board (Corporatisation) Act 1994) for Sydney Water Corporation Limited referred to in that Act and is
- 35 Crown land or land vested in the Corporation;

*Water Board (Corporatisation) 1994*SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

- (4) Section 611 (**Annual charge on rails, pipes etc.**):
From section 611 (6) (b), omit "Water Board", insert instead "Sydney Water Corporation Limited".
- (5) Section 741 (**Exemption from taxes**): 5
From section 741 (2), omit "Water Board", insert instead "Sydney Water Corporation Limited".
- (6) Section 742 (**Dispute resolution**):
From section 742 (7), omit the matter relating to the Water Board. 10

National Parks and Wildlife Act 1974 No. 80

- (1) Section 74:
Omit the section, insert instead:
Catchment areas and special areas
74. (1) This section applies where: 15
- (a) any lands reserved as a national park or historic site or dedicated as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area or that comprise a wilderness area within the meaning of the Wilderness Act 1987 are wholly or partly within a catchment area or special area of a water authority; or 20
- (b) the waters from any lands so reserved or dedicated drain into a catchment area, special area or structure of a water authority. 25
- (2) The Director-General must, before submitting to the Minister a plan of management for the national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area or wilderness area:
- (a) refer the plan to the relevant water authority for its information; and 30
- (b) also refer the plan to the Director-General of the Department of Water Resources if the relevant water authority is the Hunter Water Corporation Limited. 35

Water Board (Corporatisation) 1994

SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

5 (3) The Minister must, before adopting the plan of management, consider any representations made by the relevant water authority and (in a case involving the Hunter Water Corporation Limited) the Director-General of the Department of Water Resources.

 (4) In this section, “**water authority**” means Sydney Water Corporation Limited, Hunter Water Corporation Limited or the Broken Hill Water Board.

10 (2) Section 185 (**Catchment areas and special areas**):

 (a) Omit “Metropolitan Water, Sewerage, and Drainage Act 1924” wherever occurring, insert instead “Water Board (Corporatisation) Act 1994”.

15 (b) From section 185 (3), omit “proclamation or by-law” wherever occurring, insert instead “order or regulation”.

 (c) From section 185 (4) (a), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.

20 (d) From section 185 (5), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.

New South Wales Retirement Benefits Act 1972 No. 70

Schedule 2:

25 Omit the matter relating to The Metropolitan Water Sewerage and Drainage Board.

Pipelines Act 1967 No. 90

Section 3 (**Definitions**):

30 From the definition of “statutory body representing the Crown” in section 3 (1), omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

*Water Board (Corporatisation) 1994*SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued***Public Authorities (Financial Arrangements) Act 1987 No. 33**

Schedule 1 (Authorities):

- (a) Omit “The Metropolitan Water Sewerage and Drainage Board.” 5
- (b) Insert in alphabetical order “Sydney Water Corporation Limited.”

Public Authorities Superannuation Act 1985 No. 41

Schedule 3 (Employers):

- From Part 2, omit “The Water Board (with respect to all its employees).” 10

Public Finance and Audit Act 1983 No. 152

Schedule 2 (Statutory bodies):

- Omit “Water Board.”

Public Sector Executives Superannuation Act 1989 No. 106 15

Schedule 1 (Additional Employers):

- Insert “Sydney Water Corporation Limited” in alphabetical order.

Public Sector Management Act 1988 No. 33

- (1) Schedule 3 (Declared authorities): 20
Omit “Water Board.”
- (2) Schedule 3A (Chief executive positions):
From Part 3, omit “Managing Director of the Water Board”.
- (3) Schedule 3B (Senior executive positions): 25
(a) From Part 1, omit heading “Water Board” and all matter under that heading.

Water Board (Corporatisation) 1994

SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

- (b) From Part 2, omit “Deputy Managing Director of the Water Board”.

State Authorities Non-contributory Superannuation Act 1987 No. 212

5

Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Authorities Superannuation Act 1987 No. 211

10

Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Public Service Superannuation Act 1985 No. 45

15

Schedule 3 (**Employers**):

Omit “The Metropolitan Water Sewerage and Drainage Board.”.

Strata Titles Act 1973 No. 68

Section 89 (**Definitions**):

20

- (a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:

(b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;

25

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Strata Titles (Leasehold) Act 1986 No. 219

Section 121 (**Definitions**):

30

- (a) Omit paragraph (b) of the definition of “appropriate valuing Act”, insert instead:

Water Board (Corporatisation) 1994

SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*

- (b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;
- (b) From paragraph (a) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”. 5
- Superannuation Act 1916 No. 28**
- Schedule 3 (List of Employers): 10
- From Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.
- Valuation of Land Act 1916 No. 2**
- (1) Section 47 (Rating or taxing authorities):
- (a) Omit “Metropolitan Water Sewerage and Drainage Board.”, insert instead “Sydney Water Corporation Limited.”. 15
- (b) At the end of section 47, insert:
- (2) This Part has effect subject to any special arrangements entered into between the Valuer-General and Sydney Water Corporation Limited. 20
- (2) Section 60 (Assessed annual value for purposes of other Acts):
- Omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”. 25
- (3) Part 6B:
- Before Part 7, insert:
- PART 6B—SPECIAL ARRANGEMENTS**
- Application of Part**
- 70H. This Part applies only to Sydney Water Corporation Limited (referred to in this Part as “the Corporation”). 30

*Water Board (Corporatisation) 1994*SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued***Special arrangements**

5 70I. (1) The Valuer-General may enter into special arrangements with the Corporation regarding the supply of valuations to the Corporation.

(2) The special arrangements may make provision for or with respect to the following:

(a) the times when any such valuations are to be provided (whether on request or otherwise);

10 (b) the fees to be paid for any such valuations;

(c) any other matters relevant to the making, supply and use of any such valuations.

(3) The Valuer-General may terminate any such arrangements:

15 (a) in accordance with any procedures contained in the arrangements; or

(b) with the approval of the Minister and on giving the Corporation at least 6 months' notice of the termination.

Nature of valuations

20 70J. (1) Any valuations provided for by a special arrangement under this Part may but need not be in accordance with this Act.

25 (2) Valuations provided for by a special arrangement and not conforming to the principles of valuations required by other provisions of this Act are nevertheless subject to Parts 3 and 4.

30 (3) Those Parts (together with any other relevant provisions of this Act) apply with such modifications as are necessary or appropriate in relation to valuations provided for by a special arrangement.

Relationship with other provisions of this Act

35 70K. (1) This Part has effect despite anything in this Act.

(2) Special arrangements entered into under this Part have effect despite anything in Part 5 (including, but not limited to, sections 48, 49 and 55) and any other provisions of this Act.

*Water Board (Corporatisation) 1994***SCHEDULE 6—AMENDMENT OF OTHER ACTS—*continued*****Water Administration Act 1986 No. 195**

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

Omit "Water Board Act 1987". 5

SCHEDULE 7—AMENDMENT OF REGULATIONS

(Sec. 89)

Conveyancing (General) Regulation 1992

(1) Clause 41 (**Imposition of restrictions etc. on certain land vested in public authorities**): 10

At the end of the clause, insert:

(2) For the purposes of paragraph (c) of the definition of "prescribed authority" in section 88D (1) of the Act, Sydney Water Corporation Limited is a prescribed authority. 15

(2) Clause 41A:

After clause 41, insert:

Regulation of use of land not held by a prescribed authority

41A. For the purposes of paragraph (c) of the definition of "prescribed authority" in section 88E (1) of the Act, Sydney Water Corporation Limited is a prescribed authority. 20

Land Tax Management Regulation 1992

Schedule 1 (**Public Authorities**): 25

Omit "Water Board".

Roads (General) Regulation 1994

Clause 79 (**Public authorities**):

At the end of the clause, insert:

(2) For the purposes of the definition of "public authority" in the Dictionary to the Act, Sydney Water Corporation Limited is prescribed as a public authority for the purposes of the Act. 30

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 90)

Regulations

5 1. (1) 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 Water Board or any member or employee of the Water Board or to the Water Board Act 1987 or any provision of that Act).

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

10 (3) 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:

15 (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the 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 Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Continuation of certain regulations

20 2. (1) The following are excluded from repeal under section 86:

(a) Part 1, clauses 11 and 12 of Part 2, and Part 4, of the Water Board (Finance) Regulation 1988;

(b) Parts 1 and 2, and clause 24, of the Water Board (Plumbing and Drainage) Regulation 1989;

25 (c) the Water Board (Special Areas) Regulation 1989.

(2) The provisions referred to in subclause (1) (a) and (b) as in force immediately before the commencement of this clause are taken to have been made under this Act.

(3) The Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this clause is taken to be made under:

30 (a) section 68 so far as it relates to special areas; and

(b) section 72 so far as it relates to controlled areas.

(4) In the provisions referred to in subclause (1) (a)–(c):

(a) a reference to a provision of the Water Board Act 1987 is to be read as a reference to the corresponding provision (if any) of this Act; and

35 (b) a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Further amendment or repeal of regulations amended by Schedule 7

3. The amendments made by this Act to the regulations referred to in Schedule 7 do not affect the future amendment or repeal of those regulations. 5

Dissolution of Water Board

4. (1) The Water Board is dissolved.
- (2) The assets, rights and liabilities (if any) of the Water Board immediately before its dissolution are transferred to the Ministerial Holding Corporation.
- (3) Section 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation. 10

Members of Water Board to vacate office

5. (1) A person who, immediately before the dissolution of the Water Board, held office as a member of the Water Board:
- (a) ceases to hold office as such; and 15
- (b) except as provided by subclause (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 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. 20

Corporation to be same legal entity as Water Board

6. (1) On the dissolution of the 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 Water Board. 25
- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 4 of this Schedule or Part 3 of this Act.

Declaration of outer catchment area

7. (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 part of the outer catchment area of the Corporation. 30
- (2) A State environmental planning policy or a regional environmental plan under the Environmental Planning and Assessment Act 1979 may amend or repeal an order declaring an outer catchment area. This subclause does not affect the power under section 43 of the Interpretation Act 1987 for the Governor to make an order amending or repealing such an order. 35

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

5 (3) The lands specified in a proclamation under section 56A of the Metropolitan Water, Sewerage, and Drainage Act 1924 as in force immediately before the repeal of that section (but excluding any lands within a special area or a controlled area) are taken to be the subject of an order declaring them to be part of the outer catchment area of the Corporation. Such an order is taken to be an order made under this clause, and accordingly may be amended or repealed by an order made by the Governor or by a policy or plan referred to in subclause (2).

10 (4) An order may not be made under this clause in relation to any land within an area while there is in force a State environmental planning policy or regional environmental plan under the Environmental Planning and Assessment Act 1979 requiring the consent authority to give the Corporation notice of applications in relation to the land of the kind referred to in clause 8.

15 **Consent authority to notify Corporation of development applications in outer catchment area**

8. (1) In this clause, “**consent authority**” has the same meaning as in the Environmental Planning and Assessment Act 1979.

20 (2) If a consent authority within the outer catchment area of the Corporation receives a development application in relation to any matter that, in the opinion of the consent authority, may adversely affect the quality of the water from which the Corporation draws its supply of water, the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application.

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

30 (4) The consent authority may assume that the Corporation has no submissions to make in relation to a development application of which notice has been given under this clause if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.

35 (5) The obligations imposed on a consent authority under this clause are taken to be obligations imposed on the consent authority by an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979 and a person, including the Corporation, has the same entitlement to bring proceedings in the Land and Environment Court in respect of a contravention of those requirements as the person would have in respect of a contravention of the requirements of an environmental planning instrument.

Survival of unpaid amounts and amounts charged on land at transfer of business undertaking

40 9. (1) Any amount that was due but unpaid to the 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.

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) Subject to clause 10, any amount that was due but unpaid to the 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. 5

Certain amounts levied by Water Board not charged on land

10. (1) No service charges or fees levied by the 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. 10

(2) In this clause, “**charging period**”, in relation to the Water Board means a period declared by an order in force under section 28 (2) of the Water Board Act 1987 (as in force immediately before the commencement of section 86 of this Act) to be a charging period for the Board. 15

Pending applications for compliance certificates

11. (1) An application for a compliance certificate under the Water Board Act 1987 and pending at the commencement of this clause is taken to be an application for a compliance certificate under this Act.

(2) Any agreement in force or notice operative under Division 2 of Part 3 of the Water Board Act 1987 at the commencement of this clause continues to be in force and operative after that commencement, and for that purpose the relevant provisions of that Act are taken to continue in force in relation to such an agreement or notice (and not otherwise). 20

(3) The provisions of this clause are subject to the provisions of regulations made under clause 1. 25

Guarantees

12. Nothing in this Act affects any guarantee given by or in relation to the Water Board before the commencement of this clause and any such guarantee is, after the commencement of this clause, taken to be a guarantee for the payment by the Corporation of the amounts specified or described in the guarantee. 30

Environmental planning instruments: reservation of land

13. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the reservation of land and its acquisition by the Water Board, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 27 of the Environmental Planning and Assessment Act 1979. 35

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Environmental planning instruments: concurrence role

5 14. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the granting of its concurrence to the granting of consent to a development application in relation to lands with a special area, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 30 (2) of the Environmental Planning and Assessment Act 1979.

10 **Environmental impact statements and other planning matters**

15 15. (1) If, before the commencement of this clause:

- (a) the Director of Planning has notified the Water Board of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the Water Board in accordance with Part 5 of the Environmental Planning and Assessment Act 1979; or
- (b) the Water Board or a person on its behalf has commenced the preparation of an environmental impact statement under that Part; or
- (c) an environmental impact statement has been prepared by or on behalf of the Water Board under that Part,

20 that Part applies in relation to the activity concerned as if the Water Board had continued in existence and the Corporation were the Water Board.

(2) Part 4 of the Environmental Planning and Assessment Act 1979 does not apply so as to require development consent in relation to an activity referred to in this clause.

Operation of Evidence Act 1898 (sec. 43C)

25 16. (1) The provisions of section 43C of the Evidence Act 1898 continue to apply in relation to the admissibility in evidence of a print from photographic film of an object referred to in that section prepared by or on behalf of the Water Board before the commencement of this clause if tendered in evidence by or on behalf of the Corporation.

30 (2) The Corporation is taken to be a “prescribed corporation” within the meaning of section 43C (5) of the Evidence Act 1898 for the purposes of this clause.

Permits

35 17. Without limiting clause 2 of this Schedule, a permit issued under Part 2 of the Water Board (Plumbing and Drainage) Regulation 1989 before the commencement of this clause is taken to have been issued under the authority of a regulation made under this Act.

Water Board (Corporatisation) 1994

SCHEDULE 8—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Existing interests in special areas

18. Nothing in section 65 affects the rights of a person who has entered into an arrangement with the Water Board before the commencement of that section relating to the alienation, mortgage, charging or demise of land in a special area and, in particular, the entitlement of such a person to require due performance or completion (or both) of such an arrangement.

C-036
ALP

LEGISLATIVE COUNCIL

Water Board (Corporatisation) Bill 1994

Second Print

Amendments to be moved in Committee

No. 1 Page 2, lines 7 and 8. Omit all words on those lines, insert instead:

2. This Act commences on a day or days to be appointed for the purposes of this Act by or in accordance with an Act entitled the Protection of the Environment Operations Act 1995.

No. 2 Page 53. After line 20, insert:

Staff elected director

95. (1) Regulations may be made for or with respect to the election of a person to hold office as a staff elected director, as referred to in Schedule 3.

(2) The Electoral Commissioner, or a person employed in the office of and nominated by the Electoral Commissioner, is to be the returning officer for an election, and has the functions conferred or imposed on the returning officer by the regulations made under this section in relation to the election.

(3) Full-time employees of the Corporation are entitled to vote at an election in accordance with the regulations made under this section for the staff elected director.

(4) A person's nomination as a candidate for election as the staff elected director is not valid unless:

(a) the nomination is made by at least 2 persons who are full-time employees of the Corporation; and

(b) the person is, at the time of nomination, a full-time employee of the Corporation.

(5) A person may be, at the same time, both the elected staff member and an employee of the Corporation.

(6) Nothing in any law, rule, direction or other requirement that:

(a) is applicable to the staff elected director in his or her capacity as an employee of the Corporation; and

(b) would not be applicable if the staff elected director were not such an

employee,
operates so as to prevent or restrict the exercise by the staff elected
director of any of the functions of a director.

- No. 3 Page 67, Schedule 3, line 25. Omit "the following subclauses", insert
instead "the following subclause".
- No. 4 Page 67, Schedule 3, lines 30 and 31. Omit all words on those lines, insert
instead:
- (c) a staff elected director who is elected in the manner prescribed by
regulations referred to in section 95 of the Water Board
(Corporatisation) Act 1994;
- No. 5 Page 68, Schedule 3, lines 2-14. Omit all words on those lines.
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WATER BOARD (CORPORATISATION) BILL 1994

NEW SOUTH WALES



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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. , 1994

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and stormwater drainage systems and the disposal of waste water in Sydney and other regions and certain other matters; to provide for the transfer of assets, rights and liabilities of the Water Board; to amend the State Owned Corporations Act 1989; to amend the Government Pricing Tribunal Act 1992 in relation to the fixing of maximum prices for government monopoly services; to amend certain other Acts; to repeal the Water Board Act 1987; and for other purposes.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

5 **1.** This Act may be cited as the Water Board (Corporatisation) Act 1994.

Commencement

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

Definitions

10 **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 Part 4;

15 **“availability charge”** means a charge of a kind referred to in section 64;

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

20 **“contract charge”** means any fee or charge payable under a customer contract;

“controlled area” means an area of land declared by an order in force under section 88 to be a controlled area;

“Corporation” means Sydney Water Corporation Limited;

25 **“customer contract”** means a contract of a kind referred to in section 55 (1);

“excluded undertaking” means any assets, rights or liabilities of the Water Board that the Minister has directed to be excluded under section 8;

“exercise” of a function includes the performance of a duty;

30 **“function”** includes a power, authority or duty;

“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 or process of a court;

Water Board (Corporatisation) 1994

- “**lease**” includes a licence or permit;
- “**meter**” includes any measuring device;
- “**Ministerial Holding Corporation**” means the Ministerial Holding Corporation constituted by section 37B of the State Owned Corporations Act 1989; 5
- “**operating licence**” means an operating licence granted under section 12 or any renewal of it;
- “**outer catchment area**” means an area of land declared by an order in force under clause 7 of Schedule 9 to be an outer catchment area;
- “**owner**”, in relation to land, includes every person who jointly or severally at law or in equity: 10
- (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 15
 - (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, 20
- 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 declared by the regulations not to be within this definition, either generally or in a particular case or class of cases;
- “**public reserve**” has the same meaning as it has in the Local Government Act 1993; 25
- “**public road**” means:
- (a) any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law; or 30
 - (b) any road that is declared to be a public road for the purposes of the Roads Act 1993;
- “**special area**” means an area of land declared by an order in force under section 81 to be a special area;
- “**statutory body**” means a corporation that is incorporated by or under an Act, but does not include: 35
- (a) a company within the meaning of the Corporations Law; or
 - (b) a society within the meaning of the Co-operation Act 1923 or a co-operative within the meaning of the Co-operatives Act 1992; or 40

Water Board (Corporatisation) 1994

(c) an association incorporated under the Associations Incorporation Act 1984; or

(d) a body prescribed by the regulations as not being a statutory body for the purposes of this definition;

5 **“storages”** means dam walls, pumps and other works used for or with respect to the extraction, and storage, of:

(a) water in rivers and lakes; and

(b) water occurring naturally on the surface of the ground; and

(c) sub-surface waters;

10 **“stormwater drainage area charge”** means a charge of a kind referred to in section 65;

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

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

“Water Board” means the Water Board constituted under the Water Board Act 1987;

“works” means:

20 (a) storages, water mains, sewer mains, water and sewage treatment plants, waste water treatment plants, or stormwater drainage channels; or

(b) monitoring devices in, under, over or near:

(i) any works referred to in paragraph (a); or

25 (ii) any rivers or oceans; or

(c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b).

PART 2—ESTABLISHMENT OF STATE OWNED CORPORATION

30 **Establishment of Corporation as SOC**

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

Prohibition on sale or disposal of shares

5. (1) Shares in the Corporation cannot be sold or otherwise disposed of except to eligible Ministers.

(2) If it is proposed to amend subsection (1):

- (a) the Premier is to request the Licence Regulator constituted by section 30 to hold a public inquiry into the potential social, environmental and economic impacts of the proposed amendment; and 5
- (b) the Licence Regulator must hold the public inquiry and provide the Premier with a report setting out its findings as to the effect that the proposed amendment may have on the Corporation's ability to implement the objectives imposed on it by this Act. 10

Role of certain Ministers

6. (1) The Premier may not nominate:

- (a) the Minister who is responsible for administering the provisions of this Act relating to any operating licence and who is required, under this Act, to report to Parliament in relation to the Corporation's operations; or 15
- (b) a Minister administering the Environmental Planning and Assessment Act 1979, the Water Administration Act 1986, the Protection of the Environment Administration Act 1991 or the Public Health Act 1991, 20

as being eligible to hold shares in the Corporation.

(2) However, the Minister who has the responsibilities referred to in subsection (1) (a) is authorised to attend meetings of the shareholders of the Corporation. 25

(3) If a Minister nominated by the Premier as being eligible to hold shares in the Corporation becomes the Minister who has the responsibilities referred to in subsection (1) (a) or who is responsible for the administration of any of the Acts referred to in subsection (1) (b), the Premier must, as soon as practicable, revoke the nomination of the Minister as being eligible to hold shares in the Corporation and nominate another Minister in the Minister's place. 30

(4) The Minister who is responsible for administering the provisions of this Act relating to any operating licence is to answer all questions directed to the Minister in Parliament in relation to the administration of those provisions. 35

PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES**Direction to transfer business undertaking**

5 7. (1) The Minister may, by order in writing, direct that the business undertaking of the 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.

10 (3) On the date specified in the order, the following provisions have effect (subject to the order):

- (a) the assets of the 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;
- 15 (b) the rights and liabilities of the 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 Water Board or a predecessor of the Water Board and pending immediately before the transfer are taken to be proceedings pending by or against the Corporation;
- 20 (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 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;
- 25 (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Water Board or a predecessor of the Water Board is, subject to regulations under clause 1 (1) of Schedule 9, to be read as, or as including, a reference to the Corporation.
- 30 (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
 - 35 (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

Water Board (Corporatisation) 1994

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 Water Board is required. 5

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

Excluded undertakings

8. (1) The Minister may direct, by order in writing, that such assets, rights or liabilities of the Water Board as are specified or referred to in the order be excluded from the Water Board's business undertaking. 10

(2) On the date specified in the order, the excluded undertaking concerned is transferred to the Ministerial Holding Corporation or such other person on behalf of the Crown as is so specified. 15

(3) The functions of the Ministerial Holding Corporation include the following:

(a) to hold and dispose of assets, rights and liabilities transferred to it under this Act;

(b) 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. 20

(4) Section 7 applies to the transfer of the excluded undertaking under this section in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation. 25

(5) Different parts of any excluded undertaking may be transferred under subsection (2) to different persons.

(6) The Ministerial Holding Corporation or other person is authorised to dispose of any excluded undertaking transferred under subsection (2) or to retain it and conduct any business to which it relates. 30

Transfer of other assets, rights or liabilities

9. (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 Water Board for the 35

Water Board (Corporatisation) 1994

5 supply of water, the provision of sewerage and stormwater drainage systems, 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 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

PART 4—AREA OF OPERATIONS

Area of operations

10 **10. (1)** The Corporation has, subject to this section, the same area of operations that the Water Board had immediately before its dissolution. Each operating licence is to contain a schedule that details the area of operations or the part of the area of operations to which the operating licence applies.

15 **(2)** The Governor may, by order published in the Gazette, vary the area of operations and may, by that order, specify which systems and services the Corporation may provide in the whole or a part or parts of the area of operations as so varied.

20 **(3)** An order under subsection (2) may expand or reduce the area of operations. However, an order must not reduce the area of operations unless the Minister is satisfied that, after the order takes effect, similar services to those provided by the Corporation in the area to be excised from the area of operations are able to, and will, be provided by any one or more of the following:

- 25 (a) a council of an area; or
(b) Hunter Water Corporation Limited;
(c) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
30 (d) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987.

(4) Despite subsections (2) and (3), the area of operations must not be:
(a) reduced; or
35 (b) expanded to include the whole or part of the area within which any of the bodies referred to in subsection (3) (a)–(d) provides services that are the same services the Corporation is authorised to provide under the operating licence,

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unless consultations, regarding the proposed reduction or expansion and the implications of the proposed reduction or expansion, have taken place between the Corporation and the council, Hunter Water Corporation Limited, public authority or Water Supply Authority before the order reducing or expanding the area of operations is made. 5

(5) It does not matter if a reduction or expansion of the area of operations results in parts of the area of operations covered by an operating licence not being contiguous.

(6) An order to vary the area of operations does not take effect until written notice of the order, accompanied by a copy of the order, is laid before each House of Parliament and either: 10

(a) 15 sitting days of each House of Parliament has passed after the order was tabled and notice of a motion to disallow the order has not been given; or

(b) if notice of a motion to disallow the order has been given, the motion has lapsed or has been withdrawn or defeated. 15

Facilitating provisions of orders

11. (1) An order of the Governor for the purposes of this Part may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to: 20

(a) the transfer or apportionment of assets, rights and liabilities;

(b) the transfer of staff;

(c) the delivery or retention of records;

(d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect; 25

(e) the preservation or continuance of anything existing before the order takes effect;

(f) the imposition of fees and charges;

(g) the recovery of fees and charges.

(2) Such an order may: 30

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

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

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, 35

or may do any combination of those things.

PART 5—OPERATING LICENCES**Grant of operating licences**

5 **12. (1)** The Governor may grant one or more operating licences to enable the Corporation in accordance with this Act, in the area of operations, to provide, construct, operate, manage or maintain systems or services for:

- (a) storing or supplying water; or
- (b) providing sewerage services; or
- (c) providing stormwater drainage systems; or
- 10 (d) disposing of waste water.

(2) Operating licences may be granted to enable the Corporation to provide all or any of the systems or services in the same or different parts of the area of operations.

15 **(3)** While an operating licence is in force, the Corporation is authorised 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 the purposes referred to in subsection (1) and for the purposes of extraction and transportation of water.

20 **(4)** The authorisation given by subsection (3) in relation to an operating licence has effect only until such time as the Corporation is granted a licence or permit by the relevant authority for the purposes referred to in that subsection and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.

25 **(5)** The authorisation given by subsection (3) in relation to an operating licence applies only so far as is relevant to the ambit of the operating licence and is subject to the terms and conditions of the operating licence.

30 **(6)** This section has effect despite anything in the Water Administration Act 1986.

Form of initial operating licence

35 **13. (1)** The initial operating licence granted to the Corporation is to be the same as the draft licence that was presented to the Speaker for tabling before the third reading on the Bill for this Act by the Minister who introduced the Bill for this Act in the Legislative Assembly.

(2) However, the initial operating licence is to incorporate such changes (if any) as are necessitated by amendments made to the Bill for this Act by either House of Parliament after the presentation of the draft

licence to the Speaker by the Minister or as are necessary to effect minor errata.

Terms and conditions of operating licences

- 14. (1)** An operating licence is subject to the terms and conditions determined by the Governor, but (so far only as is relevant to the ambit of the operating licence) must include terms or conditions under which the Corporation is required: 5
- (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 10
 - (b) to provide, operate, manage and maintain a stormwater drainage system within the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the Water Board to the Corporation as at the date of the transfer of the business undertaking; and 15
 - (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, pricing and other matters determined by the Governor and set out in the operating licence; and 20
 - (d) to compile indicators of the direct impact on the environment of the Corporation's activities:
 - (i) to enable preparation of an annual report on the Corporation's performance; and 25
 - (ii) to provide information for a year to year comparison in relation to the Corporation's performance in this area.
- (2)** The operating licence granted to the Corporation is to provide for the preparation of an operational audit in accordance with Division 2 of Part 6. 30
- (3)** The operating licence granted to the Corporation is to provide, or (if there is more than one such licence) the operating licences granted to the Corporation are to provide collectively, for the provision of the systems and services referred to in subsection (1) (a) and (b) in the area of operations or the relevant part of the area of operations, except to the extent that: 35
- (a) the Governor has, by order made under section 10 (2), restricted the systems and services that the Corporation may provide in the area of operations or the relevant part of the area of operations; or
 - (b) this Act otherwise provides. 40

Water Board (Corporatisation) 1994

5 (4) Despite this section, the provision, operation, management or maintenance of the stormwater drainage system described in subsection (1) (b) need not be required as a term or condition of an operating licence if the Minister is satisfied that satisfactory arrangements have been made for the service to be provided by another appropriate body.

10 (5) If it is proposed to transfer responsibility for the provision, operation, management or maintenance of the stormwater drainage system to a council or councils (within the meaning of the Local Government Act 1993), in order to be satisfied that satisfactory arrangements have been made for the purposes of subsection (4), the Minister:

15 (a) is to cause written notice of the proposed transfer and details of the proposed new arrangements to be served on the council or councils concerned and is to invite them, by that notice, to comment on the proposal within 40 days after service of the notice; and

(b) is to be satisfied that at least the same standard of services will be provided under the new arrangements as had been provided by the Corporation.

20 (6) If new arrangements are entered into in pursuance of subsections (4) and (5), the Corporation must, within 14 days after the arrangements are entered into, give notice of the terms of the arrangements by notification published in the Gazette.

Customer Councils

25 15. (1) An operating licence must also include terms or conditions that require the Corporation to establish and regularly consult with one or more Customer Councils, each consisting of persons appointed from time to time by the Corporation.

30 (2) The Corporation is to consult with the Customer Councils from time to time, as the Corporation thinks fit, in relation to the provision of the systems and services referred to in this Part.

Amendment of operating licences

35 16. (1) An operating licence may only be amended in the manner specified in the operating licence.

(2) However, a proposed amendment to an operating licence will not take effect until written notice of the proposed amendment, accompanied by a copy of the proposed amendment, is laid before each House of Parliament and either:

Water Board (Corporatisation) 1994

- (a) 15 sitting days of each House of Parliament has passed after the proposed amendment was tabled and notice of a motion to disallow the proposed amendment has not been given; or
- (b) if notice of a motion to disallow the proposed amendment has been given, the motion has lapsed or has been withdrawn or defeated. 5
- (3) This section applies to the substitution of an operating licence in the same way as it applies to the amendment of an operating licence.
- Term of operating licences**
17. (1) The initial term of an operating licence is to be for a maximum of 5 years, as determined by the Governor. 10
- (2) After the initial term, the Governor may renew an operating licence for a maximum of 5 years at a time.
- (3) An operating licence may be renewed even if its term has expired.
- Area covered by operating licences** 15
18. An operating licence applies to the whole or a part of the area of operations, as specified in the operating licence.
- Contravention of operating licences**
19. (1) If, in the opinion of the Minister, the Corporation contravenes an operating licence, the Minister may cause a notice to be served on the Corporation requiring it to rectify the contravention within a specified period. 20
- (2) If, in the opinion of the Minister, the Corporation contravenes an operating licence, and whether or not a notice has been served under subsection (1) or the period specified in the notice has ended, the Governor may direct that either of the following is to apply: 25
- (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 \$1 million) in an amount to be determined by the Governor. 30
- (3) 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.
- (4) An 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. 35

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(5) 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 licences

5 **20. (1)** An operating licence may be cancelled by the Governor, but only if:

- 10 (a) the Corporation ceases, otherwise than as authorised by the operating licence or as permitted in accordance with an order made under section 10 (2), to do the things referred to in section 14 (1) or any of them in the area of operations for any reason; or
- 15 (b) the Corporation:
 - (i) 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; and
 - (ii) has not, within the time specified by the Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled; or
- 20 (c) the Corporation is an externally administered corporation within the meaning of the Corporations Law; or
- 25 (d) the Corporation has been convicted on more than 3 occasions within a period of 12 months of criminal offences that are punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

25 **(2)** A notice under section 19 can be regarded also as a notice for the purposes of subsection (1) (b).

30 **(3)** If an 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 14 (1), or any of them, for the benefit of existing recipients of the Corporation's systems and services.

35 **(4)** An order under this section may provide for:

- 40 (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.

PART 6—PROVISIONS RELATING TO THE CORPORATION**Division 1—Objectives of Corporation****Objectives of Corporation**

21. (1) The principal objectives of the Corporation are:

- (a) to be a successful business and, to this end: 5
 - (i) to operate at least as efficiently as any comparable businesses; and
 - (ii) to maximise the net worth of the State's investment in the Corporation; and
 - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and 10
- (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act 1991; and 15
- (c) to protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.

(2) Despite section 8 of the State Owned Corporations Act 1989, each of the Corporation's principal objectives is of equal importance. 20

Implementation of principal objectives

22. (1) In implementing the principal objectives set out in section 21, the Corporation has the following special objectives:

- (a) to reduce risks to human health;
- (b) to prevent the degradation of the environment. 25

(2) Those special objectives are to be interpreted by reference to the objectives referred to in section 6 (1) (b) of the Protection of the Environment Administration Act 1991, so far as they are relevant to the Corporation.

(3) In implementing those special objectives, regard is to be had to the means referred to in section 6 (1) (b) of the Protection of the Environment Administration Act 1991, so far as they are relevant to the Corporation, and (in particular) to the following means: 30

- (a) reducing the environmental impact of its discharges into or onto the air, water or land of substances likely to cause harm to the environment; 35

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- (b) minimising its creation of waste by the use of appropriate technology, practices and procedures;
- (c) reducing its use of energy, water and other materials and substances;
- 5 (d) re-using and recovering energy, water and other materials and substances, used or discharged by it, by the use of appropriate technology, practices and procedures;
- 10 (e) reducing significantly, by 30 June 2000, the combined environmental impact of the per capita amount of energy and water used by the Corporation and other materials and substances discharged by the Corporation, compared with that impact in the year ending 30 June 1994.

15 (4) The Corporation is to have regard to the levels of energy that would be necessary to implement its special objectives and may adjust its implementation of those objectives if the levels of energy would be excessive.

(5) However, the Corporation is to have regard to its statutory functions, and may adjust its implementation of its special objectives but only if it is necessary in order to act responsibly.

20 (6) The Corporation must publish in the annual report on the Corporation's performance prepared for the purposes of section 14 (1) (d) (i), a statement as to the implementation of its special objectives and annual adjustments made under subsections (4) and (5).

25 (7) The Environment Protection Authority must review the statement referred to in subsection (6) as soon as practicable after it is published and must, within 3 months after the publication date, make its evaluation of the statement available for public inspection. The evaluation is to include an opinion as to whether the best environmental outcome has been achieved.

30 **Pollution reduction targets**

35 **23. (1)** The Corporation must adopt targets (as developed and determined in accordance with this section) to effect significant reductions, by 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence.

(2) The targets are to be developed as follows:

- (a) The Corporation is to publish in the Gazette a statement, in a form approved by the Environment Protection Authority, showing:

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- (i) the range of concentrations and total load of those Schedule 10 substances that were monitored at the Corporation's sewage treatment plants; and
 - (ii) the total volumes of sewage discharged from its sewage treatment plants to waters as monitored by the Corporation, 5

for the year ended 30 June 1994.
 - (b) The statement is to be published within 14 days after the initial operating licence is granted to the Corporation.
 - (c) The Corporation is to conduct ecological risk assessments in relation to Schedule 10 substances discharged into waters from each of the Corporation's sewage treatment plants. 10
 - (d) Ecological risk assessments are to be carried out in accordance with a methodology for the time being approved by the Environment Protection Authority in accordance with section 24. 15
 - (e) Reports on ecological risk assessments are to be provided to the Environment Protection Authority as follows:
 - (i) reports on assessments for the ocean are to be provided by 31 December 1995; and
 - (ii) reports on assessments for the Hawkesbury–Nepean catchment are to be provided by 30 June 1996; and 20
 - (iii) reports on the remaining assessments are to be provided by 30 June 1997.
 - (f) Copies of the reports on ecological risk assessments are to be placed on display for public comment by the Corporation in accordance with section 25. 25
- (3) The Environment Protection Authority is, within 3 months after the expiration of the period for public comment referred to in section 25 (2), to determine the targets for the Corporation that are referred to in subsections (1) and (2), having regard to the following: 30
- (a) the reports on ecological risk assessments;
 - (b) any public comments on the reports that have been provided to the Authority by the Corporation in accordance with section 25 (3);
 - (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act. 35
- (4) The Corporation must adopt the targets as determined by the Environment Protection Authority.

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5 (5) The Environment Protection Authority must ensure that the licence conditions imposed by it on the Corporation, and any directions given by it to the Corporation under section 12 of the Protection of the Environment Administration Act 1991, are consistent with and are conducive to the meeting, or exceeding, by the Corporation of its targets, as determined in accordance with this section, by 30 June 2000.

10 (6) As and when the targets, licence conditions and directions are determined, imposed or given and take effect, the Corporation and the Environment Protection Authority are each to enter details of the targets, licence conditions and directions in a register kept at their respective principal offices and are to make the register available for public inspection, free of charge.

15 (7) The Corporation is to monitor its performance against the targets and publish the results on an annual basis in accordance with the requirements of an operating licence.

20 (8) By 30 June 1999, the Corporation is to determine the bases for setting targets to effect further reductions, after 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence. However, the targets are not to be set until the Environment Protection Authority approves of the bases determined.

(9) In this section, "**Schedule 10 substances**" means the substances listed in Schedule 10.

Approval of methodology for ecological risk assessment

25 **24. (1)** Before the Corporation submits a proposed methodology to the Environment Protection Authority for approval for the purposes of section 23 (2) (d), the Corporation must:

30 (a) place the proposed methodology on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and

(b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed methodology may be inspected and the address to which public comments concerning the methodology may be directed.

35 (2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed methodology to the Corporation.

(3) A methodology must be approved by the Environment Protection Authority within 30 days after the Corporation has provided the Authority with the proposed methodology that has been placed on display and copies of any public comments received on that methodology.

(4) In approving a methodology, the Environment Protection Authority is to have regard to any public comments concerning the proposed methodology that have been provided to it and made in accordance with this section.

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Public display of reports on ecological risk assessments

25. (1) As soon as practicable after providing the reports on ecological risk assessments to the Environment Protection Authority in accordance with section 23 (2) (e), the Corporation must:

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(a) place copies of those reports on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and

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(b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the reports may be inspected and the address to which public comments concerning the reports may be directed.

(2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the reports to the Corporation.

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(3) The Corporation must provide the Environment Protection Authority with copies of any such public comments.

Amendment of pollution reduction targets

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26. (1) After the Corporation has adopted a target under section 23 (4), the Environment Protection Authority may, from time to time, re-determine the target.

(2) The Corporation is to adopt a target as re-determined by the Environment Protection Authority. Subsections (5)–(7) of section 23 then apply to the re-determined target.

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(3) The Environment Protection Authority may, for the purpose of assessing whether to re-determine a target under this section, require the Corporation to carry out a further ecological risk assessment and provide a report on that assessment to the Environment Protection Authority by a specified date. Sections 23–25 apply, with necessary modifications, to any such further ecological risk assessment and report.

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(4) Any target re-determined in accordance with this section is to be re-determined by the Environment Protection Authority having regard to the following:

- 5 (a) the report on any further ecological risk assessment or, if no further assessment is made, the report on the previous assessment;
- (b) any public comments on the report on the further assessment that has been provided to the Authority by the Corporation in accordance with section 25 (3) (as applied by this section) or, if
10 no further assessment is made, any such public comments on the previous report;
- (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act.

15 (5) The Corporation and the Environment Protection Authority are to enter the reasons for the re-determination of a target in the registers kept by the Corporation and the Authority under section 23 (6).

Re-use of sewage effluent

20 27. (1) Without limiting sections 21 and 22, the Corporation is to adopt as an ultimate aim the prevention of all dry weather discharges of sewage to waters, including from ocean outfalls, except to the extent that this is necessary to safeguard public health or prevent environmental degradation, or both.

25 (2) The Corporation is to publish in the Gazette by 30 June 1995 a statement specifying the projected amount of sewage or effluent that it proposes will be re-used, intercepted or otherwise prevented from discharge, by 30 June 2000, into the ocean, waterways and other waters.

(3) In respect of years after 30 June 2000, the Corporation is, on a 5 yearly basis, to review an increase in the projected amount applying under subsection (2) in the light of the aim referred to in subsection (1).

30 (4) In reviewing the projected amounts, the Corporation is to have regard to reductions in the amount of sewage discharged by the Corporation due to any demand management provision in an operating licence.

(5) Before specifying projections in accordance with this section, the Corporation must:

- 35 (a) place the proposed projections on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and
- 40 (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed projections may be inspected and the address to which public comments concerning the projections may be directed.

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(6) Any person may, within the period of 30 days referred to in subsection (5) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed projections to the Corporation.

(7) The Corporation must, when specifying projections, have regard to any public comments concerning the proposed projections that have been directed to it. 5

Pollution control legislation

28. (1) Sections 22–26 cease to operate on the date of commencement of legislation certified (by order published in the Gazette) by the Minister responsible for the legislation as being pollution control legislation applying to the Corporation, or on a later date specified in the order. 10

(2) Despite subsection (1), all ecological risk assessments that are required to be carried out by the Corporation under section 23 (2) must be completed by the Corporation and provided to the Environment Protection Authority even if sections 22–26 cease to operate. 15

Division 2—Licence Regulator**Definitions**

29. In this Division:

“**Licence Regulator**” means the Sydney Water Corporation Licence Regulator constituted by section 30; 20

“**operational audit**” means the operational audit of the Corporation that is required to be prepared under the operating licence.

Sydney Water Corporation Licence Regulator

30. (1) There is constituted by this Act a Sydney Water Corporation Licence Regulator. The Licence Regulator is a body corporate. 25

(2) The Licence Regulator is, for the purposes of any Act, a statutory body representing the Crown.

(3) The Licence Regulator consists of 5 part-time members appointed by the Minister.

(4) Of the members: 30

(a) one is to have expertise in, and extensive knowledge of, water conservation and environmental matters and is to be appointed by the Minister from a panel of 3 persons nominated by the Nature Conservation Council of New South Wales; and

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- (b) one is to have experience in, and knowledge of, consumer issues and is to be appointed by the Minister from a panel of 3 persons nominated by the Australian Consumers Association; and
- 5 (c) one is to have extensive experience in finance, commerce and business management; and
- (d) one is to have experience in the management of a water utility business or a waste water utility business, or both; and
- (e) one is to be a nominee of the Minister administering the Water Administration Act 1986.
- 10 (5) Schedule 1 has effect with respect to the members and procedure of the Licence Regulator.

Functions of Licence Regulator

31. (1) The function of the Licence Regulator is to ensure that the operational audit is prepared in accordance with the operating licence.
- 15 (2) The Licence Regulator must:
- (a) inform the Minister about any failure of the Corporation to meet operational standards or any other requirements imposed on the Corporation under the operating licence; and
- 20 (b) monitor, and report to the Minister on, compliance by the Corporation with the operating licence; and
- (c) provide advice to the Minister about any penalties or remedial action required as a result of the Corporation's performance under the operating licence.
- (3) The Licence Regulator has such other functions as may be conferred or imposed on it by the operating licence.
- 25 (4) The Licence Regulator is to report annually to the Minister in accordance with the requirements of this Division.
- (5) The Licence Regulator is not subject to the direction and control of the Minister in respect of the contents of any report or advice given to the
- 30 Minister.

Operational report

32. The Licence Regulator is to present to the Minister a report on each operational audit within one month after its receipt of the audit.

Presentation of report to Parliament

33. (1) The Minister is to lay the report (or cause it to be laid) before both Houses of Parliament within one month after the Minister receives the report.

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(2) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.

(3) The report:

- (a) on presentation and for all purposes is taken to have been laid before the House; and 5
 - (b) may be printed by authority of the Clerk of the House; and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House; and
 - (d) is to be recorded: 10
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council; and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,
- on the first sitting day of the House after receipt of the report by the Clerk. 15

Division 3—Memoranda of understanding

Definitions

34. In this Division:

- “**memorandum of understanding**” means a memorandum of understanding referred to in the operating licence; 20
- “**regulatory agencies**” means the Water Administration Ministerial Corporation, the Director-General of the Department of Health and the Environment Protection Authority.

Corporation to enter into memoranda of understanding

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35. (1) The Corporation is to enter into a separate memorandum of understanding with each of the regulatory agencies.

(2) Subject to section 36, the Corporation is to enter into the memoranda of understanding as soon as practicable after it is granted an operating licence. 30

(3) If the Corporation and a regulatory agency are not able to agree on a term of a memorandum of understanding, the view of the regulatory agency is to prevail.

Public exhibition of memoranda of understanding

36. (1) Each regulatory agency must give notice of the preparation of the memorandum of understanding to which it is a party. 35

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(2) The notice is to be given in a newspaper circulating in the Corporation's area of operations and must:

- 5 (a) specify the address of the place at which copies of the memorandum of understanding may be inspected; and
(b) specify the address to which representations concerning the memorandum of understanding may be forwarded.

(3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the regulatory agency concerning the memorandum of understanding.

10 (4) Each regulatory agency must, on the expiration of the period referred to in subsection (3), and before entering into the memorandum of understanding, consider any representations made under this section.

15 (5) Notice of the execution of a memorandum of understanding is to be published in the Gazette and in a newspaper circulating in the area of operations within 14 days after the execution.

(6) The requirements of this section apply to an amendment to a memorandum of understanding in the same way as they apply to a memorandum of understanding.

Division 4—Provisions relating to works

20 **Ownership of works**

25 **37. (1)** The Corporation is the owner of all works installed in or on land, at sea, in or on the seabed, in rivers and other waterways and in or on the beds of rivers and waterways by the Corporation and of all works in or on land or in water vested in or transferred to the Corporation (whether or not the land is owned by the Corporation).

30 (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

35 **38. (1)** The Corporation may, by persons issued with certificates of authority under section 39, enter and occupy land or a building in accordance with this Division for any one or more of the following purposes:

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-
- (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; 5
- (b) to read a meter that measures water supplied by the Corporation or material discharged into the Corporation's sewers;
- (c) to make a valuation or assessment of the usage of the land or of any building on the land;
- (d) to find the source of pollution of water supplied by the Corporation and, for this purpose, to dig up and remove material from the land; 10
- (e) 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 and, for this purpose, to dig up and remove material from the land; 15
- (f) to cut off or restrict the supply of water or other services to the land if any contract charges relating to the supply of water or those services to the land by the Corporation are unpaid;
- (g) to rectify defective or improper work that has not been rectified in accordance with a notice served by the Corporation under a customer contract or other contract; 20
- (h) 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, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence; 25
- (i) 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, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence. 30
- (2) Material that has been excavated from land for the purposes of this section may only be removed from the land by the Corporation: 35
- (a) if this is necessary for the purpose of ascertaining whether an offence has been committed against this Act; or
- (b) if the owner of the land has consented to its removal. 40

Certificates of authority

5 **39. (1)** The board of the Corporation may authorise an officer of the Corporation or the holder for the time being of an office in the Corporation's establishment to issue certificates of authority for the purposes of this Act.

(2) Such an officer or holder of an office may issue certificates of authority.

(3) A certificate of authority must:

- 10 (a) state that it is issued under this Act; and
 (b) specify the person or class of persons who are authorised to exercise the power of entry under this Act; and
 (c) describe the nature of the powers proposed to be exercised; and
 (d) state the date (if any) on which it expires; and
 (e) bear the signature of the person by whom it is issued.

15 **(4)** The Minister may, if the Minister thinks fit, by order published in the Gazette, impose conditions or restrictions on 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.

20 **Exercise of powers of entry**

40. (1) Before a person enters any land or building under a power conferred by this Division, the Corporation or a 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 or days specified in the notice unless:

- 25 (a) entry to the 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
30 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 material discharged into the Corporation's sewers if the meter is not in a dwelling-house or building; or
35 (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:

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- (a) is in possession of a certificate of authority issued under section 39; 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 5
- (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 unless 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. 10
15

Compensation

41. (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. 20

(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 causes other physical damage to property or if an access chamber or main ventilator is constructed on the land. 25

Power to open roads

42. (1) The Corporation may, for the purpose of exercising its functions in relation to systems or services in accordance with an operating licence and after giving reasonable notice to persons likely to be affected, including the appropriate roads authority under the Roads Act 1993, open and break up: 30

- (a) the soil and pavement of a public road or public reserve; and
- (b) any pipe, sewer, drain or tunnel in or under or any ground under a public road or public reserve. 35

(2) The person having the control and management of a public road or public reserve may require the Corporation to comply with conditions in

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exercising its powers under this section, including conditions for restoration of the surface and removal of rubbish.

5 (3) If a public road or public reserve is damaged by a malfunction 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.

10 (4) If the Corporation fails to comply with a condition 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.

15 (5) A person desiring to connect premises with a water main or sewer main of the Corporation that is available for connection may (subject to such conditions as may be imposed by or under any Act or law) open and break up the soil and pavement of a public or private road or way or a footpath or public reserve to the extent required to make the connection.

Altering position of conduit

20 43. (1) The Corporation may serve a written notice on a person if:
(a) the Corporation, in order to comply with an 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:

25 (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.

30 (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.

35 (4) The Corporation may, for the purposes of subsection (3), exercise any powers of the person on whom the notice was served, in addition to or instead of any powers of the Corporation.

(5) Except as provided by subsection (4), this section does not confer on the Corporation or the owner of the conduit any additional powers of entry or powers to carry out works than would be available apart from this section.

(6) In this section, “**conduit**” means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

Protection of works

44. (1) Land in or on which a work of the Corporation is installed is taken to be the subject 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: 5

(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 10

(b) the Corporation and persons issued with certificates of authority under section 39 are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 37 (2); and 15

(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. 20

(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. 25

(3) A covenant to which subsection (1) relates is enforceable as a duly created 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 could not reasonably have prevented action taken by any person that would, if capable of prevention by the owner or lessee, have resulted in a breach of this section by the owner or lessee. 30

(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 35

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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.

- 5 (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

- 10 **45. (1)** Without limiting section 44, 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
15 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.

- 20 (3) A reference in this section to a 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.

- 25 (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.

30 **Interference with works by trees**

- 46. (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
35 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:

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- (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 5
- (b) the work of the Corporation is located, within the land on which the tree has been planted, on land that was the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes when the tree was planted. 10
- (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 the Corporation's works and any reasonable expectation of the destruction, damage or interference occurring in the future. 15
- (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. 20
- (6) The Corporation may recover from an owner the cost of removing a tree under subsection (5), but only if the Corporation establishes: 25
- (a) that the tree was planted during the ownership of that owner; and
- (b) that:
- (i) an owner or occupier should have known that the planting of the tree would result in the destruction of, damage to or interference with the work concerned; or 30
- (ii) the tree was planted on land that was then the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes.
- (7) 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: 35
- (a) an interim conservation order or a permanent conservation order under the Heritage Act 1977; or

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- (b) an order in force under section 130 or 136 of the Heritage Act 1977; or
- (c) an interim protection order under the National Parks and Wildlife Act 1974; or
- 5 (d) a protection conferred by any similar law.
- (8) 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.
- 10 (9) In this section, “tree” includes shrub or other plant.

Division 5—Acquisition of land**Acquisition of land for purposes of this Act**

47. (1) The Corporation may acquire land (including an interest in land) for the purposes of this Act.
- 15 (2) Land that the Corporation is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.
- 20 (3) The Corporation may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

Division 6—Offences**Illegal diversion of water**

48. A person must not:
- 25 (a) wrongfully take, use or divert any water 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.
- 30 Maximum penalty: 100 penalty units (or 200 penalty units in the case of a corporation).

Offence to discharge into works

49. (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). 5

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

Penalty notices

50. (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations. 10

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section. 15

(3) A penalty notice may be served personally or by post.

(4) If the amount of the penalty prescribed for the alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence. 20

(5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence. 25

(6) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty for the offence if dealt with under this section; and 30

(c) prescribe different amounts of penalty for different offences or classes of offences.

(7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court. 35

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

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(9) In this section, “**authorised person**” means a person appointed in writing by the Minister as an authorised person for the purposes of this section.

Payment of penalty does not affect other proceedings

5 **51. (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:

- 10 (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.

15 **(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

52. (1) A person:

- 20 (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,

25 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 offences

30 **53. (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.

35 **(2)** The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 100 penalty units or the maximum penalty for the offence, whichever is the lesser.

(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 7—Customer contracts

Publication of terms and conditions of customer contracts 5

54. (1) The initial terms and conditions of customer contracts are to be set out in the operating licence or licences that relate to the provision of water supply or sewerage services by the Corporation.

(2) The Corporation must, before the commencement of section 55, publish, in a daily newspaper circulating in the area of operations, a notice setting out those initial terms and conditions of customer contracts or a summary of them. 10

(3) The terms and conditions 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. 15

(4) Subsection (3) does not apply to the extent that the contract charges relate to a government monopoly service within the meaning of the Government Pricing Tribunal Act 1992.

(5) If an operating licence so provides, the terms and conditions set out in the notice or the summary must be in a form specified by or authorised under the operating licence or licences. 20

Owner of land taken to have entered into customer contract

55. (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 the terms and conditions set out in the relevant operating licence or licences as varied from time to time in accordance with section 59, for the provision of water supply or sewerage services, or either of them, to the land. 25

(2) In addition, a customer contract may also include terms and conditions relating to the imposition and payment of charges imposed under section 64 or 65. If a customer contract makes provision for such matters, a person by whom one or more of the charges are payable is taken to have entered into a contract with the Corporation on those terms and conditions. 30
35

(3) A customer contract, or a contract entered into in accordance with subsection (2), is not unjust, unconscionable, harsh or oppressive for the purposes of any law.

(4) This section has effect subject to section 56.

5 **No customer contract for unauthorised connection**

56. (1) An owner of land is not to be taken to have entered into a customer contract under section 55 if the connection of the land to a water main or sewer main:

- 10 (a) was not authorised by the Corporation, a predecessor of the Corporation or another appropriate authority; and
- (b) has not since been approved by the Corporation, a predecessor of the Corporation or another appropriate authority.

(2) The Corporation may give approvals for the purpose of this section.

Division not to apply to certain contracts

15 **57. (1)** This Division does not apply to the extent that the terms and conditions of a contract or other arrangement for the provision of water supply or sewerage or stormwater drainage systems, or any of them, have been specifically agreed to by the Corporation and a person who is taken to have entered into a customer contract under section 55.

20 (2) Without limiting subsection (1), nothing in section 55, 64 or 65 affects the operation of:

- (a) a contract between the Corporation and a person (whether or not the person is taken to have entered into a customer contract under section 55); or
- 25 (b) a contract between a public authority and a person (whether or not the person is taken to have entered into a customer contract under section 55) relating to the supply of water or the provision of water recycling, effluent treatment, stormwater drainage or similar services within the area of operations.

30 **Consumer claims**

58. The jurisdiction of a consumer claims tribunal constituted under the Consumer Claims Tribunals Act 1987 extends to the hearing and determination of a consumer claim (within the meaning of that Act) relating to a service supplied by the Corporation under a customer contract.

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Variation of customer contracts

59. (1) The terms and conditions of a customer contract may, subject to the approval of the Governor, be varied by the Corporation by a notice setting out the variation and published in a daily newspaper circulating in the area of operations. The notice must be published at least 6 months before the variation becomes effective or within a shorter period approved by the Minister. 5

(2) A copy of the notice published under this section is to be given by the Corporation to the person who is taken to have entered into the customer contract under section 55. The copy is to be given with the next account for service charges issued after the date of publication of the notice. Failure to comply with the requirements of this subsection does not affect the validity of the variation or any contract charge made in accordance with the variation. 10

(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 evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved. 15

(4) This section does not apply to the variation of the terms and conditions of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Government Pricing Tribunal. 20

Division 8—Fees and charges**Fees and charges generally**

60. (1) The Corporation may impose: 25

- (a) fees and charges for or in connection with any service or thing supplied or provided by the Corporation in the exercise of its functions under this Act; and
- (b) without affecting the generality of paragraph (a)—availability charges and stormwater drainage area charges. 30

(2) Any such fees and charges may be fixed by reference to any factors or combination of factors, including but not limited to the following:

- (a) the nature of the service or thing provided;
- (b) the place where the service or thing is provided;
- (c) usage or estimated usage of the service or thing provided; 35
- (d) land value or any other value provided for in the Valuation of Land Act 1916 and at such base date as the Corporation determines;

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(e) land size, meter size or pipe size;

(f) any factor specified in an operating licence or prescribed by the regulations.

5 (3) The Corporation may impose any such fees and charges by customer contracts or by any other means. A fee or charge that is imposed by a customer contract cannot be altered except in accordance with the customer contract or an operating licence.

10 (4) The Corporation may impose a compulsory fee or charge by means of a customer contract only, except to the extent that an operating licence or the regulations permit a specified compulsory fee or charge or specified class of compulsory fee or charge to be imposed by some other means. The regulations may determine for the purposes of this subsection the kinds of fees or charges that are or are not compulsory in nature.

15 (5) An operating licence may regulate the imposition of any fees and charges, and in particular may provide for any or all of the following:

(a) specified fees and charges must not be imposed or must cease being imposed;

(b) specified fees and charges must be imposed;

20 (c) specified fees and charges may be imposed by customer contracts only.

(6) An operating licence may provide that the Corporation must, in imposing fees or charges or any specified class of fees or charges, do so:

25 (a) on a basis that is consistent with the system employed by the Water Board for fixing such fees or charges immediately before the transfer of the business undertaking (including the relevant provisions of clauses 4 and 5 of the Water Board (Finance) Regulation 1988); or

(b) on some other basis stipulated in the operating licence.

30 (7) This section has effect subject to the Government Pricing Tribunal Act 1992.

Successor in title liable for unpaid contract charges

35 61. 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, contract charges in certain cases

62. (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; 5

“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 or stormwater drainage area charges payable in relation to the land, the occupier may pay to the Corporation any charges that are due but unpaid by the owner and may: 10

(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. 15

Fees and charges not to be charges on land

63. On and after the transfer under Part 3 of the business undertaking of the Water Board to the Corporation, no fees or charges imposed by the Corporation are to be a charge on the land to which they relate, unless expressly provided for by this Act. 20

Availability charges

64. (1) The Corporation may and, if so required by an operating licence must, require the owner of land that is not connected to a water main or sewer main owned by the Corporation and available for connection to pay an availability charge. 25

(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 63, an availability charge imposed under this section is a charge on the land to which the availability charge relates. 30

(4) An availability charge is payable in relation to a particular water main to which the land concerned is not connected even if the land is connected to another water main, provided the kinds of water available from the services differ in nature or quality. 35

(5) Without limiting the generality of section 60 (5), the Corporation must cease imposing availability charges if an operating licence so requires.

Stormwater drainage area charges

5 **65. (1)** In this section, “**stormwater drainage area**” means an area of land declared by an order of the Governor to be a stormwater drainage area for the purposes of this section.

10 **(2)** An order in force under section 28 (3) of the Water Board Act 1987 (as in force immediately before the commencement of section 86 of this Act) declaring an area of land to be a stormwater drainage area is taken to be an order for the purposes of this section.

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

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

25 **(5)** Despite section 63, a stormwater drainage area charge levied under this section is a charge on the land to which the stormwater drainage area charge relates.

Certificates as to amounts due

30 **66. (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:

35 (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.

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

(3) An application for a certificate must:

 (a) specify the name and address of the applicant; and

45 (b) identify the land to which the application relates.

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(4) 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.

Exemptions from service charges 5

67. (1) The Corporation may not levy service charges on land described in Part 1 of Schedule 2 unless it is land described in Part 2 of Schedule 2.

(2) The Minister may, by order published in the Gazette, amend Schedule 2 by omitting from the Schedule a description of land contained in it or by inserting in the Schedule a description of land. 10

(3) In this section, “service charge” means a charge of the kind that was included in the definition of “service charge” in section 3 (1) of the Water Board Act 1987, and includes any kinds of fees and charges prescribed by the regulations as service charges to which this section applies, but does not include any kinds of fees and charges so prescribed as service charges to which this section does not apply. 15

Special arrangements with Valuer-General

68. (1) The Corporation may enter into special arrangements with the Valuer-General under Part 6B of the Valuation of Land Act 1916, but must not do so in contravention of a condition of an operating licence. 20

(2) Any valuations supplied to the Corporation under any such special arrangements may be used for the purposes of this Act, but subject to the terms of an operating licence under that Act.

(3) The Corporation must take all available steps to terminate or vary any such special arrangements if required to do so by an operating licence. 25

Division 9—Development

Definitions

69. In this Division: 30

“approval” means:

(a) an approval under Part 1 of Chapter 7 of the Local Government Act 1993 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 35

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(c) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979; or

(d) any similar approval, consent or other matter, prescribed by the regulations for the purposes of this definition;

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

10 **“consent authority”** has the meaning given in the Environmental Planning and Assessment Act 1979, and includes a council to which an application for approval for the erection of a building under Part 1 of Chapter 7 of the Local Government Act 1993 may be made;

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

“development”, in relation to land, means any activity to which an approval relates;

“works” has the meaning given by section 3, and includes:

15 (a) structures on or improvements to land that are designed to facilitate the carrying of water (including, for example, excavations along natural watercourses); or

20 (b) structures on or improvements to land that are designed to facilitate the operation of water and sewerage plants or waste water treatment plants (including, for example, artificial wetlands); or

(c) monitoring devices in, under, over or near any works referred to in paragraph (a) or (b); or

25 (d) any works ancillary or antecedent to any works referred to in paragraphs (a)–(c).

Compliance certificates

70. (1) A compliance certificate is a certificate issued by the Corporation under this Division in relation to a particular development, and certifying:

30 (a) that the requirements of the Corporation under this Division in relation to the development have been complied with; or

(b) that no such requirements were imposed by the Corporation in relation to the development.

(2) A compliance certificate can be issued to:

35 (a) a developer who is subject to a condition requiring that such a certificate be obtained and who applies for a certificate; or

(b) a developer who, though not subject to such a condition, nevertheless applies for such a certificate.

Conditions requiring compliance certificates

71. (1) It may be a condition of an approval given with respect to land within the Corporation's area of operations that a compliance certificate be obtained from the Corporation.

(2) The Corporation may issue guidelines from time to time to assist consent authorities and other authorities in relation to the imposition of conditions of the kind referred to in subsection (1). 5

(3) Nothing in this section affects the generality of the Environmental Planning and Assessment Act 1979 or any other Act with regard to the imposition of conditions on approvals. 10

Applications for compliance certificates

72. (1) If an approval has been given with respect to land within the Corporation's area of operations and the developer to whom the approval has been given is required, or wishes, to obtain a compliance certificate, the developer may apply to the Corporation for a compliance certificate. 15

(2) The application must be accompanied by a copy of the approval.

Grant of compliance certificates

73. If an application is made to the Corporation for a compliance certificate, the Corporation:

(a) may grant the developer a compliance certificate, without serving a notice on the developer under section 74; or 20

(b) must grant the developer a compliance certificate, when the Corporation is satisfied that the requirements of a notice served on the developer under section 74 have been complied with; or

(c) must, at the developer's request, grant the developer a compliance certificate, if no compliance certificate has been granted to, and no notice under section 74 has been served on, the developer within 60 days after the making of an application under section 72 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. 25 30

Notice of requirements before grant of compliance certificate

74. (1) If an application is made to the Corporation for a compliance certificate, the Corporation may, before proceeding further with the application, serve a notice on the developer requiring the developer to do any one or more of the following: 35

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- (a) to pay an amount to the Corporation to cover the whole or an appropriate portion of relevant costs (as defined in section 75), as assessed by the Corporation either in the notice or in another notice;
- 5 (b) to enter into one or more agreements providing for any one or more of the following:
- (i) the payment of such an amount to the Corporation;
- (ii) the construction, or the construction and the manner of construction, of the works specified in the notice;
- 10 (iii) the transfer of any such works to the Corporation;
- (c) to provide reasonable security, in a form approved by the Corporation, for due performance of such an agreement;
- (d) to attend to such additional or ancillary matters as are specified by the Corporation and as are necessary to give effect to any one or
- 15 more requirements imposed under paragraphs (a)–(c).

(2) The Corporation may withdraw a requirement contained in a notice under this section, in which case the requirement is treated as not having been made.

20 (3) This section has effect subject to the Government Pricing Tribunal Act 1992.

Relevant costs

75. For the purposes of section 74, the relevant costs are:

- (a) the full cost of any or all of the following:
- 25 (i) works and systems already constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation;
- (ii) works and systems to be constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation,
- 30 that benefit or are available to the land concerned, based on net present value, historical cost or any other appropriate basis, and having regard (if the Corporation thinks it appropriate) to its expected operating costs and revenues; and
- (b) the full cost of amplification of the Corporation's works and systems in consequence of the proposed development; and
- 35 (c) the investment costs incurred by the Corporation or a predecessor of the Corporation and by developers in relation to the existing and proposed works and systems referred to in paragraphs (a) and (b); and

- (d) costs of such kinds as are prescribed by the regulations as additional to or in substitution for any or all of the costs referred to in paragraphs (a), (b) and (c).

Conditions of compliance certificates

76. (1) A compliance certificate may be granted unconditionally or subject to specified conditions, including, for example, a condition to the effect that the grant is conditional on carrying out the terms of an agreement entered into under section 74. 5

(2) The requirement to obtain a compliance certificate is taken not to be complied with until the conditions attached to the certificate have been complied with. 10

(3) An unconditional compliance certificate may be granted to replace one already granted subject to conditions.

Grant of compliance certificates in stages

77. (1) A compliance certificate may, instead of being issued in relation to the whole of the development concerned, be issued progressively in relation to any or all of the stages of the development. 15

(2) A compliance certificate may be granted to replace one or more already granted.

Consent authority to notify Corporation of development and building applications 20

78. (1) 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 would:

- (a) increase the demand for water supplied by the Corporation; or 25
- (b) increase the amount of waste water that is to be removed by the Corporation; or
- (c) damage or interfere with the Corporation's works; or
- (d) adversely affect the Corporation's operations; or
- (e) adversely affect the quality of the water from which the Corporation draws its supply of water in a special area, 30

the consent authority must give the Corporation notice of the application, unless it is relieved from doing so under subsection (2).

(2) The consent authority is not required to give notice of the application if it decides: 35

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- (a) not to approve the application; or
- (b) to approve the application with a condition that the developer must obtain a compliance certificate from the Corporation.

5 (3) The Corporation must issue guidelines from time to time to assist consent authorities to determine which matters should be the subject of notice under subsection (1).

10 (4) The consent authority must take into account any submissions made by the Corporation in relation to a development application or building application that is the subject of a notice under subsection (1), in determining whether to approve the development application or building application or to attach conditions to it. The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a compliance certificate from the Corporation.

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

20 (6) 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.

Enforcement

25 **79. (1)** Any money owing to the Corporation as a consequence of a notice referred to in section 74 may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(2) Nothing in this section affects any power or remedy that the Corporation has apart from this section.

Division 10—Special areas

30 Definitions

80. In this Division:

“**joint sponsors**” means the Director-General of National Parks and Wildlife and the Corporation;

35 “**public agency**” means the Governor, a Minister of the Crown or a statutory body.

Special areas

81. (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 not recommend the making of such an order unless the Minister certifies that the Minister is satisfied that the making of the order is necessary for either or both of the following purposes: 5

(a) protecting the quality of stored waters, whether intended for use for drinking or other purposes;

(b) maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with the Corporation's obligations to provide, construct, operate, manage or maintain storages under any operating licence. 10

(3) The area of land within any special area (as referred to in the Water Board Act 1987) immediately before the commencement of this section is taken to be the subject of an order declaring it to be a special area under this Act. 15

(4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended by an order made by the Governor. 20

(5) The Minister must cause a copy of an order made under this section, including an order amending an order, to be tabled in each House of Parliament within 14 sitting days of that House after the order has been published in the Gazette.

(6) A special area must not be reduced in size, and an order declaring an area of land to be a special area must not be repealed, unless authorised by an Act of Parliament. 25

Restriction on alienation of land in special areas

82. (1) The Corporation must not alienate, mortgage, charge or demise land in a special area that is owned by or vested in the Corporation unless: 30

(a) to or in favour of the Minister administering the National Parks and Wildlife Act 1974; or

(b) authorised by an Act of Parliament.

(2) Nothing in subsection (1) operates: 35

(a) to extinguish or otherwise affect any existing lease, licence or other interest in the land in a special area; or

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(b) to prevent the renewal of any such lease, licence or other interest;
or

5 (c) to prevent the grant of a lease, licence or other interest in the land
in accordance with any plan of management prepared in relation
to the land under this Act.

Crown land in special areas

10 **83. (1)** Action may not be taken under the Crown Lands Act 1989 in
relation to land in a special area unless the Corporation has given written
approval and any conditions to which the approval is subject are
complied with.

(2) The Corporation 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.

Exercise of functions by public agencies in special areas

15 **84. (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 to the Corporation.

20 (2) On receiving a notice referred to in this section, the Corporation
may make such representations to the public agency as the Corporation
thinks fit.

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

25 (4) If a public agency has functions with regard to a development
application relating to land within a special area to which an
environmental planning instrument applies, the forwarding of the
development application or a copy of it to the Corporation, or the giving
30 of any other form of notification of the development application to the
Corporation, whether by the public agency or the applicant, is taken also
to be the giving of notice for the purposes of this section.

(5) This section does not apply to a public agency's functions with
regard to the making of an environmental planning instrument in relation
to land within a special area.

35 (6) This section does not apply to a public agency's functions with
regard to a development application, if an environmental planning
instrument applying in the special area prevents the development

application from being determined by the granting of consent without the concurrence of the Corporation.

(7) This section does not apply to a public agency's functions to the extent that they relate to a matter about which a notice has been given to the Corporation under section 78. 5

Regulations concerning special areas

85. (1) The regulations may make provision for or with respect to special areas, including charges or payments for abstraction of water and the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas. 10

(2) A regulation made under this Division 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. 15

Plans of management

86. (1) The joint sponsors are jointly required to cause a plan of management to be prepared for each special area as soon as practicable after it has been declared to be a special area.

(2) A plan of management for an area of land referred to in section 81 (3) is to be prepared within 24 months after the commencement of this section. 20

(3) When a plan of management has been prepared, the joint sponsors must give notice of the plan in a newspaper circulating throughout New South Wales and must, in that notice: 25

- (a) specify the address of the place at which copies of the plan of management may be inspected; and
- (b) specify the address to which representations concerning the plan of management may be forwarded.

(4) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the joint sponsors concerning the plan of management. 30

(5) The joint sponsors must, on the expiration of the period referred to in subsection (4), and before submitting the plan of management to the Minister, consider any representations made under this section. 35

(6) The Minister may adopt a plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the joint sponsors for further consideration.

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(7) If the Minister refers a plan of management back for further consideration, the joint sponsors must resubmit it after considering it further and making any appropriate alterations.

(8) The Minister may:

- 5 (a) amend or alter a plan of management from time to time; or
(b) cancel a plan of management; or
(c) cancel a plan of management and substitute a new plan.

10 (9) Before doing any of the things referred to in subsection (8), the Minister may consult with any person or body (including persons or bodies other than the joint sponsors) that the Minister thinks fit.

(10) Subsections (3)–(5) apply to an amendment or alteration of a plan of management in the same way as they apply to a plan of management.

Operations under plan of management

15 **87. (1)** A plan of management adopted under this Act for a special area must be carried out and given effect to by the Corporation.

(2) Subject to the requirements of any other Act or any instrument under any other Act, no operations are to be undertaken by the Corporation in relation to the lands within the special area unless the operations are in accordance with the plan.

20 **Division 11—Controlled areas**

Controlled areas

88. (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 controlled area.

25 (2) An order under this section applies to land only while it is owned by or vested in the Corporation.

30 (3) The lands referred to in Schedule 1 to the Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this section (but excluding the lands referred to in the first paragraph, including paragraphs (a)–(c), and the second paragraph of that Schedule) are taken to be the subject of an order declaring them to be a controlled area, despite anything in section 81 (3).

35 (4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended or repealed by an order made by the Governor.

Regulations concerning controlled areas

89. (1) The regulations may make provision for or with respect to controlled areas, including the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas. 5

(2) A regulation made under this Division 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.

Division 12—Activities outside area of operations 10**Activities outside area of operations**

90. (1) If an operating licence has been issued to the Corporation under this Act, the Corporation may:

(a) exercise outside 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; and 15

(b) undertake activities in the exercise of any such right outside the area of operations, 20

for the purpose of supplying water to councils or the owners or occupiers of land in the vicinity of the bulk supply lines (or carrying out any other activities previously authorised under section 13 (5) of the Water Board Act 1987).

(2) Subsection (1) applies only until such time as the Corporation is granted a licence or permit by the relevant authority for the purpose referred to in that subsection and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted. 25

(3) Subsection (1) applies only if the activities are necessary for the purpose of providing systems or services that the Water Board was authorised to provide in accordance with a Ministerial consent under section 13 (5) of the Water Board Act 1987 that was current on the repeal of that Act. 30

(4) This section applies to an activity only until the Minister revokes the consent or the activity becomes the subject of an operating licence. 35

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

Division 13—Other matters**Contracting out**

5 **91. (1)** The Corporation may enter into a contract or other arrangement with any person for the provision, construction, operation, management or maintenance of systems or services that are the subject of an operating licence or for the carrying out of any of its other activities.

10 **(2)** The person with whom any such contract or other arrangement is entered may (subject to the contract or other arrangement) exercise, 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 the purposes referred to in subsection (1).

15 **(3)** The power to exercise rights conferred by subsection (2) has effect only until such time as the Corporation is granted a licence or permit by the relevant authority for the purposes referred to in subsections (1) and (2) and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.

20 **(4)** The power to exercise rights under subsection (2) may be exercised only in relation to activities carried out under an operating licence.

25 **(5)** The entering into of a contract or other arrangement under this section does not relieve the Corporation of its responsibilities to comply with an operating licence.

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

25

PART 7—MISCELLANEOUS**Alteration of names**

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

Performance of community service obligations

30 **93. (1)** This section applies when a direction is made under section 11 of the State Owned Corporations Act 1989 or to any activity the performance of which the Corporation identifies as not being in its commercial interests or for which the Corporation seeks reimbursement or is entitled to be reimbursed as a consequence, whether the activity was
35 previously carried out by the Water Board or not.

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(2) Before any direction is made under section 11 of the State Owned Corporations Act 1989 or reimbursement is sought, the Corporation's board of directors, or the Minister, as the case may be:

- (a) must quantify for the Treasurer the cost of performing the activities so as to identify the least capital and operating costs of obtaining the outcome or service to which the activity or direction relates; and 5
- (b) must certify to the Treasurer that the costs have been quantified by open public tender or such other means as may be considered appropriate to demonstrate that the service or activity is being provided at the least capital and operating cost. 10

(3) The Treasurer is to publish a notice of any payment made, together with the certification provided under subsection (2) (b) in the Gazette within 14 days after payment is made.

(4) This section applies despite anything in section 11 of the State Owned Corporations Act 1989. 15

Composition of board

94. Schedule 2 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 3 to this Act. 20

Provisions relating to subsidiaries

95. Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 4 to this Act.

Provisions relating to certain staff

96. (1) Pursuant to clause 1 of Schedule 4 to the State Owned Corporations Act 1989, it is declared that the Water Board is an authority to which that Schedule applies. 25

(2) Unbroken service with the Corporation that is continuous with service with the Water Board is to be taken into account in accordance with the Transferred Officers Extended Leave Act 1961, both during and after service with the Corporation. 30

(3) The Transferred Officers Extended Leave Act 1961 does not otherwise apply to members of the staff of the Corporation.

Special audit of activities

97. (1) Despite section 36 (1) (b) of the State Owned Corporations Act 1989, the provisions of Division 2A of Part 3 of the Public Finance and Audit Act 1983 apply to the Corporation. 35

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(2) For the purposes of this section and Division 2A of Part 3 of the Public Finance and Audit Act 1983:

- (a) the Corporation is taken to be an authority within the meaning of section 38A of that Act; and
- 5 (b) the chief executive officer of, or the person who exercises the functions of a chief executive officer in relation to, the Corporation is taken to be the Head of an authority within the meaning of that expression as defined in section 4 (1) of that Act.

Act binds Crown

10 **98.** 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 stormwater drainage

15 **99. (1)** A person must not do any kind of work of water supply, sewerage or stormwater drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

- 20 (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
- 25 (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.

30 (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.

35 (3) Subsection (1) does not apply to an employee of the Corporation who carries out any such work on behalf of the Corporation or to any other person who is authorised by the Corporation to carry out any such work.

Service of notices

100. (1) A notice under this Act to a person liable for payment of a fee or charge, or to a person who is the owner or occupier of land or a building, may be served:

- (a) personally; or 5
- (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently residing or employed there who seems to be at least 16 years old; or
- (c) by post to the residence or place of business of the person to be served last known to the Corporation; or 10
- (d) by affixing it to a conspicuous part of the land or building.

(2) A notice under this Act to a corporation constituted by or under an Act or other law may be served:

- (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old; or 15
- (b) in any manner authorised by or under the Act or law by which the corporation is constituted or which applies to the corporation.

(3) A notice under this Act to a government department or administrative office may be served: 20

- (a) in the case of a notice of valuation or a notice of a fee or charge—on the Treasurer or as prescribed by the regulations; or
- (b) in any other case—on the Department Head or as prescribed by the regulations.

(4) A notice under this Act may be served on a person who appears to be absent from the State, or who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served. 25

(5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Corporation, it may be served by an advertisement that: 30

- (a) is published in a newspaper circulating in the locality of the land or premises; and
- (b) states the name of the owner of the land or premises if known to the Corporation; and 35
- (c) if the notice is notice of a fee or charge—states the amount of the fee or charge, the period (if any) for which it is owing and that a detailed notice of the fee or charge may be obtained by inquiry at an office of the Corporation identified in the advertisement; and
- (d) states that the advertisement operates as service of the notice. 40

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(6) A notice under this Act may be served on a person in accordance with a means of communication (such as facsimile transmission, telecommunication or another electronic means of communication) notified by the person as being an available means of communication.

5 (7) A customer contract or the regulations may impose additional requirements in relation to any means of service provided by this section or may provide other means of serving notices.

Annual reports

10 **101. (1)** The Corporation is to comply with requirements of Schedule 5 regarding the annual report of the operations of the Corporation, in addition to any other relevant requirements of the State Owned Corporations Act 1989 and the Corporations Law.

(2) The regulations may amend or replace Schedule 5.

Restraint of breaches of Act

15 **102. (1)** Any person may bring proceedings, concerning matters relating to the protection of the environment, in the Land and Environment Court for an order to restrain a breach of this Act (or a threatened or apprehended breach of this Act).

20 (2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).

25 (3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.

30 (4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings.

35 (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

Restraint of breaches of customer contract

103. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach (or a threatened or apprehended breach) of a customer contract by the Corporation.

(2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach). 5

(3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed. 10

(4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings. 15

(5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings. 20

Application of Freedom of Information Act 1989

104. (1) The Freedom of Information Act 1989 applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority. 25

(2) For the purposes of that Act:

(a) the Minister administering this section is the responsible Minister; and

(b) the Managing Director of the Corporation, or the holder of another office prescribed by the regulations, is the principal officer of the Corporation; and 30

(c) the holder of an office prescribed by the regulations is the principal officer of a subsidiary of the Corporation.

Application of Independent Commission Against Corruption Act 1988 35

105. Section 23 of the Independent Commission Against Corruption Act 1988 applies to the Corporation and its subsidiaries and to persons who are public officials by virtue of their connection with the Corporation

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or such a subsidiary. This section has effect despite section 36 of the State Owned Corporations Act 1989.

Regulations

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

- 10 (a) the renewal of, and the arrangements to apply pending the renewal of, an operating licence; and
- 15 (b) in the case of drought or accident, or if the Minister is for some other reason of the opinion that it is necessary in the public interest and for the purpose of maintaining water supply—the restriction or regulation of the supply and use of water in the area of operations; and
- 20 (c) the classification or valuation of land or other basis or bases for the making of fees or charges, and the procedure for the making and imposing of fees or charges; and
- 25 (d) charges on land and the recovery of amounts charged on land, including applying the provisions (with or without modification) of Divisions 4 and 5 of Part 2 of Chapter 17 of the Local Government Act 1993; and
- (e) any matters to which the regulations referred to in clause 2 of Schedule 9 relate.

(3) 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.
- 30 **(4)** Regulations may be made for or with respect to:
- (a) authorising the Corporation to make arrangements with another person to collect fees or charges on behalf of the Corporation; and
- (b) the fees to be paid by the person to the Corporation.

Repeals

35 **107. (1)** The Water Board Act 1987 is repealed.

(2) All regulations and by-laws under that Act and the Metropolitan Water, Sewerage, and Drainage Act 1924 are repealed, except as provided in Schedule 9 to this Act.

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Amendment of Government Pricing Tribunal Act 1992 No. 39

108. The Government Pricing Tribunal Act 1992 is amended as set out in Schedule 6.

Amendment of other Acts

109. The Acts specified in Schedule 7 are amended as set out in that Schedule. 5

Amendment of regulations

110. The regulations specified in Schedule 8 are amended as set out in that Schedule.

Savings, transitional and other provisions 10

111. Schedule 9 has effect.

Review of Act

112. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 15

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION
LICENCE REGULATOR**

(Sec. 30 (5))

5

PART 1—PRELIMINARY

Definitions

1. In this Schedule:

“**Chairperson**” means the Chairperson of the Licence Regulator;

“**member**” means a member of the Licence Regulator.

10

PART 2—MEMBERS

Chairperson

2. The Chairperson is to be selected by the Minister from among the 5 members.

Deputies

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3. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member’s deputy:

(a) may, if available, act in the place of the member; and

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(b) while so acting, has the functions of the member and is taken to be the member.

(3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of members

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4. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Remuneration

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member. 5

Vacancy in office of member

6. (1) The office of a member becomes vacant if the member:
- (a) dies; or 10
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this Schedule or by the Governor under Part 8 of the Public Sector Management Act 1988; or 15
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or 20
 - (f) becomes a mentally incapacitated person; or
 - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or 25
 - (h) is absent from 3 consecutive meetings of the Licence Regulator of which reasonable notice has been given to the member, except on leave granted by the Licence Regulator or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Licence Regulator for having been absent from the meetings. 30
- (2) The Minister may remove a member from office at any time.

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Disclosure of pecuniary interests

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7. (1) If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Licence Regulator; and

10

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Licence Regulator.

15

(2) A disclosure by a member at a meeting of the Licence Regulator that the member:

(a) is a member or officer, or is in the employment, of a specified company or other body; or

(b) is a partner, or is in the employment, of a specified person; or

20

(c) has some other specified interest relating to a specified company or other body or to a specified person,

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is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept by the Licence Regulator for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Licence Regulator.

30

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Licence Regulator otherwise determines:

(a) be present during any deliberation of the Licence Regulator with respect to the matter; or

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(b) take part in any decision of the Licence Regulator with respect to the matter.

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued***

- (5) For the purpose of the making of a determination by the Licence Regulator under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 5
- (a) be present during any deliberation of the Licence Regulator for the purpose of making the determination;
 - (b) take part in the making by the Licence Regulator of the determination. 10
- (6) A contravention of this clause does not invalidate any decision of the Licence Regulator.

Filling of vacancy in office of member

8. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy. 15

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or 20
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member. 25
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 3—PROCEDURE**General procedure** 30

10. The procedure for calling meetings of the Licence Regulator and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Licence Regulator.

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SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Quorum

5 11. The quorum for a meeting of the Licence Regulator is 3 members.

Presiding member

12. (1) The Chairperson is to preside at a meeting of the Licence Regulator.

10 (2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Licence Regulator at which a quorum is present is a decision of the Licence Regulator.

15 **Transaction of business outside meeting or by telephone or other means**

20 14. (1) The Licence Regulator may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Licence Regulator.

25 (2) The Licence Regulator may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

30 the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Licence Regulator.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Licence Regulator.

Water Board (Corporatisation) 1994

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued***

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other means for transmission of the information in the papers concerned. 5

Minutes

15. (1) The Licence Regulator is to ensure that full and accurate minutes of all its proceedings are kept. 10

(2) The Licence Regulator is to submit a copy of the minutes of a meeting of the Licence Regulator to the Minister within 14 days after the meeting is held. 10

First meeting

16. The Minister may call the first meeting of the Licence Regulator in such manner as the Minister thinks fit. 15

SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES

(Sec. 67)

PART 1—LAND EXEMPT FROM SERVICE CHARGES

1. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery. 20

2. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a common.

3. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.

4. Land which belongs to any public benevolent institution, or public charity, and is used or occupied by the institution or charity for its purposes. 25

5. Land which is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain. 30

6. Land which is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.

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SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES—
continued

7. Land which belongs to a religious body and which is occupied and used in connection with:

- 5 (a) any church or other building used or occupied in public worship;
 or
- (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building; or
- 10 (c) any building used or occupied for the purposes of religious teaching or training; or
- (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State; or
- 15 (e) any building used or occupied solely as a hospital and not conducted for private gain.

8. Land which is a public place within the meaning of the Local Government Act 1993.

9. Land which:

- (a) is unoccupied; and
- 20 (b) is not supplied with water from any water-pipe of the Corporation and is not connected to any sewer of the Corporation; and
- (c) has been determined, by the council of the area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.

25 10. Land which is unoccupied and which is below highwater mark of any tidal water.

30 11. Land which belongs to and which is occupied and used in connection with any registered non-government school within the meaning of the Education Reform Act 1990, including any playground which belongs to and is used in connection with any such school, and any building occupied as a residence by any caretaker, servant, or teacher of any such school which belongs to and is used in connection with the school.

35 12. Drill grounds, sports grounds, gardens, or children's playgrounds provided by the council of an area under the powers conferred by the Local Government Act 1993.

*Water Board (Corporatisation) 1994***SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES—**
continued

13. Land vested in the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983, being land which is declared under Division 5 of Part 6 of that Act to be exempt from the payment of rates under this Act. 5

PART 2—EXCEPTIONS

1. Land within a public place, public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business. 10
2. Land that is vested in the Crown or a public body and is leased to any person for private purposes.
3. Land vested in the Crown or an authority (within the meaning of the Public Finance and Audit Act 1983) that: 15
- (a) is used or occupied by the Crown or such an authority for a purpose specified in item 1, 2, 3, 5 or 6 of Part 1 of this Schedule; or
- (b) is land referred to in item 8 of Part 1 of this Schedule (other than a public road or the permanent way of a railway). 20

SCHEDULE 3—BOARD OF CORPORATION

(Sec. 94)

- Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards Sydney Water Corporation Limited, taken to be altered by inserting after clause 1 (6) the following subclauses: 25
- (6A) The board is to consist of the following:
- (a) a chairman, selected by the voting shareholders;
- (b) six directors, selected for their relevant expertise by the voting shareholders;
- (c) a director with industrial relations experience, selected under subclause (6B), not being an employee of the corporation; 30
- (d) the chief executive of the corporation.

*Water Board (Corporatisation) 1994***SCHEDULE 3—BOARD OF CORPORATION—*continued***

(6B) The director with industrial relations experience is to be selected by a selection committee from a panel of 3 persons nominated by the Labor Council of New South Wales.

- 5 (6C) The selection committee is to consist of the following:
- (a) the chairman of the board (or, if that position is vacant, a person nominated by the voting shareholders);
 - (b) two persons nominated by the Labor Council of New South Wales;
 - 10 (c) two other persons nominated by the voting shareholders.

(6D) Subject to this clause, the procedures for nominating and selecting the director with industrial relations experience and for constituting the Selection Committee are to be as determined by the voting shareholders.

SCHEDULE 4—SUBSIDIARIES OF CORPORATION

(Sec. 95)

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

- 20 (a) by inserting in clause 1 (5) after the word “director” the words “to be appointed by or on behalf of the State owned corporation”;
- (b) by omitting clause 1 (9) and by inserting instead the following subclause:

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

SCHEDULE 5—ANNUAL REPORT OF CORPORATION

(Sec. 101 (2))

Definition

1. In this Schedule:

“**financial year**” means the financial year of the Corporation. 5

Budgetary information

2. The annual report of the operations of the Corporation is to include or be accompanied by:

(a) a detailed budget for the financial year to which the report relates;
and 10

(b) an outline budget for the next following financial year.

Specific particulars

3. The annual report of the operations of the Corporation is to include the following particulars in relation to the following matters:

(a) **research and development**—particulars of completed research and continuing research and development activities together with the resources allocated for that research and those activities, unless the inclusion of those particulars would, in the opinion of the Corporation, adversely affect the business or commercial operations of the Corporation; 15
20

(b) **human resources:**

(i) the number of employees, by category, with comparison to each of not less than 3 years before the financial year to which the report relates;

(ii) any exceptional movement in wages, salaries or allowances of material effect; 25

(iii) personnel policies and practices;

(iv) industrial relations policies and practices;

(c) **consultants:**

(i) in respect of the engagement during the financial year of a consultant by the Corporation the cost of which exceeds \$30,000, the following details relating to the consultant: 30

*Water Board (Corporatisation) 1994*SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- the name of the consultant;
- if the consultant has been engaged for a particular project, the title of the project;
- 5 • the actual cost of engaging the consultant;
- (ii) in respect of the engagement during the financial year of consultants by the Corporation, if the cost of each such engagement is less than \$30,000, the following details relating to the consultants:
- 10 • the total number of engagements costing less than \$30,000;
- the total cost of all such engagements;
- (iii) if no consultants were engaged by the Corporation during the financial year, a statement of that fact;
- 15 **(d) equal employment opportunity:**
- (i) a statement setting out the equal opportunity achievements of the Corporation during the financial year and the key equal employment opportunity strategies proposed by the Corporation for the following year;
- 20 (ii) statistical information for the financial year of such kind, and set out in such form, as is determined by the Secretary of the Treasury or, if such information is not currently available, particulars of the arrangements that have been made to obtain and provide such information during the
- 25 following year;
- (e) promotion:**
- (i) a statement setting out the types of publications and other information available to the public dealing with the functions and activities of the Corporation and indicating those which were published by the Corporation during the
- 30 financial year;
- (ii) overseas visits undertaken with the main purposes highlighted;
- 35 **(f) consumer response**—the extent and main features of consumer complaints, indicating any services improved or changed as a result of complaints or consumer suggestions made;

*Water Board (Corporatisation) 1994*SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- (g) **guarantee of service**—where appropriate, the standard for providing services, together with comment on any variance from the standard or changes made to the standard;
- (h) **time for payment of accounts** (in relation to contracts entered into by or on behalf of the Corporation for the supply of goods or services, or both, to the Corporation)—all instances where penalty interest has been paid if payment has not been made within a period and the reason for the delay in making the payment which led to the payment of the interest. 5
10

Comparison of investment performance

4. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the investment performance of the Corporation in respect of its surplus funds and of the investment performance of the appropriate Treasury Corporation investment facilities. 15
- (2) The appropriate Treasury Corporation investment facility is (in respect of any particular surplus funds) the one chosen by the Corporation from among the investment facilities made available under the description “Hour-Glass Investment Facilities” by the Treasury Corporation to public authorities for investment of their surplus funds. 20
- (3) The Corporation’s choice of investment facility is to be made on the basis of the nature and term of the underlying liability to which the particular surplus funds relate, as determined in accordance with guidelines issued by the Treasurer. 25
- (4) The Corporation is to notify the Treasurer of its choice of investment facilities for the purposes of the comparison, giving reasons for its choice, within 1 month after the beginning of the financial year to which the report relates.
- (5) The Treasurer can disallow the Corporation’s choice of investment facility and substitute the Treasurer’s own choice (advising the Corporation accordingly), in which case the comparison is to be based on the Treasurer’s choice of investment facility. 30
- (6) The following provisions apply to a comparison required by this clause: 35

Water Board (Corporatisation) 1994

SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- (a) investment performance is to be stated as an annual compound percentage rate of return;
- 5 (b) the investment performance of an investment facility made available by the Treasury Corporation is as advised to statutory bodies by the Treasurer from time to time;
- (c) the comparison is to relate to investment performance during the financial year to which the report relates.
- 10 (7) For the purposes of the comparison, the following matters are to be as determined in accordance with guidelines issued to statutory bodies by the Treasurer from time to time:
- (a) which cash assets of the Corporation are to be considered to be its surplus funds;
- 15 (b) the method of calculating investment return, including the method of calculating an annual return from an actual period of investment of less than a year;
- (c) the method of calculating and comparing investment return where there is a difference between the period of actual investment of funds and the period over which the return of the relevant Treasury Corporation investment facility is measured.
- 20

Comparison of liability management performance

- 25 5. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the performance of the Corporation's liability portfolio and the performance of the Corporation's benchmark portfolio.
- (2) The Corporation's benchmark portfolio is a notional portfolio maintained by the Corporation and constructed in accordance with guidelines issued by the Treasurer so as to be risk neutral.
- (3) The comparison required by this clause:
- 30 (a) is to be in terms of the measure or measures advised in guidelines issued by the Treasurer; and
- (b) is to relate to liability portfolio performance during the financial year to which the report relates.

SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING TRIBUNAL ACT 1992

(Sec. 108)

- (1) Section 11 (**Investigations and reports by Tribunal—standing reference**): 5
 In section 11 (1) (a), omit “maximum price”, insert instead “pricing”.
- (2) Section 12 (**Investigations and reports by Tribunal—reference by Minister**):
 (a) In section 12 (1) (a), omit “maximum price”, insert instead “pricing”. 10
 (b) In section 12 (3), omit “maximum price”, insert instead “pricing”.
 (c) In section 12 (3), omit “that price”, insert instead “that pricing”. 15
- (3) Section 13 (**Investigations and reports by Tribunal—general provisions**):
 In section 13 (5), omit “maximum price”, insert instead “pricing”.
- (4) Section 13A: 20
 After section 13, insert:
Determinations of pricing
 13A. (1) In making a determination of the pricing for a government monopoly service, the Tribunal is limited to doing either of the following: 25
 (a) determining the maximum price for the monopoly service;
 (b) determining the methodology for fixing the maximum price for the monopoly service.
 (2) However, the Tribunal may choose to make a 30
 determination in terms of subsection (1) (b) only if the Tribunal is of the opinion that it is impractical to make a determination in terms of subsection (1) (a).

Water Board (Corporatisation) 1994

SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued*

5 (3) The Tribunal is to include in its determination a statement of the reasons why it has chosen to make a determination in terms of subsection (1) (b).

(5) Section 14A:

After section 14, insert:

Determination of methodology for fixing prices

10 14A. (1) A determination of the Tribunal of the methodology for fixing the price for a government monopoly service may be made in any manner the Tribunal considers appropriate.

15 (2) In making such a determination, the Tribunal may have regard to such matters as it considers appropriate, including, for example, the following:

- (a) the government agency's economic cost of production;
- (b) past, current or future expenditures in relation to the government monopoly service;
- 20 (c) charges for other monopoly services provided by the government agency;
- (d) economic parameters, such as:
 - (i) discount rates; or
 - 25 (ii) movements in a general price index (such as the Consumer Price Index), whether past or forecast;
- (e) a rate of return on the assets of the government agency;
- (f) a valuation of the assets of the government agency;
- 30 (g) the effects of pricing on environmental outcomes (including the sustainability of eco-systems) and the use of natural resources by the government agency.

Water Board (Corporatisation) 1994

 SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
 TRIBUNAL ACT 1992—*continued*
(6) Section 16 (**Report on financial impact if maximum price not charged**):

After “service”, insert “or determines a methodology that would or might increase the maximum price for a government monopoly service”.

5

(7) Section 17 (**Gazettal of determinations**):

In section 17 (1), omit “maximum price”, insert instead “pricing”.

10

(8) Section 18 (**Implementation of price determinations and other reports**):

(a) After section 18 (1), insert:

(1A) A determination made by the Tribunal of the methodology for fixing the maximum price for a government monopoly service is to be implemented as follows:

15

(a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology;

20

(b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology.

25

30

(b) In section 18 (2), after “Tribunal”, insert “or calculated in accordance with the determination of the Tribunal”.

Water Board (Corporatisation) 1994

 SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
 TRIBUNAL ACT 1992—*continued*

(9) Section 31:

After section 30, insert:

5 **Disputes regarding application of determination of methodology**

10 31. (1) A customer who is dissatisfied with the way in which a government agency applies the methodology in a determination referred to in section 14A may complain to the agency.

(2) The chief executive of the agency is to review the complaint or cause it to be reviewed.

15 (3) The customer, if still dissatisfied, may request the agency that the matter be reviewed by way of arbitration by an arbitrator, who is to be appointed by agreement between the customer and the agency. The agency is, subject to this section, to comply with any such request.

(4) Costs of the arbitration are to be borne equally by the agency and the customer.

20 (5) The regulations may exclude classes of determinations from the operation of this section and may make provision for or with respect to reviews and arbitration under this section, including:

25 (a) the times within which complaints and requests are to be made;

(b) the circumstances in which complaints and requests may be dismissed without consideration;

(c) the determination of costs of arbitration.

30 (6) Subject to this section and the regulations, the Commercial Arbitration Act 1984 applies to any such arbitration.

(10) Schedule 1 (**Government agencies for which Tribunal has standing reference**):

35 Omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS

(Sec. 109)

Aboriginal Land Rights Act 1983 No. 42

- (1) Section 43 (**Exemption of Aboriginal lands from the payment of rates**): 5

From section 43 (1) (b), omit "Metropolitan Water, Sewerage, and Drainage Act 1924", insert instead "Water Board (Corporatisation) Act 1994".

- (2) Section 44 (**Execution etc. against Aboriginal lands barred in certain cases**): 10

From section 44 (b), omit "Metropolitan Water, Sewerage, and Drainage Act 1924", insert instead "Water Board (Corporatisation) Act 1994".

Attachment of Wages Limitation Act 1957 No. 28

Schedule: 15

Omit "Metropolitan Water, Sewerage and Drainage Board."

Building Services Corporation Act 1989 No. 147

Section 135 (**Proceedings for certain offences under other Acts**): 20

Omit section 135 (g), insert instead:

(g) the Water Board (Corporatisation) Act 1994; or

Capital Debt Charges Act 1957 No. 1

Schedule:

Omit the matter relating to The Metropolitan Water, Sewerage and Drainage Board. 25

Clean Waters Act 1970 No. 78

Section 5 (**Definitions**):

- (a) From the definition of "statutory authority", omit "the Metropolitan Water Sewerage and Drainage Board,". 30

- (b) Omit the definition of "Water Board".

Water Board (Corporatisation) 1994

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

Conveyancing Act 1919 No. 6

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

5 In section 88 (4), before “nor”, insert “or by or for Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994,”.

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

10 Insert in numerical order:

 (6) For the purposes of this section, Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994 is taken to be a public authority constituted by Act of Parliament.

15 **Dams Safety Act 1978 No. 96**

 Section 8 (**Members**):

 From section 8 (2) (b), omit “Metropolitan Water Sewerage and Drainage Board constituted under the Metropolitan Water, Sewerage, and Drainage Act 1924”,
20 insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Drainage Act 1939 No. 29

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

25 Omit “the Metropolitan Water, Sewerage and Drainage Act 1924–1937”, insert instead “the Water Board (Corporatisation) Act 1994”.

Electricity Commission Act 1950 No. 22

 Section 3 (**Definitions**):

30 From the definition of “Statutory body” or “Statutory body representing the Crown” in section 3 (1), omit “the Metropolitan Water, Sewerage and Drainage Board,”.

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***Environmental Education Trust Act 1990 No. 26**(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”. 5

(2) Section 13 (**Environmental Education Trust Fund**):

Omit section 13 (1) (a), insert instead:

- (a) 10 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; 10
and 15

Environmental Research Trust Act 1990 No. 25(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”. 20

(2) Section 13 (**Environmental Research Trust Fund**):

Omit section 13 (1) (a), insert instead:

- (a) 20 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; 25
and

Environmental Restoration and Rehabilitation Trust Act 1990 No. 24 30(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”.

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(2) Section 16 (**Environmental Restoration and Rehabilitation Trust Fund**):

Omit section 16 (1) (a), insert instead:

- 5 (a) 70 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the
- 10 Water Board or Sydney Water Corporation Limited; and

Evidence Act 1898 No. 11Section 43C (**Conditions under which print from photographic film admissible in evidence**):

- 15 From the definition of “statutory body representing the Crown” in section 43C (5), omit “the Metropolitan Water Sewerage and Drainage Board,”.

First State Superannuation Act 1992 No. 100Schedule 1 (**Employers**):

- 20 In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

Fluoridation of Public Water Supplies Act 1957 No. 58Section 11 (**Regulations**):

- 25 From section 11 (1) (b), omit “, other than persons employed by the Water Board,”.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

(1) Section 21 (2):

Omit the subsection.

30 (2) Schedule 4 (**Employing authorities**):

Omit “The Metropolitan Water Sewerage and Drainage Board.”.

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***Heritage Act 1977 No. 136**(1) Section 123 (**Definitions**):

- (a) From paragraph (c) of the definition of “rating or taxing authority”, omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”. 5
- (b) From the definition of “valuing law”, omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”. 10

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

- From section 126 (d), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”. 15

Justices Act 1902 No. 27Section 100I (**Definitions**):

- From paragraph (a) of the definition of “penalty notice” in section 100I (1), omit “Water Board Act 1987, section 51;”. 20

Local Government Act 1919 No. 41(1) Section 327 (**Conditions to be observed before opening new roads or subdivisions**):

- (a) Omit section 327 (1) (d) (ii) (A), insert instead: 25
- (A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or
- (b) From section 327 (1) (d) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”. 30

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

(c) Omit section 327 (2) (b) (ii) (A), insert instead:

(A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

5 (d) From section 327 (2) (b) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

(2) Section 331A (**Subdivision of land within the area of operations of a water authority**):

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

(i) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

(b) From section 331A (1), omit “the Water Board”, insert instead “Sydney Water Corporation Limited”.

15 (c) From section 331A (2), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

(d) Omit section 331A (3) (a), insert instead:

20 (a) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

(e) From section 331A (3), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

Local Government Act 1993 No. 30

25 (1) Section 56 (**Application of Division**):

Omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.

(2) Section 68 (**What activities, generally, require the approval of the council?**)

30 From section 68 (2), omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(3) Section 555 (**What land is exempt from all rates?**):

Omit section 555 (1) (c), insert instead:

- (c) land that is within a special area or controlled area (within the meaning of the Water Board (Corporatisation) Act 1994) for Sydney Water Corporation Limited referred to in that Act and is Crown land or land vested in the Corporation; 5

(4) Section 611 (**Annual charge on rails, pipes etc.**):

From section 611 (6) (b), omit "Water Board", insert instead "Sydney Water Corporation Limited". 10

(5) Section 741 (**Exemption from taxes**):

From section 741 (2), omit "Water Board", insert instead "Sydney Water Corporation Limited".

(6) Section 742 (**Dispute resolution**): 15

From section 742 (7), omit the matter relating to the Water Board.

National Parks and Wildlife Act 1974 No. 80

(1) Section 74:

Omit the section, insert instead: 20

Catchment areas and special areas

74. (1) This section applies where:

- (a) any lands reserved as a national park or historic site or dedicated as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area or that comprise a wilderness area within the meaning of the Wilderness Act 1987 are wholly or partly within a catchment area or special area of a water authority; or 25
- (b) the waters from any lands so reserved or dedicated drain into a catchment area, special area or structure of a water authority. 30

*Water Board (Corporatisation) 1994*SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

5 (2) The Director-General must, before submitting to the Minister a plan of management for the national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area or wilderness area:

- (a) refer the plan to the relevant water authority for its information; and
- 10 (b) also refer the plan to the Director-General of the Department of Water Resources if the relevant water authority is the Hunter Water Corporation Limited.

15 (3) The Minister must, before adopting the plan of management, consider any representations made by the relevant water authority and (in a case involving the Hunter Water Corporation Limited) the Director-General of the Department of Water Resources.

(4) In this section, “**water authority**” means Sydney Water Corporation Limited, Hunter Water Corporation Limited or the Broken Hill Water Board.

20 (2) Section 185 (**Catchment areas and special areas**):

- (a) Omit “Metropolitan Water, Sewerage, and Drainage Act 1924” wherever occurring, insert instead “Water Board (Corporatisation) Act 1994”.
- 25 (b) From section 185 (3), omit “proclamation or by-law” wherever occurring, insert instead “order or regulation”.
- (c) From section 185 (4) (a), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.
- 30 (d) From section 185 (5), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.

New South Wales Retirement Benefits Act 1972 No. 70

Schedule 2:

35 Omit the matter relating to The Metropolitan Water Sewerage and Drainage Board.

Water Board (Corporatisation) 1994

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

Pipelines Act 1967 No. 90

Section 3 (**Definitions**):

From the definition of “statutory body representing the Crown” in section 3 (1), omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

5

Public Authorities (Financial Arrangements) Act 1987 No. 33

Schedule 1 (**Authorities**):

10

- (a) Omit “The Metropolitan Water Sewerage and Drainage Board.”.
- (b) Insert in alphabetical order “Sydney Water Corporation Limited.”.

Public Authorities Superannuation Act 1985 No. 41

15

Schedule 3 (**Employers**):

From Part 2, omit “The Water Board (with respect to all its employees).”.

Public Finance and Audit Act 1983 No. 152

Schedule 2 (**Statutory bodies**):

20

Omit “Water Board.”.

Public Sector Executives Superannuation Act 1989 No. 106

Schedule 1 (**Additional Employers**):

Insert “Sydney Water Corporation Limited” in alphabetical order.

25

Public Sector Management Act 1988 No. 33

(1) Schedule 3 (**Declared authorities**):

Omit “Water Board.”.

Water Board (Corporatisation) 1994

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

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

From Part 3, omit “Managing Director of the Water Board”.

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

(a) From Part 1, omit heading “Water Board” and all matter under that heading.

(b) From Part 2, omit “Deputy Managing Director of the Water Board”.

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

Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Authorities Superannuation Act 1987 No. 211

15 Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Public Service Superannuation Act 1985 No. 45

Schedule 3 (**Employers**):

20 Omit “The Metropolitan Water Sewerage and Drainage Board.”.

Strata Titles Act 1973 No. 68

Section 89 (**Definitions**):

25 (a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:

(b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;

Water Board (Corporatisation) 1994

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

5

Strata Titles (Leasehold) Act 1986 No. 219

Section 121 (**Definitions**):

- (a) Omit paragraph (b) of the definition of “appropriate valuing Act”, insert instead:

(b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;

10

- (b) From paragraph (a) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

15

Superannuation Act 1916 No. 28

Schedule 3 (**List of Employers**):

From Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

20

Valuation of Land Act 1916 No. 2

(1) Section 47 (**Rating or taxing authorities**):

- (a) Omit “Metropolitan Water Sewerage and Drainage Board.”, insert instead “Sydney Water Corporation Limited.”.

25

- (b) At the end of section 47, insert:

(2) This Part has effect subject to any special arrangements entered into between the Valuer-General and Sydney Water Corporation Limited.

Water Board (Corporatisation) 1994

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

(2) Section 60 (**Assessed annual value for purposes of other Acts**):

5 Omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

(3) Part 6B:

Before Part 7, insert:

PART 6B—SPECIAL ARRANGEMENTS

Application of Part

10 70H. This Part applies only to Sydney Water Corporation Limited (referred to in this Part as “**the Corporation**”).

Special arrangements

15 70I. (1) The Valuer-General may enter into special arrangements with the Corporation regarding the supply of valuations to the Corporation.

(2) The special arrangements may make provision for or with respect to the following:

- 20 (a) the times when any such valuations are to be provided (whether on request or otherwise);
- (b) the fees to be paid for any such valuations;
- (c) any other matters relevant to the making, supply and use of any such valuations.

25 (3) The Valuer-General may terminate any such arrangements:

- (a) in accordance with any procedures contained in the arrangements; or
- (b) with the approval of the Minister and on giving the Corporation at least 6 months’ notice of the termination.
- 30

Nature of valuations

70J. (1) Any valuations provided for by a special arrangement under this Part may but need not be in accordance with this Act.

*Water Board (Corporatisation) 1994***SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***

(2) Valuations provided for by a special arrangement and not conforming to the principles of valuations required by other provisions of this Act are nevertheless subject to Parts 3 and 4.

5

(3) Those Parts (together with any other relevant provisions of this Act) apply with such modifications as are necessary or appropriate in relation to valuations provided for by a special arrangement.

Relationship with other provisions of this Act

10

70K. (1) This Part has effect despite anything in this Act.

(2) Special arrangements entered into under this Part have effect despite anything in Part 5 (including, but not limited to, sections 48, 49 and 55) and any other provisions of this Act.

15

Water Administration Act 1986 No. 195

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

Omit "Water Board Act 1987".

20

SCHEDULE 8—AMENDMENT OF REGULATIONS

(Sec. 110)

Conveyancing (General) Regulation 1992

(1) Clause 41 (**Imposition of restrictions etc. on certain land vested in public authorities**):

25

At the end of the clause, insert:

(2) For the purposes of paragraph (c) of the definition of "prescribed authority" in section 88D (1) of the Act, Sydney Water Corporation Limited is a prescribed authority.

30

*Water Board (Corporatisation) 1994*SCHEDULE 8—AMENDMENT OF REGULATIONS—*continued*

(2) Clause 41A:

After clause 41, insert:

5 **Regulation of use of land not held by a prescribed authority**

41A. For the purposes of paragraph (c) of the definition of “prescribed authority” in section 88E (1) of the Act, Sydney Water Corporation Limited is a prescribed authority.

10 **Land Tax Management Regulation 1992**

Schedule 1 (**Public Authorities**):

Omit “Water Board”.

Roads (General) Regulation 1994Clause 79 (**Public authorities**):

15 At the end of the clause, insert:

(2) For the purposes of the definition of “public authority” in the Dictionary to the Act, Sydney Water Corporation Limited is prescribed as a public authority for the purposes of the Act.

20 **SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 111)

Regulations

25 1. (1) 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 Water Board or any member or employee of the Water Board or to the Water Board Act 1987 or any provision of that Act).

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

Water Board (Corporatisation) 1994

 SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (3) 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: 5
- (a) to affect, in a manner prejudicial to any person (other than the State, the Corporation, the 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 Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication. 10

Continuation of certain regulations

2. (1) The following are excluded from repeal under section 106:
- (a) Part 1, clauses 11 and 12 of Part 2, and Part 4, of the Water Board (Finance) Regulation 1988; 15
 - (b) Parts 1 and 2, and clause 24, of the Water Board (Plumbing and Drainage) Regulation 1989;
 - (c) the Water Board (Special Areas) Regulation 1989;
 - (d) the Water Board (Water Restrictions) Regulation 1994.
- (2) The provisions and the Regulation referred to in subclause (1) (a), (b) and (d) as in force immediately before the commencement of this clause are taken to have been made under this Act. 20
- (3) The Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this clause is taken to be made under:
- (a) section 85 so far as it relates to special areas; and 25
 - (b) section 89 so far as it relates to controlled areas.
- (4) In the provisions referred to in subclause (1) (a)–(d):
- (a) a reference to a provision of the Water Board Act 1987 is to be read as a reference to the corresponding provision (if any) of this Act; and
 - (b) a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation. 30

Further amendment or repeal of regulations amended by Schedule 8

3. The amendments made by this Act to the regulations referred to in Schedule 8 do not affect the future amendment or repeal of those regulations.

Water Board (Corporatisation) 1994

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Dissolution of Water Board

4. (1) The Water Board is dissolved.
- 5 (2) The assets, rights and liabilities (if any) of the Water Board immediately before its dissolution are transferred to the Ministerial Holding Corporation.
- (3) Section 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

Members of Water Board to vacate office

- 10 5. (1) A person who, immediately before the dissolution of the Water Board, held office as a member of the Water Board:
- (a) ceases to hold office as such; and
- (b) except as provided by subclause (2), is not entitled to any remuneration or compensation because of the loss of that office.
- 15 (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 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 Water Board

- 20 6. (1) On the dissolution of the 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 Water Board.
- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 4 of this Schedule or Part 3 of this Act.

25 **Declaration of outer catchment area**

7. (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 part of the outer catchment area of the Corporation.
- 30 (2) A State environmental planning policy or a regional environmental plan under the Environmental Planning and Assessment Act 1979 may amend or repeal an order declaring an outer catchment area. This subclause does not affect the power under section 43 of the Interpretation Act 1987 for the Governor to make an order amending or repealing such an order.

Water Board (Corporatisation) 1994

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

- (3) The lands specified in a proclamation under section 56A of the Metropolitan Water, Sewerage, and Drainage Act 1924 as in force immediately before the repeal of that section (but excluding any lands within a special area or a controlled area) are taken to be the subject of an order declaring them to be part of the outer catchment area of the Corporation. Such an order is taken to be an order made under this clause, and accordingly may be amended or repealed by an order made by the Governor or by a policy or plan referred to in subclause (2). 5
- (4) An order may not be made under this clause in relation to any land within an area while there is in force a State environmental planning policy or regional environmental plan under the Environmental Planning and Assessment Act 1979 requiring the consent authority to give the Corporation notice of applications in relation to the land of the kind referred to in clause 8. 10
- Consent authority to notify Corporation of development applications in outer catchment area** 15
8. (1) In this clause, “consent authority” has the same meaning as in the Environmental Planning and Assessment Act 1979.
- (2) If a consent authority within the outer catchment area of the Corporation receives a development application in relation to any matter that would adversely affect the quality of the water from which the Corporation draws its supply of water, the consent authority must, within 7 days of the receipt of the application, give the Corporation notice of the application. 20
- (3) The consent authority must take into account any submissions made by the Corporation in relation to the development application in determining whether to consent to the development application or to attach conditions to any such consent. 25
- (4) The consent authority may assume that the Corporation has no submissions to make in relation to a development application of which notice has been given under this clause if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation. 30
- (5) The obligations imposed on a consent authority under this clause are taken to be obligations imposed on the consent authority by an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979 and a person, including the Corporation, has the same entitlement to bring proceedings in the Land and Environment Court in respect of a contravention of those requirements as the person would have in respect of a contravention of the requirements of an environmental planning instrument. 35

Water Board (Corporatisation) 1994

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Survival of unpaid amounts and amounts charged on land at transfer of business undertaking

5 9. (1) Any amount that was due but unpaid to the 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.

10 (2) Subject to clause 10, any amount that was due but unpaid to the 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.

Certain amounts levied by Water Board not charged on land

15 10. (1) No service charges or fees levied by the 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.

20 (2) In this clause, “**charging period**”, in relation to the Water Board means a period declared by an order in force under section 28 (2) of the Water Board Act 1987 (as in force immediately before the commencement of section 106 of this Act) to be a charging period for the Board.

Pending applications for compliance certificates

25 11. (1) An application for a compliance certificate under the Water Board Act 1987 and pending at the commencement of this clause is taken to be an application for a compliance certificate under this Act.

30 (2) Any agreement in force or notice operative under Division 2 of Part 3 of the Water Board Act 1987 at the commencement of this clause continues to be in force and operative after that commencement, and for that purpose the relevant provisions of that Act are taken to continue in force in relation to such an agreement or notice (and not otherwise).

(3) The provisions of this clause are subject to the provisions of regulations made under clause 1.

Guarantees

35 12. Nothing in this Act affects any guarantee given by or in relation to the Water Board before the commencement of this clause and any such guarantee is, after the commencement of this clause, taken to be a guarantee for the payment by the Corporation of the amounts specified or described in the guarantee.

Water Board (Corporatisation) 1994

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Environmental planning instruments: reservation of land

13. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the reservation of land and its acquisition by the Water Board, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 27 of the Environmental Planning and Assessment Act 1979. 5

Environmental planning instruments: concurrence role

14. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the granting of its concurrence to the granting of consent to a development application in relation to lands with a special area, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 30 (2) of the Environmental Planning and Assessment Act 1979. 10
15

Environmental impact statements and other planning matters

15. (1) If, before the commencement of this clause:

- (a) the Director of Planning has notified the Water Board of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the Water Board in accordance with Part 5 of the Environmental Planning and Assessment Act 1979; or 20
- (b) the Water Board or a person on its behalf has commenced the preparation of an environmental impact statement under that Part; or
- (c) an environmental impact statement has been prepared by or on behalf of the Water Board under that Part, 25

that Part applies in relation to the activity concerned as if the Water Board had continued in existence and the Corporation were the Water Board.

(2) Part 4 of the Environmental Planning and Assessment Act 1979 does not apply so as to require development consent in relation to an activity referred to in this clause.

Operation of Evidence Act 1898 (sec. 43C)

16. (1) The provisions of section 43C of the Evidence Act 1898 continue to apply in relation to the admissibility in evidence of a print from photographic film of an object referred to in that section prepared by or on behalf of the Water Board before the commencement of this clause if tendered in evidence by or on behalf of the Corporation. 30

(2) The Corporation is taken to be a “**prescribed corporation**” within the meaning of section 43C (5) of the Evidence Act 1898 for the purposes of this clause. 35

*Water Board (Corporatisation) 1994*SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Permits**

- 5 17. Without limiting clause 2 of this Schedule, a permit issued under Part 2 of the Water Board (Plumbing and Drainage) Regulation 1989 before the commencement of this clause is taken to have been issued under the authority of a regulation made under this Act.

Existing interests in special areas

- 10 18. Nothing in section 82 affects the rights of a person who has entered into an arrangement with the Water Board before the commencement of that section relating to the alienation, mortgage, charging or demise of land in a special area and, in particular, the entitlement of such a person to require due performance or completion (or both) of such an arrangement.

SCHEDULE 10—LIST OF SUBSTANCES

- 15 (Sec. 23 (9))
- Aluminium
 - Ammonia (insofar as it is a toxicant)
 - Arsenic
 - Barium
 - 20 Benzidene
 - Boron
 - Cadmium
 - Chloride
 - Chromium
 - 25 Cobalt
 - Copper
 - Cyanide
 - Dichlorobenzidine
 - Diphenylhydrazine
 - 30 Halogenated aliphatic compounds, including chlorinated alkanes and alkenes
 - Iron
 - Lead
 - Manganese
 - Mercury
 - 35 Molybdenum
 - Monocyclic aromatic compounds, including chlorinated benzenes, chlorinated phenols and phenolic compounds
 - Nickel
 - Nitrate and nitrite (insofar as they are toxicants)
 - 40 Pesticides, including organochlorines and organophosphates

Water Board (Corporatisation) 1994

SCHEDULE 10—LIST OF SUBSTANCES—*continued*

Polyaromatic hydrocarbons, including chlorinated naphthylenes, polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs)	
Selenium	
Silver	5
Sulphate	
Surfactants	
Tin	
Trihalomethanes	
Total residual chlorine, including available chloramines	10
Zinc	

WATER BOARD (CORPORATISATION) ACT 1994 No. 88

NEW SOUTH WALES



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WATER BOARD (CORPORATISATION) ACT 1994 No. 88

NEW SOUTH WALES



Act No. 88, 1994

An Act to establish a State owned corporation in relation to the supply of water, the provision of sewerage and stormwater drainage systems and the disposal of waste water in Sydney and other regions and certain other matters; to provide for the transfer of assets, rights and liabilities of the Water Board; to amend the State Owned Corporations Act 1989; to amend the Government Pricing Tribunal Act 1992 in relation to the fixing of maximum prices for government monopoly services; to amend certain other Acts; to repeal the Water Board Act 1987; and for other purposes.
[Assented to 12 December 1994]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Water Board (Corporatisation) Act 1994.

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 Part 4;

“**availability charge**” means a charge of a kind referred to in section 64;

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

“**contract charge**” means any fee or charge payable under a customer contract;

“**controlled area**” means an area of land declared by an order in force under section 88 to be a controlled area;

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

“**customer contract**” means a contract of a kind referred to in section 55 (1);

“**excluded undertaking**” means any assets, rights or liabilities of the Water Board that the Minister has directed to be excluded under section 8;

“**exercise**” of a function includes the performance of a duty;

“**function**” includes a power, authority or duty;

“**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 or process of a court;

Water Board (Corporatisation) Act 1994 No. 88

“lease” includes a licence or permit;

“meter” includes any measuring device;

“Ministerial Holding Corporation” means the Ministerial Holding Corporation constituted by section 37B of the State Owned Corporations Act 1989;

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

“outer catchment area” means an area of land declared by an order in force under clause 7 of Schedule 9 to be an outer catchment area;

“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 declared by the regulations not to be within this definition, either generally or in a particular case or class of cases;

“public reserve” has the same meaning as it has in the Local Government Act 1993;

“public road” means:

- (a) any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law; or
- (b) any road that is declared to be a public road for the purposes of the Roads Act 1993;

“special area” means an area of land declared by an order in force under section 81 to be a special area;

“statutory body” means a corporation that is incorporated by or under an Act, but does not include:

- (a) a company within the meaning of the Corporations Law; or
- (b) a society within the meaning of the Co-operation Act 1923 or a co-operative within the meaning of the Co-operatives Act 1992; or

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- (c) an association incorporated under the Associations Incorporation Act 1984; or
- (d) a body prescribed by the regulations as not being a statutory body for the purposes of this definition;

“storages” means dam walls, pumps and other works used for or with respect to the extraction, and storage, of:

- (a) water in rivers and lakes; and
- (b) water occurring naturally on the surface of the ground; and
- (c) sub-surface waters;

“stormwater drainage area charge” means a charge of a kind referred to in section 65;

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

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

“Water Board” means the Water Board constituted under the Water Board Act 1987;

“works” means:

- (a) storages, water mains, sewer mains, water and sewage treatment plants, waste water treatment plants, or stormwater drainage channels; or
- (b) monitoring devices in, under, over or near:
 - (i) any works referred to in paragraph (a); or
 - (ii) any rivers or oceans; or
- (c) any works ancillary or antecedent to any works referred to in paragraph (a) or (b).

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 “Sydney Water Corporation Limited”.

Prohibition on sale or disposal of shares

5. (1) Shares in the Corporation cannot be sold or otherwise disposed of except to eligible Ministers.

(2) If it is proposed to amend subsection (1):

- (a) the Premier is to request the Licence Regulator constituted by section 30 to hold a public inquiry into the potential social, environmental and economic impacts of the proposed amendment; and
- (b) the Licence Regulator must hold the public inquiry and provide the Premier with a report setting out its findings as to the effect that the proposed amendment may have on the Corporation's ability to implement the objectives imposed on it by this Act.

Role of certain Ministers

6. (1) The Premier may not nominate:

- (a) the Minister who is responsible for administering the provisions of this Act relating to any operating licence and who is required, under this Act, to report to Parliament in relation to the Corporation's operations; or
- (b) a Minister administering the Environmental Planning and Assessment Act 1979, the Water Administration Act 1986, the Protection of the Environment Administration Act 1991 or the Public Health Act 1991,

as being eligible to hold shares in the Corporation.

(2) However, the Minister who has the responsibilities referred to in subsection (1) (a) is authorised to attend meetings of the shareholders of the Corporation.

(3) If a Minister nominated by the Premier as being eligible to hold shares in the Corporation becomes the Minister who has the responsibilities referred to in subsection (1) (a) or who is responsible for the administration of any of the Acts referred to in subsection (1) (b), the Premier must, as soon as practicable, revoke the nomination of the Minister as being eligible to hold shares in the Corporation and nominate another Minister in the Minister's place.

(4) The Minister who is responsible for administering the provisions of this Act relating to any operating licence is to answer all questions directed to the Minister in Parliament in relation to the administration of those provisions.

PART 3—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Direction to transfer business undertaking

7. (1) The Minister may, by order in writing, direct that the business undertaking of the 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.

(3) On the date specified in the order, the following provisions have effect (subject to the order):

- (a) the assets of the 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 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 Water Board or a predecessor of the 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 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 Water Board or a predecessor of the Water Board is, subject to regulations under clause 1 (1) of Schedule 9, 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

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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 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.

Excluded undertakings

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

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

(3) The functions of the Ministerial Holding Corporation include the following:

- (a) to hold and dispose of assets, rights and liabilities transferred to it under this Act;
- (b) 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.

(4) Section 7 applies to the transfer of the excluded undertaking under this section in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

(5) Different parts of any excluded undertaking may be transferred under subsection (2) to different persons.

(6) The Ministerial Holding Corporation or other person is authorised to dispose of any excluded undertaking transferred under subsection (2) or to retain it and conduct any business to which it relates.

Transfer of other assets, rights or liabilities

9. (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 Water Board for the

supply of water, the provision of sewerage and stormwater drainage systems, 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 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

PART 4—AREA OF OPERATIONS

Area of operations

10. (1) The Corporation has, subject to this section, the same area of operations that the Water Board had immediately before its dissolution. Each operating licence is to contain a schedule that details the area of operations or the part of the area of operations to which the operating licence applies.

(2) The Governor may, by order published in the Gazette, vary the area of operations and may, by that order, specify which systems and services the Corporation may provide in the whole or a part or parts of the area of operations as so varied.

(3) An order under subsection (2) may expand or reduce the area of operations. However, an order must not reduce the area of operations unless the Minister is satisfied that, after the order takes effect, similar services to those provided by the Corporation in the area to be excised from the area of operations are able to, and will, be provided by any one or more of the following:

- (a) a council of an area; or
- (b) Hunter Water Corporation Limited;
- (c) a public authority referred to in section 11 (2) of the Water Administration Act 1986; or
- (d) a Water Supply Authority within the meaning of the Water Supply Authorities Act 1987.

(4) Despite subsections (2) and (3), the area of operations must not be:

- (a) reduced; or
- (b) expanded to include the whole or part of the area within which any of the bodies referred to in subsection (3) (a)–(d) provides services that are the same services the Corporation is authorised to provide under the operating licence,

unless consultations, regarding the proposed reduction or expansion and the implications of the proposed reduction or expansion, have taken place between the Corporation and the council, Hunter Water Corporation Limited, public authority or Water Supply Authority before the order reducing or expanding the area of operations is made.

(5) It does not matter if a reduction or expansion of the area of operations results in parts of the area of operations covered by an operating licence not being contiguous.

(6) An order to vary the area of operations does not take effect until written notice of the order, accompanied by a copy of the order, is laid before each House of Parliament and either:

- (a) 15 sitting days of each House of Parliament has passed after the order was tabled and notice of a motion to disallow the order has not been given; or
- (b) if notice of a motion to disallow the order has been given, the motion has lapsed or has been withdrawn or defeated.

Facilitating provisions of orders

11. (1) An order of the Governor for the purposes of this Part may include such provisions as are necessary or convenient for giving effect to the order, including provisions for or with respect to:

- (a) the transfer or apportionment of assets, rights and liabilities;
- (b) the transfer of staff;
- (c) the delivery or retention of records;
- (d) the termination, cessation, dissolution or abolition of anything existing before the order takes effect;
- (e) the preservation or continuance of anything existing before the order takes effect;
- (f) the imposition of fees and charges;
- (g) the recovery of fees and charges.

(2) Such an order may:

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

or may do any combination of those things.

PART 5—OPERATING LICENCES**Grant of operating licences**

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

- (a) storing or supplying water; or
- (b) providing sewerage services; or
- (c) providing stormwater drainage systems; or
- (d) disposing of waste water.

(2) Operating licences may be granted to enable the Corporation to provide all or any of the systems or services in the same or different parts of the area of operations.

(3) While an operating licence is in force, the Corporation is authorised 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 the purposes referred to in subsection (1) and for the purposes of extraction and transportation of water.

(4) The authorisation given by subsection (3) in relation to an operating licence has effect only until such time as the Corporation is granted a licence or permit by the relevant authority for the purposes referred to in that subsection and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.

(5) The authorisation given by subsection (3) in relation to an operating licence applies only so far as is relevant to the ambit of the operating licence and is subject to the terms and conditions of the operating licence.

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

Form of initial operating licence

13. (1) The initial operating licence granted to the Corporation is to be the same as the draft licence that was presented to the Speaker for tabling before the third reading on the Bill for this Act by the Minister who introduced the Bill for this Act in the Legislative Assembly.

(2) However, the initial operating licence is to incorporate such changes (if any) as are necessitated by amendments made to the Bill for this Act by either House of Parliament after the presentation of the draft

licence to the Speaker by the Minister or as are necessary to effect minor errata.

Terms and conditions of operating licences

14. (1) An operating licence is subject to the terms and conditions determined by the Governor, but (so far only as is relevant to the ambit of the operating licence) 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 stormwater drainage system within the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the 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, pricing and other matters determined by the Governor and set out in the operating licence; and
- (d) to compile indicators of the direct impact on the environment of the Corporation's activities:
 - (i) to enable preparation of an annual report on the Corporation's performance; and
 - (ii) to provide information for a year to year comparison in relation to the Corporation's performance in this area.

(2) The operating licence granted to the Corporation is to provide for the preparation of an operational audit in accordance with Division 2 of Part 6.

(3) The operating licence granted to the Corporation is to provide, or (if there is more than one such licence) the operating licences granted to the Corporation are to provide collectively, for the provision of the systems and services referred to in subsection (1) (a) and (b) in the area of operations or the relevant part of the area of operations, except to the extent that:

- (a) the Governor has, by order made under section 10 (2), restricted the systems and services that the Corporation may provide in the area of operations or the relevant part of the area of operations; or
- (b) this Act otherwise provides.

(4) Despite this section, the provision, operation, management or maintenance of the stormwater drainage system described in subsection (1) (b) need not be required as a term or condition of an operating licence if the Minister is satisfied that satisfactory arrangements have been made for the service to be provided by another appropriate body.

(5) If it is proposed to transfer responsibility for the provision, operation, management or maintenance of the stormwater drainage system to a council or councils (within the meaning of the Local Government Act 1993), in order to be satisfied that satisfactory arrangements have been made for the purposes of subsection (4), the Minister:

- (a) is to cause written notice of the proposed transfer and details of the proposed new arrangements to be served on the council or councils concerned and is to invite them, by that notice, to comment on the proposal within 40 days after service of the notice; and
- (b) is to be satisfied that at least the same standard of services will be provided under the new arrangements as had been provided by the Corporation.

(6) If new arrangements are entered into in pursuance of subsections (4) and (5), the Corporation must, within 14 days after the arrangements are entered into, give notice of the terms of the arrangements by notification published in the Gazette.

Customer Councils

15. (1) An operating licence must also include terms or conditions that require the Corporation to establish and regularly consult with one or more Customer Councils, each consisting of persons appointed from time to time by the Corporation.

(2) The Corporation is to consult with the Customer Councils from time to time, as the Corporation thinks fit, in relation to the provision of the systems and services referred to in this Part.

Amendment of operating licences

16. (1) An operating licence may only be amended in the manner specified in the operating licence.

(2) However, a proposed amendment to an operating licence will not take effect until written notice of the proposed amendment, accompanied by a copy of the proposed amendment, is laid before each House of Parliament and either:

- (a) 15 sitting days of each House of Parliament has passed after the proposed amendment was tabled and notice of a motion to disallow the proposed amendment has not been given; or
- (b) if notice of a motion to disallow the proposed amendment has been given, the motion has lapsed or has been withdrawn or defeated.

(3) This section applies to the substitution of an operating licence in the same way as it applies to the amendment of an operating licence.

Term of operating licences

17. (1) The initial term of an operating licence is to be for a maximum of 5 years, as determined by the Governor.

(2) After the initial term, the Governor may renew an operating licence for a maximum of 5 years at a time.

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

Area covered by operating licences

18. An operating licence applies to the whole or a part of the area of operations, as specified in the operating licence.

Contravention of operating licences

19. (1) If, in the opinion of the Minister, the Corporation contravenes an operating licence, the Minister may cause a notice to be served on the Corporation requiring it to rectify the contravention within a specified period.

(2) If, in the opinion of the Minister, the Corporation contravenes an operating licence, and whether or not a notice has been served under subsection (1) or the period specified in the notice has ended, the Governor may direct that either 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 \$1 million) in an amount to be determined by the Governor.

(3) 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.

(4) An 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.

(5) 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 licences

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

- (a) the Corporation ceases, otherwise than as authorised by the operating licence or as permitted in accordance with an order made under section 10 (2), to do the things referred to in section 14 (1) or any of them in the area of operations for any reason; or
- (b) the Corporation:
 - (i) 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; and
 - (ii) has not, within the time specified by the Minister in a notice to the Corporation, either rectified the default or shown cause, to the satisfaction of the Minister, why the operating licence should not be cancelled; or
- (c) the Corporation is an externally administered corporation within the meaning of the Corporations Law; or
- (d) the Corporation has been convicted on more than 3 occasions within a period of 12 months of criminal offences that are punishable by a fine of at least \$10,000 or, if the Corporation were a natural person, penal servitude or imprisonment for 12 months or more.

(2) A notice under section 19 can be regarded also as a notice for the purposes of subsection (1) (b).

(3) If an 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 14 (1), or any of them, for the benefit of existing recipients of the Corporation's systems and services.

(4) 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.

PART 6—PROVISIONS RELATING TO THE CORPORATION**Division 1—Objectives of Corporation****Objectives of Corporation**

21. (1) The principal objectives of the Corporation are:

- (a) to be a successful business and, to this end:
 - (i) to operate at least as efficiently as any comparable businesses; and
 - (ii) to maximise the net worth of the State's investment in the Corporation; and
 - (iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates; and
- (b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act 1991; and
- (c) to protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.

(2) Despite section 8 of the State Owned Corporations Act 1989, each of the Corporation's principal objectives is of equal importance.

Implementation of principal objectives

22. (1) In implementing the principal objectives set out in section 21, the Corporation has the following special objectives:

- (a) to reduce risks to human health;
- (b) to prevent the degradation of the environment.

(2) Those special objectives are to be interpreted by reference to the objectives referred to in section 6 (1) (b) of the Protection of the Environment Administration Act 1991, so far as they are relevant to the Corporation.

(3) In implementing those special objectives, regard is to be had to the means referred to in section 6 (1) (b) of the Protection of the Environment Administration Act 1991, so far as they are relevant to the Corporation, and (in particular) to the following means:

- (a) reducing the environmental impact of its discharges into or onto the air, water or land of substances likely to cause harm to the environment;

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- (b) minimising its creation of waste by the use of appropriate technology, practices and procedures;
- (c) reducing its use of energy, water and other materials and substances;
- (d) re-using and recovering energy, water and other materials and substances, used or discharged by it, by the use of appropriate technology, practices and procedures;
- (e) reducing significantly, by 30 June 2000, the combined environmental impact of the per capita amount of energy and water used by the Corporation and other materials and substances discharged by the Corporation, compared with that impact in the year ending 30 June 1994.

(4) The Corporation is to have regard to the levels of energy that would be necessary to implement its special objectives and may adjust its implementation of those objectives if the levels of energy would be excessive.

(5) However, the Corporation is to have regard to its statutory functions, and may adjust its implementation of its special objectives but only if it is necessary in order to act responsibly.

(6) The Corporation must publish in the annual report on the Corporation's performance prepared for the purposes of section 14 (1) (d) (i), a statement as to the implementation of its special objectives and annual adjustments made under subsections (4) and (5).

(7) The Environment Protection Authority must review the statement referred to in subsection (6) as soon as practicable after it is published and must, within 3 months after the publication date, make its evaluation of the statement available for public inspection. The evaluation is to include an opinion as to whether the best environmental outcome has been achieved.

Pollution reduction targets

23. (1) The Corporation must adopt targets (as developed and determined in accordance with this section) to effect significant reductions, by 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence.

(2) The targets are to be developed as follows:

- (a) The Corporation is to publish in the Gazette a statement, in a form approved by the Environment Protection Authority, showing:

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- (i) the range of concentrations and total load of those Schedule 10 substances that were monitored at the Corporation's sewage treatment plants; and
- (ii) the total volumes of sewage discharged from its sewage treatment plants to waters as monitored by the Corporation,

for the year ended 30 June 1994.

- (b) The statement is to be published within 14 days after the initial operating licence is granted to the Corporation.
- (c) The Corporation is to conduct ecological risk assessments in relation to Schedule 10 substances discharged into waters from each of the Corporation's sewage treatment plants.
- (d) Ecological risk assessments are to be carried out in accordance with a methodology for the time being approved by the Environment Protection Authority in accordance with section 24.
- (e) Reports on ecological risk assessments are to be provided to the Environment Protection Authority as follows:
 - (i) reports on assessments for the ocean are to be provided by 31 December 1995; and
 - (ii) reports on assessments for the Hawkesbury–Nepean catchment are to be provided by 30 June 1996; and
 - (iii) reports on the remaining assessments are to be provided by 30 June 1997.
- (f) Copies of the reports on ecological risk assessments are to be placed on display for public comment by the Corporation in accordance with section 25.

(3) The Environment Protection Authority is, within 3 months after the expiration of the period for public comment referred to in section 25 (2), to determine the targets for the Corporation that are referred to in subsections (1) and (2), having regard to the following:

- (a) the reports on ecological risk assessments;
- (b) any public comments on the reports that have been provided to the Authority by the Corporation in accordance with section 25 (3);
- (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act.

(4) The Corporation must adopt the targets as determined by the Environment Protection Authority.

(5) The Environment Protection Authority must ensure that the licence conditions imposed by it on the Corporation, and any directions given by it to the Corporation under section 12 of the Protection of the Environment Administration Act 1991, are consistent with and are conducive to the meeting, or exceeding, by the Corporation of its targets, as determined in accordance with this section, by 30 June 2000.

(6) As and when the targets, licence conditions and directions are determined, imposed or given and take effect, the Corporation and the Environment Protection Authority are each to enter details of the targets, licence conditions and directions in a register kept at their respective principal offices and are to make the register available for public inspection, free of charge.

(7) The Corporation is to monitor its performance against the targets and publish the results on an annual basis in accordance with the requirements of an operating licence.

(8) By 30 June 1999, the Corporation is to determine the bases for setting targets to effect further reductions, after 30 June 2000, of Schedule 10 substances present in waters as a result of the conduct of the Corporation's sewerage services under an operating licence. However, the targets are not to be set until the Environment Protection Authority approves of the bases determined.

(9) In this section, "**Schedule 10 substances**" means the substances listed in Schedule 10.

Approval of methodology for ecological risk assessment

24. (1) Before the Corporation submits a proposed methodology to the Environment Protection Authority for approval for the purposes of section 23 (2) (d), the Corporation must:

- (a) place the proposed methodology on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and
- (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed methodology may be inspected and the address to which public comments concerning the methodology may be directed.

(2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed methodology to the Corporation.

(3) A methodology must be approved by the Environment Protection Authority within 30 days after the Corporation has provided the Authority with the proposed methodology that has been placed on display and copies of any public comments received on that methodology.

(4) In approving a methodology, the Environment Protection Authority is to have regard to any public comments concerning the proposed methodology that have been provided to it and made in accordance with this section.

Public display of reports on ecological risk assessments

25. (1) As soon as practicable after providing the reports on ecological risk assessments to the Environment Protection Authority in accordance with section 23 (2) (e), the Corporation must:

- (a) place copies of those reports on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and
- (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the reports may be inspected and the address to which public comments concerning the reports may be directed.

(2) Any person may, within the period of 30 days referred to in subsection (1) (a), or such longer period as may be specified in the notice, direct comments concerning the reports to the Corporation.

(3) The Corporation must provide the Environment Protection Authority with copies of any such public comments.

Amendment of pollution reduction targets

26. (1) After the Corporation has adopted a target under section 23 (4), the Environment Protection Authority may, from time to time, re-determine the target.

(2) The Corporation is to adopt a target as re-determined by the Environment Protection Authority. Subsections (5)–(7) of section 23 then apply to the re-determined target.

(3) The Environment Protection Authority may, for the purpose of assessing whether to re-determine a target under this section, require the Corporation to carry out a further ecological risk assessment and provide a report on that assessment to the Environment Protection Authority by a specified date. Sections 23–25 apply, with necessary modifications, to any such further ecological risk assessment and report.

(4) Any target re-determined in accordance with this section is to be re-determined by the Environment Protection Authority having regard to the following:

- (a) the report on any further ecological risk assessment or, if no further assessment is made, the report on the previous assessment;
- (b) any public comments on the report on the further assessment that has been provided to the Authority by the Corporation in accordance with section 25 (3) (as applied by this section) or, if no further assessment is made, any such public comments on the previous report;
- (c) such other factors as appear relevant to the Authority, taking into account the statutory obligations of the Authority under any Act.

(5) The Corporation and the Environment Protection Authority are to enter the reasons for the re-determination of a target in the registers kept by the Corporation and the Authority under section 23 (6).

Re-use of sewage effluent

27. (1) Without limiting sections 21 and 22, the Corporation is to adopt as an ultimate aim the prevention of all dry weather discharges of sewage to waters, including from ocean outfalls, except to the extent that this is necessary to safeguard public health or prevent environmental degradation, or both.

(2) The Corporation is to publish in the Gazette by 30 June 1995 a statement specifying the projected amount of sewage or effluent that it proposes will be re-used, intercepted or otherwise prevented from discharge, by 30 June 2000, into the ocean, waterways and other waters.

(3) In respect of years after 30 June 2000, the Corporation is, on a 5 yearly basis, to review an increase in the projected amount applying under subsection (2) in the light of the aim referred to in subsection (1).

(4) In reviewing the projected amounts, the Corporation is to have regard to reductions in the amount of sewage discharged by the Corporation due to any demand management provision in an operating licence.

(5) Before specifying projections in accordance with this section, the Corporation must:

- (a) place the proposed projections on display for public comment for a period of 30 days after the date of publication of the notice referred to in paragraph (b); and
- (b) by notice published in a newspaper circulating throughout New South Wales, specify the place or places at which copies of the proposed projections may be inspected and the address to which public comments concerning the projections may be directed.

(6) Any person may, within the period of 30 days referred to in subsection (5) (a), or such longer period as may be specified in the notice, direct comments concerning the proposed projections to the Corporation.

(7) The Corporation must, when specifying projections, have regard to any public comments concerning the proposed projections that have been directed to it.

Pollution control legislation

28. (1) Sections 22–26 cease to operate on the date of commencement of legislation certified (by order published in the Gazette) by the Minister responsible for the legislation as being pollution control legislation applying to the Corporation, or on a later date specified in the order.

(2) Despite subsection (1), all ecological risk assessments that are required to be carried out by the Corporation under section 23 (2) must be completed by the Corporation and provided to the Environment Protection Authority even if sections 22–26 cease to operate.

Division 2—Licence Regulator

Definitions

29. In this Division:

“**Licence Regulator**” means the Sydney Water Corporation Licence Regulator constituted by section 30;

“**operational audit**” means the operational audit of the Corporation that is required to be prepared under the operating licence.

Sydney Water Corporation Licence Regulator

30. (1) There is constituted by this Act a Sydney Water Corporation Licence Regulator. The Licence Regulator is a body corporate.

(2) The Licence Regulator is, for the purposes of any Act, a statutory body representing the Crown.

(3) The Licence Regulator consists of 5 part-time members appointed by the Minister.

(4) Of the members:

- (a) one is to have expertise in, and extensive knowledge of, water conservation and environmental matters and is to be appointed by the Minister from a panel of 3 persons nominated by the Nature Conservation Council of New South Wales; and

- (b) one is to have experience in, and knowledge of, consumer issues and is to be appointed by the Minister from a panel of 3 persons nominated by the Australian Consumers Association; and
- (c) one is to have extensive experience in finance, commerce and business management; and
- (d) one is to have experience in the management of a water utility business or a waste water utility business, or both; and
- (e) one is to be a nominee of the Minister administering the Water Administration Act 1986.

(5) Schedule 1 has effect with respect to the members and procedure of the Licence Regulator.

Functions of Licence Regulator

31. (1) The function of the Licence Regulator is to ensure that the operational audit is prepared in accordance with the operating licence.

(2) The Licence Regulator must:

- (a) inform the Minister about any failure of the Corporation to meet operational standards or any other requirements imposed on the Corporation under the operating licence; and
- (b) monitor, and report to the Minister on, compliance by the Corporation with the operating licence; and
- (c) provide advice to the Minister about any penalties or remedial action required as a result of the Corporation's performance under the operating licence.

(3) The Licence Regulator has such other functions as may be conferred or imposed on it by the operating licence.

(4) The Licence Regulator is to report annually to the Minister in accordance with the requirements of this Division.

(5) The Licence Regulator is not subject to the direction and control of the Minister in respect of the contents of any report or advice given to the Minister.

Operational report

32. The Licence Regulator is to present to the Minister a report on each operational audit within one month after its receipt of the audit.

Presentation of report to Parliament

33. (1) The Minister is to lay the report (or cause it to be laid) before both Houses of Parliament within one month after the Minister receives the report.

(2) If a House of Parliament is not sitting when the Minister seeks to furnish a report to it, the Minister may present copies of the report to the Clerk of the House concerned.

(3) The report:

- (a) on presentation and for all purposes is taken to have been laid before the House; and
- (b) may be printed by authority of the Clerk of the House; and
- (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House; and
- (d) is to be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council; and
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly,
 on the first sitting day of the House after receipt of the report by the Clerk.

Division 3—Memoranda of understanding

Definitions

34. In this Division:

“**memorandum of understanding**” means a memorandum of understanding referred to in the operating licence;

“**regulatory agencies**” means the Water Administration Ministerial Corporation, the Director-General of the Department of Health and the Environment Protection Authority.

Corporation to enter into memoranda of understanding

35. (1) The Corporation is to enter into a separate memorandum of understanding with each of the regulatory agencies.

(2) Subject to section 36, the Corporation is to enter into the memoranda of understanding as soon as practicable after it is granted an operating licence.

(3) If the Corporation and a regulatory agency are not able to agree on a term of a memorandum of understanding, the view of the regulatory agency is to prevail.

Public exhibition of memoranda of understanding

36. (1) Each regulatory agency must give notice of the preparation of the memorandum of understanding to which it is a party.

(2) The notice is to be given in a newspaper circulating in the Corporation's area of operations and must:

- (a) specify the address of the place at which copies of the memorandum of understanding may be inspected; and
- (b) specify the address to which representations concerning the memorandum of understanding may be forwarded.

(3) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the regulatory agency concerning the memorandum of understanding.

(4) Each regulatory agency must, on the expiration of the period referred to in subsection (3), and before entering into the memorandum of understanding, consider any representations made under this section.

(5) Notice of the execution of a memorandum of understanding is to be published in the Gazette and in a newspaper circulating in the area of operations within 14 days after the execution.

(6) The requirements of this section apply to an amendment to a memorandum of understanding in the same way as they apply to a memorandum of understanding.

Division 4—Provisions relating to works

Ownership of works

37. (1) The Corporation is the owner of all works installed in or on land, at sea, in or on the seabed, in rivers and other waterways and in or on the beds of rivers and waterways by the Corporation and of all works in or on land or in water 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

38. (1) The Corporation may, by persons issued with certificates of authority under section 39, enter and occupy land or a building in accordance with this Division for any one or more of the following purposes:

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- (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 material discharged into the Corporation's sewers;
 - (c) to make a valuation or assessment of the usage of the land or of any building on the land;
 - (d) to find the source of pollution of water supplied by the Corporation and, for this purpose, to dig up and remove material from the land;
 - (e) 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 and, for this purpose, to dig up and remove material from the land;
 - (f) to cut off or restrict the supply of water or other services to the land if any contract charges relating to the supply of water or those services to the land by the Corporation are unpaid;
 - (g) to rectify defective or improper work that has not been rectified in accordance with a notice served by the Corporation under a customer contract or other contract;
 - (h) 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, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence;
 - (i) 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, maintain, remove, extend, expand, connect, disconnect or improve, or do any other thing to, the Corporation's systems and services for the purposes of carrying out the terms and conditions of an operating licence.
- (2) Material that has been excavated from land for the purposes of this section may only be removed from the land by the Corporation:
- (a) if this is necessary for the purpose of ascertaining whether an offence has been committed against this Act; or
 - (b) if the owner of the land has consented to its removal.

Certificates of authority

39. (1) The board of the Corporation may authorise an officer of the Corporation or the holder for the time being of an office in the Corporation's establishment to issue certificates of authority for the purposes of this Act.

(2) Such an officer or holder of an office may issue certificates of authority.

(3) A certificate of authority must:

- (a) state that it is issued under this Act; and
- (b) specify the person or class of persons who are authorised to exercise the power of entry under this Act; and
- (c) describe the nature of the powers proposed to be exercised; and
- (d) state the date (if any) on which it expires; and
- (e) bear the signature of the person by whom it is issued.

(4) The Minister may, if the Minister thinks fit, by order published in the Gazette, impose conditions or restrictions on 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.

Exercise of powers of entry

40. (1) Before a person enters any land or building under a power conferred by this Division, the Corporation or a 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 or days specified in the notice unless:

- (a) entry to the 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 material 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 under section 39; 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 unless 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.

Compensation

41. (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 causes other physical damage to property or if an access chamber or main ventilator is constructed on the land.

Power to open roads

42. (1) The Corporation may, for the purpose of exercising its functions in relation to systems or services in accordance with an operating licence and after giving reasonable notice to persons likely to be affected, including the appropriate roads authority under the Roads Act 1993, open and break up:

- (a) the soil and pavement of a public road or public reserve; and
- (b) any pipe, 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 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.

(3) If a public road or public reserve is damaged by a malfunction 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 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.

(5) A person desiring to connect premises with a water main or sewer main of the Corporation that is available for connection may (subject to such conditions as may be imposed by or under any Act or law) open and break up the soil and pavement of a public or private road or way or a footpath or public reserve to the extent required to make the connection.

Altering position of conduit

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

- (a) the Corporation, in order to comply with an 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) The Corporation may, for the purposes of subsection (3), exercise any powers of the person on whom the notice was served, in addition to or instead of any powers of the Corporation.

(5) Except as provided by subsection (4), this section does not confer on the Corporation or the owner of the conduit any additional powers of entry or powers to carry out works than would be available apart from this section.

(6) In this section, “**conduit**” means anything that is in or under a public road (or any other land on which no building or other structure is located) and is used for the conveyance of a substance, energy or signals.

Protection of works

44. (1) Land in or on which a work of the Corporation is installed is taken to be the subject 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
- (b) the Corporation and persons issued with certificates of authority under section 39 are not delayed or obstructed in and about the taking, in relation to the work, of any of the steps referred to in section 37 (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) A covenant to which subsection (1) relates is enforceable as a duly created 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 could not reasonably have prevented action taken by any person that would, if 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

45. (1) Without limiting section 44, 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 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) A reference in this section to a 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

46. (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:

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- (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, on land that was the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes when the tree was planted.

(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 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) The Corporation may recover from an owner the cost of removing a tree under subsection (5), but only if the Corporation establishes:

- (a) that the tree was planted during the ownership of that owner; and
- (b) that:
 - (i) an owner or occupier should have known that the planting of the tree would result in the destruction of, damage to or interference with the work concerned; or
 - (ii) the tree was planted on land that was then the subject of an easement in favour of the Corporation (or a predecessor of the Corporation) or an easement for water supply, sewerage or stormwater drainage purposes.

(7) 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

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- (b) an order in force under section 130 or 136 of the Heritage Act 1977; or
- (c) an interim protection order under the National Parks and Wildlife Act 1974; or
- (d) a protection conferred by any similar law.

(8) 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.

(9) In this section, “tree” includes shrub or other plant.

Division 5—Acquisition of land

Acquisition of land for purposes of this Act

47. (1) The Corporation may acquire land (including an interest in land) for the purposes of this Act.

(2) Land that the Corporation is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of this Act.

(3) The Corporation may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

Division 6—Offences

Illegal diversion of water

48. A person must not:

- (a) wrongfully take, use or divert any water 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).

Offence to discharge into works

49. (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).

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

Penalty notices

50. (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of the penalty prescribed for the alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may:

- (a)** prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b)** prescribe the amount of penalty for the offence if dealt with under this section; and
- (c)** prescribe different amounts of penalty for different offences or classes of offences.

(7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section, “**authorised person**” means a person appointed in writing by the Minister as an authorised person for the purposes of this section.

Payment of penalty does not affect other proceedings

51. (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

52. (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 offences

53. (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 100 penalty units or the maximum penalty for the offence, whichever is the lesser.

(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 7—Customer contracts

Publication of terms and conditions of customer contracts

54. (1) The initial terms and conditions of customer contracts are to be set out in the operating licence or licences that relate to the provision of water supply or sewerage services by the Corporation.

(2) The Corporation must, before the commencement of section 55, publish, in a daily newspaper circulating in the area of operations, a notice setting out those initial terms and conditions of customer contracts or a summary of them.

(3) The terms and conditions 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) Subsection (3) does not apply to the extent that the contract charges relate to a government monopoly service within the meaning of the Government Pricing Tribunal Act 1992.

(5) If an operating licence so provides, the terms and conditions set out in the notice or the summary must be in a form specified by or authorised under the operating licence or licences.

Owner of land taken to have entered into customer contract

55. (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 the terms and conditions set out in the relevant operating licence or licences as varied from time to time in accordance with section 59, for the provision of water supply or sewerage services, or either of them, to the land.

(2) In addition, a customer contract may also include terms and conditions relating to the imposition and payment of charges imposed under section 64 or 65. If a customer contract makes provision for such matters, a person by whom one or more of the charges are payable is taken to have entered into a contract with the Corporation on those terms and conditions.

(3) A customer contract, or a contract entered into in accordance with subsection (2), is not unjust, unconscionable, harsh or oppressive for the purposes of any law.

(4) This section has effect subject to section 56.

No customer contract for unauthorised connection

56. (1) An owner of land is not to be taken to have entered into a customer contract under section 55 if the connection of the land to a water main or sewer main:

- (a) was not authorised by the Corporation, a predecessor of the Corporation or another appropriate authority; and
- (b) has not since been approved by the Corporation, a predecessor of the Corporation or another appropriate authority.

(2) The Corporation may give approvals for the purpose of this section.

Division not to apply to certain contracts

57. (1) This Division does not apply to the extent that the terms and conditions of a contract or other arrangement for the provision of water supply or sewerage or stormwater drainage systems, or any of them, have been specifically agreed to by the Corporation and a person who is taken to have entered into a customer contract under section 55.

(2) Without limiting subsection (1), nothing in section 55, 64 or 65 affects the operation of:

- (a) a contract between the Corporation and a person (whether or not the person is taken to have entered into a customer contract under section 55); or
- (b) a contract between a public authority and a person (whether or not the person is taken to have entered into a customer contract under section 55) relating to the supply of water or the provision of water recycling, effluent treatment, stormwater drainage or similar services within the area of operations.

Consumer claims

58. The jurisdiction of a consumer claims tribunal constituted under the Consumer Claims Tribunals Act 1987 extends to the hearing and determination of a consumer claim (within the meaning of that Act) relating to a service supplied by the Corporation under a customer contract.

Variation of customer contracts

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

(2) A copy of the notice published under this section is to be given by the Corporation to the person who is taken to have entered into the customer contract under section 55. The copy is to be given with the next account for service charges issued after the date of publication of the notice. Failure to comply with the requirements of this subsection 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 evidence that the Governor has approved of the variation of the terms and conditions unless the contrary is proved.

(4) This section does not apply to the variation of the terms and conditions of a customer contract to the extent that the variation relates to alteration of the level of fees or charges and the alteration is in accordance with a determination of the Government Pricing Tribunal.

Division 8—Fees and charges**Fees and charges generally**

60. (1) The Corporation may impose:

- (a) fees and charges for or in connection with any service or thing supplied or provided by the Corporation in the exercise of its functions under this Act; and
- (b) without affecting the generality of paragraph (a)—availability charges and stormwater drainage area charges.

(2) Any such fees and charges may be fixed by reference to any factors or combination of factors, including but not limited to the following:

- (a) the nature of the service or thing provided;
- (b) the place where the service or thing is provided;
- (c) usage or estimated usage of the service or thing provided;
- (d) land value or any other value provided for in the Valuation of Land Act 1916 and at such base date as the Corporation determines;

- (e) land size, meter size or pipe size;
- (f) any factor specified in an operating licence or prescribed by the regulations.

(3) The Corporation may impose any such fees and charges by customer contracts or by any other means. A fee or charge that is imposed by a customer contract cannot be altered except in accordance with the customer contract or an operating licence.

(4) The Corporation may impose a compulsory fee or charge by means of a customer contract only, except to the extent that an operating licence or the regulations permit a specified compulsory fee or charge or specified class of compulsory fee or charge to be imposed by some other means. The regulations may determine for the purposes of this subsection the kinds of fees or charges that are or are not compulsory in nature.

(5) An operating licence may regulate the imposition of any fees and charges, and in particular may provide for any or all of the following:

- (a) specified fees and charges must not be imposed or must cease being imposed;
- (b) specified fees and charges must be imposed;
- (c) specified fees and charges may be imposed by customer contracts only.

(6) An operating licence may provide that the Corporation must, in imposing fees or charges or any specified class of fees or charges, do so:

- (a) on a basis that is consistent with the system employed by the Water Board for fixing such fees or charges immediately before the transfer of the business undertaking (including the relevant provisions of clauses 4 and 5 of the Water Board (Finance) Regulation 1988); or
- (b) on some other basis stipulated in the operating licence.

(7) This section has effect subject to the Government Pricing Tribunal Act 1992.

Successor in title liable for unpaid contract charges

61. 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, contract charges in certain cases

62. (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 or stormwater drainage area charges payable in relation to the land, the occupier may pay to the Corporation any charges 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.

Fees and charges not to be charges on land

63. On and after the transfer under Part 3 of the business undertaking of the Water Board to the Corporation, no fees or charges imposed by the Corporation are to be a charge on the land to which they relate, unless expressly provided for by this Act.

Availability charges

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

(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 63, an availability charge imposed under this section is a charge on the land to which the availability charge relates.

(4) An availability charge is payable in relation to a particular water main to which the land concerned is not connected even if the land is connected to another water main, provided the kinds of water available from the services differ in nature or quality.

(5) Without limiting the generality of section 60 (5), the Corporation must cease imposing availability charges if an operating licence so requires.

Stormwater drainage area charges

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

(2) An order in force under section 28 (3) of the Water Board Act 1987 (as in force immediately before the commencement of section 86 of this Act) declaring an area of land to be a stormwater drainage area is taken to be an order for the purposes of this section.

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

(4) A stormwater drainage area charge 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 63, a stormwater drainage area charge levied under this section is a charge on the land to which the stormwater drainage area charge relates.

Certificates as to amounts due

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

(3) 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.

(4) 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.

Exemptions from service charges

67. (1) The Corporation may not levy service charges on land described in Part 1 of Schedule 2 unless it is land described in Part 2 of Schedule 2.

(2) The Minister may, by order published in the Gazette, amend Schedule 2 by omitting from the Schedule a description of land contained in it or by inserting in the Schedule a description of land.

(3) In this section, “**service charge**” means a charge of the kind that was included in the definition of “service charge” in section 3 (1) of the Water Board Act 1987, and includes any kinds of fees and charges prescribed by the regulations as service charges to which this section applies, but does not include any kinds of fees and charges so prescribed as service charges to which this section does not apply.

Special arrangements with Valuer-General

68. (1) The Corporation may enter into special arrangements with the Valuer-General under Part 6B of the Valuation of Land Act 1916, but must not do so in contravention of a condition of an operating licence.

(2) Any valuations supplied to the Corporation under any such special arrangements may be used for the purposes of this Act, but subject to the terms of an operating licence under that Act.

(3) The Corporation must take all available steps to terminate or vary any such special arrangements if required to do so by an operating licence.

Division 9—Development

Definitions

69. In this Division:

“**approval**” means:

- (a) an approval under Part 1 of Chapter 7 of the Local Government Act 1993 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

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- (c) a development consent under Part 4 of the Environmental Planning and Assessment Act 1979; or
- (d) any similar approval, consent or other matter, prescribed by the regulations for the purposes of this definition;

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

“consent authority” has the meaning given in the Environmental Planning and Assessment Act 1979, and includes a council to which an application for approval for the erection of a building under Part 1 of Chapter 7 of the Local Government Act 1993 may be made;

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

“development”, in relation to land, means any activity to which an approval relates;

“works” has the meaning given by section 3, and includes:

- (a) structures on or improvements to land that are designed to facilitate the carrying of water (including, for example, excavations along natural watercourses); or
- (b) structures on or improvements to land that are designed to facilitate the operation of water and sewerage plants or waste water treatment plants (including, for example, artificial wetlands); or
- (c) monitoring devices in, under, over or near any works referred to in paragraph (a) or (b); or
- (d) any works ancillary or antecedent to any works referred to in paragraphs (a)–(c).

Compliance certificates

70. (1) A compliance certificate is a certificate issued by the Corporation under this Division in relation to a particular development, and certifying:

- (a) that the requirements of the Corporation under this Division in relation to the development have been complied with; or
- (b) that no such requirements were imposed by the Corporation in relation to the development.

(2) A compliance certificate can be issued to:

- (a) a developer who is subject to a condition requiring that such a certificate be obtained and who applies for a certificate; or
- (b) a developer who, though not subject to such a condition, nevertheless applies for such a certificate.

Conditions requiring compliance certificates

71. (1) It may be a condition of an approval given with respect to land within the Corporation's area of operations that a compliance certificate be obtained from the Corporation.

(2) The Corporation may issue guidelines from time to time to assist consent authorities and other authorities in relation to the imposition of conditions of the kind referred to in subsection (1).

(3) Nothing in this section affects the generality of the Environmental Planning and Assessment Act 1979 or any other Act with regard to the imposition of conditions on approvals.

Applications for compliance certificates

72. (1) If an approval has been given with respect to land within the Corporation's area of operations and the developer to whom the approval has been given is required, or wishes, to obtain a compliance certificate, the developer may apply to the Corporation for a compliance certificate.

(2) The application must be accompanied by a copy of the approval.

Grant of compliance certificates

73. If an application is made to the Corporation for a compliance certificate, the Corporation:

- (a) may grant the developer a compliance certificate, without serving a notice on the developer under section 74; or
- (b) must grant the developer a compliance certificate, when the Corporation is satisfied that the requirements of a notice served on the developer under section 74 have been complied with; or
- (c) must, at the developer's request, grant the developer a compliance certificate, if no compliance certificate has been granted to, and no notice under section 74 has been served on, the developer within 60 days after the making of an application under section 72 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.

Notice of requirements before grant of compliance certificate

74. (1) If an application is made to the Corporation for a compliance certificate, the Corporation may, before proceeding further with the application, serve a notice on the developer requiring the developer to do any one or more of the following:

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- (a) to pay an amount to the Corporation to cover the whole or an appropriate portion of relevant costs (as defined in section 75), as assessed by the Corporation either in the notice or in another notice;
- (b) to enter into one or more agreements providing for any one or more of the following:
 - (i) the payment of such an amount to the Corporation;
 - (ii) the construction, or the construction and the manner of construction, of the works specified in the notice;
 - (iii) the transfer of any such works to the Corporation;
- (c) to provide reasonable security, in a form approved by the Corporation, for due performance of such an agreement;
- (d) to attend to such additional or ancillary matters as are specified by the Corporation and as are necessary to give effect to any one or more requirements imposed under paragraphs (a)–(c).

(2) The Corporation may withdraw a requirement contained in a notice under this section, in which case the requirement is treated as not having been made.

(3) This section has effect subject to the Government Pricing Tribunal Act 1992.

Relevant costs

75. For the purposes of section 74, the relevant costs are:

- (a) the full cost of any or all of the following:
 - (i) works and systems already constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation;
 - (ii) works and systems to be constructed by or on behalf of, or at the request of, or under an agreement with, the Corporation or a predecessor of the Corporation, that benefit or are available to the land concerned, based on net present value, historical cost or any other appropriate basis, and having regard (if the Corporation thinks it appropriate) to its expected operating costs and revenues; and
- (b) the full cost of amplification of the Corporation's works and systems in consequence of the proposed development; and
- (c) the investment costs incurred by the Corporation or a predecessor of the Corporation and by developers in relation to the existing and proposed works and systems referred to in paragraphs (a) and (b); and

- (d) costs of such kinds as are prescribed by the regulations as additional to or in substitution for any or all of the costs referred to in paragraphs (a), (b) and (c).

Conditions of compliance certificates

76. (1) A compliance certificate may be granted unconditionally or subject to specified conditions, including, for example, a condition to the effect that the grant is conditional on carrying out the terms of an agreement entered into under section 74.

(2) The requirement to obtain a compliance certificate is taken not to be complied with until the conditions attached to the certificate have been complied with.

(3) An unconditional compliance certificate may be granted to replace one already granted subject to conditions.

Grant of compliance certificates in stages

77. (1) A compliance certificate may, instead of being issued in relation to the whole of the development concerned, be issued progressively in relation to any or all of the stages of the development.

(2) A compliance certificate may be granted to replace one or more already granted.

Consent authority to notify Corporation of development and building applications

78. (1) 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 would:

- (a) increase the demand for water supplied by the Corporation; or
- (b) increase the amount of waste water that is to be removed by the Corporation; or
- (c) damage or interfere with the Corporation's works; or
- (d) adversely affect the Corporation's operations; or
- (e) adversely affect the quality of the water from which the Corporation draws its supply of water in a special area,

the consent authority must give the Corporation notice of the application, unless it is relieved from doing so under subsection (2).

(2) The consent authority is not required to give notice of the application if it decides:

- (a) not to approve the application; or
- (b) to approve the application with a condition that the developer must obtain a compliance certificate from the Corporation.

(3) The Corporation must issue guidelines from time to time to assist consent authorities to determine which matters should be the subject of notice under subsection (1).

(4) The consent authority must take into account any submissions made by the Corporation in relation to a development application or building application that is the subject of a notice under subsection (1), in determining whether to approve the development application or building application or to attach conditions to it. The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a compliance certificate from the Corporation.

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

(6) 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.

Enforcement

79. (1) Any money owing to the Corporation as a consequence of a notice referred to in section 74 may be recovered in any court of competent jurisdiction as if it were a debt due to the Corporation.

(2) Nothing in this section affects any power or remedy that the Corporation has apart from this section.

Division 10—Special areas

Definitions

80. In this Division:

“**joint sponsors**” means the Director-General of National Parks and Wildlife and the Corporation;

“**public agency**” means the Governor, a Minister of the Crown or a statutory body.

Special areas

81. (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 not recommend the making of such an order unless the Minister certifies that the Minister is satisfied that the making of the order is necessary for either or both of the following purposes:

- (a)** protecting the quality of stored waters, whether intended for use for drinking or other purposes;
- (b)** maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with the Corporation's obligations to provide, construct, operate, manage or maintain storages under any operating licence.

(3) The area of land within any special area (as referred to in the Water Board Act 1987) immediately before the commencement of this section is taken to be the subject of an order declaring it to be a special area under this Act.

(4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended by an order made by the Governor.

(5) The Minister must cause a copy of an order made under this section, including an order amending an order, to be tabled in each House of Parliament within 14 sitting days of that House after the order has been published in the Gazette.

(6) A special area must not be reduced in size, and an order declaring an area of land to be a special area must not be repealed, unless authorised by an Act of Parliament.

Restriction on alienation of land in special areas

82. (1) The Corporation must not alienate, mortgage, charge or demise land in a special area that is owned by or vested in the Corporation unless:

- (a)** to or in favour of the Minister administering the National Parks and Wildlife Act 1974; or
- (b)** authorised by an Act of Parliament.

(2) Nothing in subsection (1) operates:

- (a)** to extinguish or otherwise affect any existing lease, licence or other interest in the land in a special area; or

- (b) to prevent the renewal of any such lease, licence or other interest;
or
- (c) to prevent the grant of a lease, licence or other interest in the land in accordance with any plan of management prepared in relation to the land under this Act.

Crown land in special areas

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

(2) The Corporation 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.

Exercise of functions by public agencies in special areas

84. (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 to the Corporation.

(2) On receiving a notice referred to in this section, the Corporation may make such representations to the public agency as the Corporation thinks fit.

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

(4) If a public agency has functions with regard to a development application relating to land within a special area to which an environmental planning instrument applies, the forwarding of the development application or a copy of it to the Corporation, or the giving of any other form of notification of the development application to the Corporation, whether by the public agency or the applicant, is taken also to be the giving of notice for the purposes of this section.

(5) This section does not apply to a public agency's functions with regard to the making of an environmental planning instrument in relation to land within a special area.

(6) This section does not apply to a public agency's functions with regard to a development application, if an environmental planning instrument applying in the special area prevents the development

application from being determined by the granting of consent without the concurrence of the Corporation.

(7) This section does not apply to a public agency's functions to the extent that they relate to a matter about which a notice has been given to the Corporation under section 78.

Regulations concerning special areas

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

(2) A regulation made under this Division 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.

Plans of management

86. (1) The joint sponsors are jointly required to cause a plan of management to be prepared for each special area as soon as practicable after it has been declared to be a special area.

(2) A plan of management for an area of land referred to in section 81 (3) is to be prepared within 24 months after the commencement of this section.

(3) When a plan of management has been prepared, the joint sponsors must give notice of the plan in a newspaper circulating throughout New South Wales and must, in that notice:

- (a) specify the address of the place at which copies of the plan of management may be inspected; and
- (b) specify the address to which representations concerning the plan of management may be forwarded.

(4) Any person may, within 30 days or such longer period as may be specified in the notice, make representations to the joint sponsors concerning the plan of management.

(5) The joint sponsors must, on the expiration of the period referred to in subsection (4), and before submitting the plan of management to the Minister, consider any representations made under this section.

(6) The Minister may adopt a plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the joint sponsors for further consideration.

(7) If the Minister refers a plan of management back for further consideration, the joint sponsors must resubmit it after considering it further and making any appropriate alterations.

(8) The Minister may:

- (a) amend or alter a plan of management from time to time; or
- (b) cancel a plan of management; or
- (c) cancel a plan of management and substitute a new plan.

(9) Before doing any of the things referred to in subsection (8), the Minister may consult with any person or body (including persons or bodies other than the joint sponsors) that the Minister thinks fit.

(10) Subsections (3)–(5) apply to an amendment or alteration of a plan of management in the same way as they apply to a plan of management.

Operations under plan of management

87. (1) A plan of management adopted under this Act for a special area must be carried out and given effect to by the Corporation.

(2) Subject to the requirements of any other Act or any instrument under any other Act, no operations are to be undertaken by the Corporation in relation to the lands within the special area unless the operations are in accordance with the plan.

Division 11—Controlled areas

Controlled areas

88. (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 controlled area.

(2) An order under this section applies to land only while it is owned by or vested in the Corporation.

(3) The lands referred to in Schedule 1 to the Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this section (but excluding the lands referred to in the first paragraph, including paragraphs (a)–(c), and the second paragraph of that Schedule) are taken to be the subject of an order declaring them to be a controlled area, despite anything in section 81 (3).

(4) An order referred to in subsection (3) is taken to be an order made under this section, and accordingly may be amended or repealed by an order made by the Governor.

Regulations concerning controlled areas

89. (1) The regulations may make provision for or with respect to controlled areas, including the regulation or prohibition of abstracting, using, polluting or contaminating waters or polluting or contaminating land within such areas.

(2) A regulation made under this Division 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.

Division 12—Activities outside area of operations**Activities outside area of operations**

90. (1) If an operating licence has been issued to the Corporation under this Act, the Corporation may:

- (a) exercise outside 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; and
- (b) undertake activities in the exercise of any such right outside the area of operations,

for the purpose of supplying water to councils or the owners or occupiers of land in the vicinity of the bulk supply lines (or carrying out any other activities previously authorised under section 13 (5) of the Water Board Act 1987).

(2) Subsection (1) applies only until such time as the Corporation is granted a licence or permit by the relevant authority for the purpose referred to in that subsection and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.

(3) Subsection (1) applies only if the activities are necessary for the purpose of providing systems or services that the Water Board was authorised to provide in accordance with a Ministerial consent under section 13 (5) of the Water Board Act 1987 that was current on the repeal of that Act.

(4) This section applies to an activity only until the Minister revokes the consent or the activity becomes the subject of an operating licence.

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

Division 13—Other matters**Contracting out**

91. (1) The Corporation may enter into a contract or other arrangement with any person for the provision, construction, operation, management or maintenance of systems or services that are the subject of an operating licence or for the carrying out of any of its other activities.

(2) The person with whom any such contract or other arrangement is entered may (subject to the contract or other arrangement) exercise, 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 the purposes referred to in subsection (1).

(3) The power to exercise rights conferred by subsection (2) has effect only until such time as the Corporation is granted a licence or permit by the relevant authority for the purposes referred to in subsections (1) and (2) and the Minister, by certificate published in the Gazette, certifies that such a licence or permit has been granted.

(4) The power to exercise rights under subsection (2) may be exercised only in relation to activities carried out under an operating licence.

(5) The entering into of a contract or other arrangement under this section does not relieve the Corporation of its responsibilities to comply with an operating licence.

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

PART 7—MISCELLANEOUS**Alteration of names**

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

Performance of community service obligations

93. (1) This section applies when a direction is made under section 11 of the State Owned Corporations Act 1989 or to any activity the performance of which the Corporation identifies as not being in its commercial interests or for which the Corporation seeks reimbursement or is entitled to be reimbursed as a consequence, whether the activity was previously carried out by the Water Board or not.

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(2) Before any direction is made under section 11 of the State Owned Corporations Act 1989 or reimbursement is sought, the Corporation's board of directors, or the Minister, as the case may be:

- (a) must quantify for the Treasurer the cost of performing the activities so as to identify the least capital and operating costs of obtaining the outcome or service to which the activity or direction relates; and
- (b) must certify to the Treasurer that the costs have been quantified by open public tender or such other means as may be considered appropriate to demonstrate that the service or activity is being provided at the least capital and operating cost.

(3) The Treasurer is to publish a notice of any payment made, together with the certification provided under subsection (2) (b) in the Gazette within 14 days after payment is made.

(4) This section applies despite anything in section 11 of the State Owned Corporations Act 1989.

Composition of board

94. Schedule 2 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 3 to this Act.

Provisions relating to subsidiaries

95. Schedule 3 to the State Owned Corporations Act 1989 is, as regards the Corporation, taken to be altered as set out in Schedule 4 to this Act.

Provisions relating to certain staff

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

(2) Unbroken service with the Corporation that is continuous with service with the Water Board is to be taken into account in accordance with the Transferred Officers Extended Leave Act 1961, both during and after service with the Corporation.

(3) The Transferred Officers Extended Leave Act 1961 does not otherwise apply to members of the staff of the Corporation.

Special audit of activities

97. (1) Despite section 36 (1) (b) of the State Owned Corporations Act 1989, the provisions of Division 2A of Part 3 of the Public Finance and Audit Act 1983 apply to the Corporation.

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(2) For the purposes of this section and Division 2A of Part 3 of the Public Finance and Audit Act 1983:

- (a) the Corporation is taken to be an authority within the meaning of section 38A of that Act; and
- (b) the chief executive officer of, or the person who exercises the functions of a chief executive officer in relation to, the Corporation is taken to be the Head of an authority within the meaning of that expression as defined in section 4 (1) of that Act.

Act binds Crown

98. 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 stormwater drainage

99. (1) A person must not do any kind of work of water supply, sewerage or stormwater drainage intended for direct or indirect connection with the pipes, sewers or drains of the Corporation unless the person:

- (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) Subsection (1) does not apply to an employee of the Corporation who carries out any such work on behalf of the Corporation or to any other person who is authorised by the Corporation to carry out any such work.

Service of notices

100. (1) A notice under this Act to a person liable for payment of a fee or charge, or to a person who is the owner or occupier of land or a building, may be served:

- (a) personally; or
- (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently residing or employed there who seems to be at least 16 years old; or
- (c) by post to the residence or place of business of the person to be served last known to the Corporation; or
- (d) by affixing it to a conspicuous part of the land or building.

(2) A notice under this Act to a corporation constituted by or under an Act or other law may be served:

- (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old; or
- (b) in any manner authorised by or under the Act or law by which the corporation is constituted or which applies to the corporation.

(3) A notice under this Act to a government department or administrative office may be served:

- (a) in the case of a notice of valuation or a notice of a fee or charge—on the Treasurer or as prescribed by the regulations; or
- (b) in any other case—on the Department Head or as prescribed by the regulations.

(4) A notice under this Act may be served on a person who appears to be absent from the State, or who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served.

(5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Corporation, it may be served by an advertisement that:

- (a) is published in a newspaper circulating in the locality of the land or premises; and
- (b) states the name of the owner of the land or premises if known to the Corporation; and
- (c) if the notice is notice of a fee or charge—states the amount of the fee or charge, the period (if any) for which it is owing and that a detailed notice of the fee or charge may be obtained by inquiry at an office of the Corporation identified in the advertisement; and
- (d) states that the advertisement operates as service of the notice.

(6) A notice under this Act may be served on a person in accordance with a means of communication (such as facsimile transmission, telecommunication or another electronic means of communication) notified by the person as being an available means of communication.

(7) A customer contract or the regulations may impose additional requirements in relation to any means of service provided by this section or may provide other means of serving notices.

Annual reports

101. (1) The Corporation is to comply with requirements of Schedule 5 regarding the annual report of the operations of the Corporation, in addition to any other relevant requirements of the State Owned Corporations Act 1989 and the Corporations Law.

(2) The regulations may amend or replace Schedule 5.

Restraint of breaches of Act

102. (1) Any person may bring proceedings, concerning matters relating to the protection of the environment, in the Land and Environment Court for an order to restrain a breach of this Act (or a threatened or apprehended breach of this Act).

(2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).

(3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.

(4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings.

(5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

Restraint of breaches of customer contract

103. (1) Any person may bring proceedings in the Supreme Court for an order to restrain a breach (or a threatened or apprehended breach) of a customer contract by the Corporation.

(2) Any such proceedings may be brought whether or not any right of that person has been or may be infringed by or as a consequence of the breach (or the threatened or apprehended breach).

(3) If the Court is satisfied that a breach, or a threatened or apprehended breach, will, unless restrained by order of the Court, be committed or be likely to be committed, it may make such orders as it thinks fit to restrain the breach or other conduct of the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed.

(4) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of the committee or other controlling or governing body), having like or common interests in those proceedings.

(5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

Application of Freedom of Information Act 1989

104. (1) The Freedom of Information Act 1989 applies to and in respect of the Corporation and any subsidiaries of the Corporation as if they were each a public authority.

(2) For the purposes of that Act:

- (a) the Minister administering this section is the responsible Minister; and
- (b) the Managing Director of the Corporation, or the holder of another office prescribed by the regulations, is the principal officer of the Corporation; and
- (c) the holder of an office prescribed by the regulations is the principal officer of a subsidiary of the Corporation.

Application of Independent Commission Against Corruption Act 1988

105. Section 23 of the Independent Commission Against Corruption Act 1988 applies to the Corporation and its subsidiaries and to persons who are public officials by virtue of their connection with the Corporation

or such a subsidiary. This section has effect despite section 36 of the State Owned Corporations Act 1989.

Regulations

106. (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) 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, an operating licence; and
- (b) in the case of drought or accident, or if the Minister is for some other reason of the opinion that it is necessary in the public interest and for the purpose of maintaining water supply—the restriction or regulation of the supply and use of water in the area of operations; and
- (c) the classification or valuation of land or other basis or bases for the making of fees or charges, and the procedure for the making and imposing of fees or charges; and
- (d) charges on land and the recovery of amounts charged on land, including applying the provisions (with or without modification) of Divisions 4 and 5 of Part 2 of Chapter 17 of the Local Government Act 1993; and
- (e) any matters to which the regulations referred to in clause 2 of Schedule 9 relate.

(3) 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.

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

- (a) authorising the Corporation to make arrangements with another person to collect fees or charges on behalf of the Corporation; and
- (b) the fees to be paid by the person to the Corporation.

Repeals

107. (1) The Water Board Act 1987 is repealed.

(2) All regulations and by-laws under that Act and the Metropolitan Water, Sewerage, and Drainage Act 1924 are repealed, except as provided in Schedule 9 to this Act.

Amendment of Government Pricing Tribunal Act 1992 No. 39

108. The Government Pricing Tribunal Act 1992 is amended as set out in Schedule 6.

Amendment of other Acts

109. The Acts specified in Schedule 7 are amended as set out in that Schedule.

Amendment of regulations

110. The regulations specified in Schedule 8 are amended as set out in that Schedule.

Savings, transitional and other provisions

111. Schedule 9 has effect.

Review of Act

112. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION
LICENCE REGULATOR**

(Sec. 30 (5))

PART 1—PRELIMINARY

Definitions

1. In this Schedule:

“**Chairperson**” means the Chairperson of the Licence Regulator;

“**member**” means a member of the Licence Regulator.

PART 2—MEMBERS

Chairperson

2. The Chairperson is to be selected by the Minister from among the 5 members.

Deputies

3. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.

(2) In the absence of a member, the member’s deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has the functions of the member and is taken to be the member.

(3) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of members

4. Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member’s instrument of appointment, but is eligible (if otherwise qualified) for reappointment.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Remuneration

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Vacancy in office of member

6. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this Schedule or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) is absent from 3 consecutive meetings of the Licence Regulator of which reasonable notice has been given to the member, except on leave granted by the Licence Regulator or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Licence Regulator for having been absent from the meetings.

(2) The Minister may remove a member from office at any time.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Disclosure of pecuniary interests

7. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Licence Regulator; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Licence Regulator.

(2) A disclosure by a member at a meeting of the Licence Regulator that the member:

- (a) is a member or officer, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded in a book kept by the Licence Regulator for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Licence Regulator.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Licence Regulator otherwise determines:

- (a) be present during any deliberation of the Licence Regulator with respect to the matter; or
- (b) take part in any decision of the Licence Regulator with respect to the matter.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

(5) For the purpose of the making of a determination by the Licence Regulator under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Licence Regulator for the purpose of making the determination; or
- (b) take part in the making by the Licence Regulator of the determination.

(6) A contravention of this clause does not invalidate any decision of the Licence Regulator.

Filling of vacancy in office of member

8. If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

PART 3—PROCEDURE

General procedure

10. The procedure for calling meetings of the Licence Regulator and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Licence Regulator.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued*

Quorum

11. The quorum for a meeting of the Licence Regulator is 3 members.

Presiding member

12. (1) The Chairperson is to preside at a meeting of the Licence Regulator.

(2) The Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Licence Regulator at which a quorum is present is a decision of the Licence Regulator.

Transaction of business outside meeting or by telephone or other means

14. (1) The Licence Regulator may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Licence Regulator.

(2) The Licence Regulator may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Licence Regulator.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Licence Regulator.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF SYDNEY WATER CORPORATION LICENCE
REGULATOR—*continued***

(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other means for transmission of the information in the papers concerned.

Minutes

15. (1) The Licence Regulator is to ensure that full and accurate minutes of all its proceedings are kept.

(2) The Licence Regulator is to submit a copy of the minutes of a meeting of the Licence Regulator to the Minister within 14 days after the meeting is held.

First meeting

16. The Minister may call the first meeting of the Licence Regulator in such manner as the Minister thinks fit.

SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES

(Sec. 67)

PART 1—LAND EXEMPT FROM SERVICE CHARGES

1. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.

2. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a common.

3. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.

4. Land which belongs to any public benevolent institution, or public charity, and is used or occupied by the institution or charity for its purposes.

5. Land which is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.

6. Land which is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.

SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES—
continued

7. Land which belongs to a religious body and which is occupied and used in connection with:

- (a) any church or other building used or occupied in public worship; or
- (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building; or
- (c) any building used or occupied for the purposes of religious teaching or training; or
- (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State; or
- (e) any building used or occupied solely as a hospital and not conducted for private gain.

8. Land which is a public place within the meaning of the Local Government Act 1993.

9. Land which:

- (a) is unoccupied; and
- (b) is not supplied with water from any water-pipe of the Corporation and is not connected to any sewer of the Corporation; and
- (c) has been determined, by the council of the area in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.

10. Land which is unoccupied and which is below highwater mark of any tidal water.

11. Land which belongs to and which is occupied and used in connection with any registered non-government school within the meaning of the Education Reform Act 1990, including any playground which belongs to and is used in connection with any such school, and any building occupied as a residence by any caretaker, servant, or teacher of any such school which belongs to and is used in connection with the school.

12. Drill grounds, sports grounds, gardens, or children's playgrounds provided by the council of an area under the powers conferred by the Local Government Act 1993.

SCHEDULE 2—EXEMPTIONS FROM SERVICE CHARGES—
continued

13. Land vested in the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983, being land which is declared under Division 5 of Part 6 of that Act to be exempt from the payment of rates under this Act.

PART 2—EXCEPTIONS

1. Land within a public place, public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business.

2. Land that is vested in the Crown or a public body and is leased to any person for private purposes.

3. Land vested in the Crown or an authority (within the meaning of the Public Finance and Audit Act 1983) that:

- (a) is used or occupied by the Crown or such an authority for a purpose specified in item 1, 2, 3, 5 or 6 of Part 1 of this Schedule; or
- (b) is land referred to in item 8 of Part 1 of this Schedule (other than a public road or the permanent way of a railway).

SCHEDULE 3—BOARD OF CORPORATION

(Sec. 94)

Part 2 of Schedule 2 to the State Owned Corporations Act 1989 is, as regards Sydney Water Corporation Limited, taken to be altered by inserting after clause 1 (6) the following subclauses:

(6A) The board is to consist of the following:

- (a) a chairman, selected by the voting shareholders;
- (b) six directors, selected for their relevant expertise by the voting shareholders;
- (c) a director with industrial relations experience, selected under subclause (6B), not being an employee of the corporation;
- (d) the chief executive of the corporation.

SCHEDULE 3—BOARD OF CORPORATION—*continued*

(6B) The director with industrial relations experience is to be selected by a selection committee from a panel of 3 persons nominated by the Labor Council of New South Wales.

(6C) The selection committee is to consist of the following:

- (a) the chairman of the board (or, if that position is vacant, a person nominated by the voting shareholders);
- (b) two persons nominated by the Labor Council of New South Wales;
- (c) two other persons nominated by the voting shareholders.

(6D) Subject to this clause, the procedures for nominating and selecting the director with industrial relations experience and for constituting the Selection Committee are to be as determined by the voting shareholders.

SCHEDULE 4—SUBSIDIARIES OF CORPORATION

(Sec. 95)

Part 2 of Schedule 3 to the State Owned Corporations Act 1989 is, as regards Sydney Water Corporation Limited, 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 State owned 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 State owned corporation, and shares held by eligible Ministers or by or on behalf of the State owned corporation may not be transferred except with such prior written approval or by the Premier under subclause (4).

SCHEDULE 5—ANNUAL REPORT OF CORPORATION

(Sec. 101 (2))

Definition

1. In this Schedule:

“**financial year**” means the financial year of the Corporation.

Budgetary information

2. The annual report of the operations of the Corporation is to include or be accompanied by:

- (a) a detailed budget for the financial year to which the report relates; and
- (b) an outline budget for the next following financial year.

Specific particulars

3. The annual report of the operations of the Corporation is to include the following particulars in relation to the following matters:

- (a) **research and development**—particulars of completed research and continuing research and development activities together with the resources allocated for that research and those activities, unless the inclusion of those particulars would, in the opinion of the Corporation, adversely affect the business or commercial operations of the Corporation;
- (b) **human resources**:
 - (i) the number of employees, by category, with comparison to each of not less than 3 years before the financial year to which the report relates;
 - (ii) any exceptional movement in wages, salaries or allowances of material effect;
 - (iii) personnel policies and practices;
 - (iv) industrial relations policies and practices;
- (c) **consultants**:
 - (i) in respect of the engagement during the financial year of a consultant by the Corporation the cost of which exceeds \$30,000, the following details relating to the consultant:

SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- the name of the consultant;
 - if the consultant has been engaged for a particular project, the title of the project;
 - the actual cost of engaging the consultant;
- (ii) in respect of the engagement during the financial year of consultants by the Corporation, if the cost of each such engagement is less than \$30,000, the following details relating to the consultants:
- the total number of engagements costing less than \$30,000;
 - the total cost of all such engagements;
- (iii) if no consultants were engaged by the Corporation during the financial year, a statement of that fact;
- (d) **equal employment opportunity:**
- (i) a statement setting out the equal opportunity achievements of the Corporation during the financial year and the key equal employment opportunity strategies proposed by the Corporation for the following year;
- (ii) statistical information for the financial year of such kind, and set out in such form, as is determined by the Secretary of the Treasury or, if such information is not currently available, particulars of the arrangements that have been made to obtain and provide such information during the following year;
- (e) **promotion:**
- (i) a statement setting out the types of publications and other information available to the public dealing with the functions and activities of the Corporation and indicating those which were published by the Corporation during the financial year;
- (ii) overseas visits undertaken with the main purposes highlighted;
- (f) **consumer response**—the extent and main features of consumer complaints, indicating any services improved or changed as a result of complaints or consumer suggestions made;

SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- (g) **guarantee of service**—where appropriate, the standard for providing services, together with comment on any variance from the standard or changes made to the standard;
- (h) **time for payment of accounts** (in relation to contracts entered into by or on behalf of the Corporation for the supply of goods or services, or both, to the Corporation)—all instances where penalty interest has been paid if payment has not been made within a period and the reason for the delay in making the payment which led to the payment of the interest.

Comparison of investment performance

4. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the investment performance of the Corporation in respect of its surplus funds and of the investment performance of the appropriate Treasury Corporation investment facilities.

(2) The appropriate Treasury Corporation investment facility is (in respect of any particular surplus funds) the one chosen by the Corporation from among the investment facilities made available under the description “Hour-Glass Investment Facilities” by the Treasury Corporation to public authorities for investment of their surplus funds.

(3) The Corporation’s choice of investment facility is to be made on the basis of the nature and term of the underlying liability to which the particular surplus funds relate, as determined in accordance with guidelines issued by the Treasurer.

(4) The Corporation is to notify the Treasurer of its choice of investment facilities for the purposes of the comparison, giving reasons for its choice, within 1 month after the beginning of the financial year to which the report relates.

(5) The Treasurer can disallow the Corporation’s choice of investment facility and substitute the Treasurer’s own choice (advising the Corporation accordingly), in which case the comparison is to be based on the Treasurer’s choice of investment facility.

(6) The following provisions apply to a comparison required by this clause:

SCHEDULE 5—ANNUAL REPORT OF CORPORATION—*continued*

- (a) investment performance is to be stated as an annual compound percentage rate of return;
- (b) the investment performance of an investment facility made available by the Treasury Corporation is as advised to statutory bodies by the Treasurer from time to time;
- (c) the comparison is to relate to investment performance during the financial year to which the report relates.

(7) For the purposes of the comparison, the following matters are to be as determined in accordance with guidelines issued to statutory bodies by the Treasurer from time to time:

- (a) which cash assets of the Corporation are to be considered to be its surplus funds;
- (b) the method of calculating investment return, including the method of calculating an annual return from an actual period of investment of less than a year;
- (c) the method of calculating and comparing investment return where there is a difference between the period of actual investment of funds and the period over which the return of the relevant Treasury Corporation investment facility is measured.

Comparison of liability management performance

5. (1) The annual report of the operations of the Corporation is to include, in the form of a comparison, details of the performance of the Corporation's liability portfolio and the performance of the Corporation's benchmark portfolio.

(2) The Corporation's benchmark portfolio is a notional portfolio maintained by the Corporation and constructed in accordance with guidelines issued by the Treasurer so as to be risk neutral.

(3) The comparison required by this clause:

- (a) is to be in terms of the measure or measures advised in guidelines issued by the Treasurer; and
- (b) is to relate to liability portfolio performance during the financial year to which the report relates.

**SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992**

(Sec. 108)

- (1) Section 11 (**Investigations and reports by Tribunal—standing reference**):

In section 11 (1) (a), omit “maximum price”, insert instead “pricing”.

- (2) Section 12 (**Investigations and reports by Tribunal—reference by Minister**):

(a) In section 12 (1) (a), omit “maximum price”, insert instead “pricing”.

(b) In section 12 (3), omit “maximum price”, insert instead “pricing”.

(c) In section 12 (3), omit “that price”, insert instead “that pricing”.

- (3) Section 13 (**Investigations and reports by Tribunal—general provisions**):

In section 13 (5), omit “maximum price”, insert instead “pricing”.

- (4) Section 13A:

After section 13, insert:

Determinations of pricing

13A. (1) In making a determination of the pricing for a government monopoly service, the Tribunal is limited to doing either of the following:

(a) determining the maximum price for the monopoly service;

(b) determining the methodology for fixing the maximum price for the monopoly service.

(2) However, the Tribunal may choose to make a determination in terms of subsection (1) (b) only if the Tribunal is of the opinion that it is impractical to make a determination in terms of subsection (1) (a).

**SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued***

(3) The Tribunal is to include in its determination a statement of the reasons why it has chosen to make a determination in terms of subsection (1) (b).

(5) Section 14A:

After section 14, insert:

Determination of methodology for fixing prices

14A. (1) A determination of the Tribunal of the methodology for fixing the price for a government monopoly service may be made in any manner the Tribunal considers appropriate.

(2) In making such a determination, the Tribunal may have regard to such matters as it considers appropriate, including, for example, the following:

- (a) the government agency's economic cost of production;
- (b) past, current or future expenditures in relation to the government monopoly service;
- (c) charges for other monopoly services provided by the government agency;
- (d) economic parameters, such as:
 - (i) discount rates; or
 - (ii) movements in a general price index (such as the Consumer Price Index), whether past or forecast;
- (e) a rate of return on the assets of the government agency;
- (f) a valuation of the assets of the government agency;
- (g) the effects of pricing on environmental outcomes (including the sustainability of eco-systems) and the use of natural resources by the government agency.

SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued*(6) Section 16 (**Report on financial impact if maximum price not charged**):

After “service”, insert “or determines a methodology that would or might increase the maximum price for a government monopoly service”.

(7) Section 17 (**Gazettal of determinations**):

In section 17 (1), omit “maximum price”, insert instead “pricing”.

(8) Section 18 (**Implementation of price determinations and other reports**):

(a) After section 18 (1), insert:

(1A) A determination made by the Tribunal of the methodology for fixing the maximum price for a government monopoly service is to be implemented as follows:

(a) if the price for the service is fixed by a Minister, a public official (other than the Governor) or the relevant government agency—the Minister, official or agency is to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology;

(b) in any other case—the Minister responsible for the supply of the service (or for the government agency that supplies the service) is required to take the appropriate action available to the Minister to ensure that the price does not exceed the maximum price fixed in accordance with a proper application of the methodology.

(b) In section 18 (2), after “Tribunal”, insert “or calculated in accordance with the determination of the Tribunal”.

**SCHEDULE 6—AMENDMENT OF GOVERNMENT PRICING
TRIBUNAL ACT 1992—*continued*****(9) Section 31:**

After section 30, insert:

Disputes regarding application of determination of methodology

31. (1) A customer who is dissatisfied with the way in which a government agency applies the methodology in a determination referred to in section 14A may complain to the agency.

(2) The chief executive of the agency is to review the complaint or cause it to be reviewed.

(3) The customer, if still dissatisfied, may request the agency that the matter be reviewed by way of arbitration by an arbitrator, who is to be appointed by agreement between the customer and the agency. The agency is, subject to this section, to comply with any such request.

(4) Costs of the arbitration are to be borne equally by the agency and the customer.

(5) The regulations may exclude classes of determinations from the operation of this section and may make provision for or with respect to reviews and arbitration under this section, including:

- (a) the times within which complaints and requests are to be made;
- (b) the circumstances in which complaints and requests may be dismissed without consideration;
- (c) the determination of costs of arbitration.

(6) Subject to this section and the regulations, the Commercial Arbitration Act 1984 applies to any such arbitration.

(10) Schedule 1 (Government agencies for which Tribunal has standing reference):

Omit "Water Board", insert instead "Sydney Water Corporation Limited".

SCHEDULE 7—AMENDMENT OF OTHER ACTS

(Sec. 109)

Aboriginal Land Rights Act 1983 No. 42

- (1) Section 43 (**Exemption of Aboriginal lands from the payment of rates**):

From section 43 (1) (b), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

- (2) Section 44 (**Execution etc. against Aboriginal lands barred in certain cases**):

From section 44 (b), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

Attachment of Wages Limitation Act 1957 No. 28

Schedule:

Omit “Metropolitan Water, Sewerage and Drainage Board.”.

Building Services Corporation Act 1989 No. 147

Section 135 (**Proceedings for certain offences under other Acts**):

Omit section 135 (g), insert instead:

(g) the Water Board (Corporatisation) Act 1994; or

Capital Debt Charges Act 1957 No. 1

Schedule:

Omit the matter relating to The Metropolitan Water, Sewerage and Drainage Board.

Clean Waters Act 1970 No. 78

Section 5 (**Definitions**):

- (a) From the definition of “statutory authority”, omit “the Metropolitan Water Sewerage and Drainage Board,”.
- (b) Omit the definition of “Water Board”.

SCHEDULE 7—AMENDMENT OF OTHER 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 Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994,”.

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

Insert in numerical order:

(6) For the purposes of this section, Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994 is taken to be a public authority constituted by Act of Parliament.

Dams Safety Act 1978 No. 96Section 8 (**Members**):

From section 8 (2) (b), omit “Metropolitan Water Sewerage and Drainage Board constituted under the Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Drainage Act 1939 No. 29Section 5 (**Certain Acts not affected**):

Omit “the Metropolitan Water, Sewerage and Drainage Act 1924–1937”, insert instead “the Water Board (Corporatisation) Act 1994”.

Electricity Commission Act 1950 No. 22Section 3 (**Definitions**):

From the definition of “Statutory body” or “Statutory body representing the Crown” in section 3 (1), omit “the Metropolitan Water, Sewerage and Drainage Board,”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***Environmental Education Trust Act 1990 No. 26**(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”.

(2) Section 13 (**Environmental Education Trust Fund**):

Omit section 13 (1) (a), insert instead:

- (a) 10 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; and

Environmental Research Trust Act 1990 No. 25(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”.

(2) Section 13 (**Environmental Research Trust Fund**):

Omit section 13 (1) (a), insert instead:

- (a) 20 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; and

Environmental Restoration and Rehabilitation Trust Act 1990 No. 24(1) Section 5 (**Membership and procedure of the Trust**):

From section 5 (2) (d), omit “Chairperson of the Water Board”, insert instead “Managing Director of Sydney Water Corporation Limited”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(2) Section 16 (**Environmental Restoration and Rehabilitation Trust Fund**):

Omit section 16 (1) (a), insert instead:

- (a) 70 per cent of payments received by the Water Board or Sydney Water Corporation Limited that are payable on or after 1 January 1990 and before 1 July 2000 for permissions or agreements relating to the discharge of trade waste into any service of the Water Board or Sydney Water Corporation Limited; and

Evidence Act 1898 No. 11Section 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 Metropolitan Water Sewerage and Drainage Board,”.

First State Superannuation Act 1992 No. 100Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

Fluoridation of Public Water Supplies Act 1957 No. 58Section 11 (**Regulations**):

From section 11 (1) (b), omit “, other than persons employed by the Water Board,”.

Government and Related Employees Appeal Tribunal Act 1980 No. 39

(1) Section 21 (2):

Omit the subsection.

(2) Schedule 4 (**Employing authorities**):

Omit “The Metropolitan Water Sewerage and Drainage Board.”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***Heritage Act 1977 No. 136**(1) Section 123 (**Definitions**):

- (a) From paragraph (c) of the definition of “rating or taxing authority”, omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.
- (b) From the definition of “valuing law”, omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

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

From section 126 (d), omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

Justices Act 1902 No. 27Section 100I (**Definitions**):

From paragraph (a) of the definition of “penalty notice” in section 100I (1), omit “Water Board Act 1987, section 51;”.

Local Government Act 1919 No. 41(1) Section 327 (**Conditions to be observed before opening new roads or subdivisions**):

- (a) Omit section 327 (1) (d) (ii) (A), insert instead:

(A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

- (b) From section 327 (1) (d) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

(c) Omit section 327 (2) (b) (ii) (A), insert instead:

(A) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

(d) From section 327 (2) (b) (ii), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

(2) Section 331A (**Subdivision of land within the area of operations of a water authority**):

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

(i) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

(b) From section 331A (1), omit “the Water Board”, insert instead “Sydney Water Corporation Limited”.

(c) From section 331A (2), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

(d) Omit section 331A (3) (a), insert instead:

(a) the area of operations referred to in Part 4 of the Water Board (Corporatisation) Act 1994; or

(e) From section 331A (3), omit “section 27 of the Water Board Act 1987”, insert instead “section 56 of the Water Board (Corporatisation) Act 1994”.

Local Government Act 1993 No. 30

(1) Section 56 (**Application of Division**):

Omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.

(2) Section 68 (**What activities, generally, require the approval of the council?**)

From section 68 (2), omit “Water Board Act 1987”, insert instead “Water Board (Corporatisation) Act 1994”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(3) Section 555 (**What land is exempt from all rates?**):

Omit section 555 (1) (c), insert instead:

- (c) land that is within a special area or controlled area (within the meaning of the Water Board (Corporatisation) Act 1994) for Sydney Water Corporation Limited referred to in that Act and is Crown land or land vested in the Corporation;

(4) Section 611 (**Annual charge on rails, pipes etc.**):

From section 611 (6) (b), omit "Water Board", insert instead "Sydney Water Corporation Limited".

(5) Section 741 (**Exemption from taxes**):

From section 741 (2), omit "Water Board", insert instead "Sydney Water Corporation Limited".

(6) Section 742 (**Dispute resolution**):

From section 742 (7), omit the matter relating to the Water Board.

National Parks and Wildlife Act 1974 No. 80

(1) Section 74:

Omit the section, insert instead:

Catchment areas and special areas

74. (1) This section applies where:

- (a) any lands reserved as a national park or historic site or dedicated as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area or that comprise a wilderness area within the meaning of the Wilderness Act 1987 are wholly or partly within a catchment area or special area of a water authority; or
- (b) the waters from any lands so reserved or dedicated drain into a catchment area, special area or structure of a water authority.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

(2) The Director-General must, before submitting to the Minister a plan of management for the national park, historic site, nature reserve, state game reserve, karst conservation reserve, Aboriginal area or wilderness area:

- (a) refer the plan to the relevant water authority for its information; and
- (b) also refer the plan to the Director-General of the Department of Water Resources if the relevant water authority is the Hunter Water Corporation Limited.

(3) The Minister must, before adopting the plan of management, consider any representations made by the relevant water authority and (in a case involving the Hunter Water Corporation Limited) the Director-General of the Department of Water Resources.

(4) In this section, “**water authority**” means Sydney Water Corporation Limited, Hunter Water Corporation Limited or the Broken Hill Water Board.

(2) Section 185 (**Catchment areas and special areas**):

- (a) Omit “Metropolitan Water, Sewerage, and Drainage Act 1924” wherever occurring, insert instead “Water Board (Corporatisation) Act 1994”.
- (b) From section 185 (3), omit “proclamation or by-law” wherever occurring, insert instead “order or regulation”.
- (c) From section 185 (4) (a), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.
- (d) From section 185 (5), omit “The Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited”.

New South Wales Retirement Benefits Act 1972 No. 70

Schedule 2:

Omit the matter relating to The Metropolitan Water Sewerage and Drainage Board.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued***Pipelines Act 1967 No. 90**Section 3 (**Definitions**):

From the definition of “statutory body representing the Crown” in section 3 (1), omit “Metropolitan Water Sewerage and Drainage Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Public Authorities (Financial Arrangements) Act 1987 No. 33Schedule 1 (**Authorities**):

- (a) Omit “The Metropolitan Water Sewerage and Drainage Board.”.
- (b) Insert in alphabetical order “Sydney Water Corporation Limited.”.

Public Authorities Superannuation Act 1985 No. 41Schedule 3 (**Employers**):

From Part 2, omit “The Water Board (with respect to all its employees).”.

Public Finance and Audit Act 1983 No. 152Schedule 2 (**Statutory bodies**):

Omit “Water Board.”.

Public Sector Executives Superannuation Act 1989 No. 106Schedule 1 (**Additional Employers**):

Insert “Sydney Water Corporation Limited” in alphabetical order.

Public Sector Management Act 1988 No. 33(1) Schedule 3 (**Declared authorities**):

Omit “Water Board.”.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(2) Schedule 3A (**Chief executive positions**):

From Part 3, omit “Managing Director of the Water Board”.

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

(a) From Part 1, omit heading “Water Board” and all matter under that heading.

(b) From Part 2, omit “Deputy Managing Director of the Water Board”.

State Authorities Non-contributory Superannuation Act 1987 No. 212Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Authorities Superannuation Act 1987 No. 211Schedule 1 (**Employers**):

In Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

State Public Service Superannuation Act 1985 No. 45Schedule 3 (**Employers**):

Omit “The Metropolitan Water Sewerage and Drainage Board.”.

Strata Titles Act 1973 No. 68Section 89 (**Definitions**):

(a) Omit paragraph (c) of the definition of “appropriate valuing Act”, insert instead:

(b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

- (b) From paragraph (c) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Strata Titles (Leasehold) Act 1986 No. 219Section 121 (**Definitions**):

- (a) Omit paragraph (b) of the definition of “appropriate valuing Act”, insert instead:
 - (b) where Sydney Water Corporation Limited is the valuing authority in respect of the parcel—the Water Board (Corporatisation) Act 1994;
- (b) From paragraph (a) of the definition of “valuing authority”, omit “Water Board”, insert instead “Sydney Water Corporation Limited referred to in the Water Board (Corporatisation) Act 1994”.

Superannuation Act 1916 No. 28Schedule 3 (**List of Employers**):

From Part 1, omit “Water Board”, insert instead “Sydney Water Corporation Limited”.

Valuation of Land Act 1916 No. 2(1) Section 47 (**Rating or taxing authorities**):

- (a) Omit “Metropolitan Water Sewerage and Drainage Board.”, insert instead “Sydney Water Corporation Limited.”.
- (b) At the end of section 47, insert:
 - (2) This Part has effect subject to any special arrangements entered into between the Valuer-General and Sydney Water Corporation Limited.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*(2) Section 60 (**Assessed annual value for purposes of other Acts**):

Omit “Metropolitan Water, Sewerage, and Drainage Act 1924”, insert instead “Water Board (Corporatisation) Act 1994”.

(3) Part 6B:

Before Part 7, insert:

PART 6B—SPECIAL ARRANGEMENTS**Application of Part**

70H. This Part applies only to Sydney Water Corporation Limited (referred to in this Part as “**the Corporation**”).

Special arrangements

70I. (1) The Valuer-General may enter into special arrangements with the Corporation regarding the supply of valuations to the Corporation.

(2) The special arrangements may make provision for or with respect to the following:

- (a) the times when any such valuations are to be provided (whether on request or otherwise);
- (b) the fees to be paid for any such valuations;
- (c) any other matters relevant to the making, supply and use of any such valuations.

(3) The Valuer-General may terminate any such arrangements:

- (a) in accordance with any procedures contained in the arrangements; or
- (b) with the approval of the Minister and on giving the Corporation at least 6 months’ notice of the termination.

Nature of valuations

70J. (1) Any valuations provided for by a special arrangement under this Part may but need not be in accordance with this Act.

SCHEDULE 7—AMENDMENT OF OTHER ACTS—*continued*

(2) Valuations provided for by a special arrangement and not conforming to the principles of valuations required by other provisions of this Act are nevertheless subject to Parts 3 and 4.

(3) Those Parts (together with any other relevant provisions of this Act) apply with such modifications as are necessary or appropriate in relation to valuations provided for by a special arrangement.

Relationship with other provisions of this Act

70K. (1) This Part has effect despite anything in this Act.

(2) Special arrangements entered into under this Part have effect despite anything in Part 5 (including, but not limited to, sections 48, 49 and 55) and any other provisions of this Act.

Water Administration Act 1986 No. 195

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

Omit "Water Board Act 1987".

SCHEDULE 8—AMENDMENT OF REGULATIONS

(Sec. 110)

Conveyancing (General) Regulation 1992

(1) Clause 41 (**Imposition of restrictions etc. on certain land vested in public authorities**):

At the end of the clause, insert:

(2) For the purposes of paragraph (c) of the definition of "prescribed authority" in section 88D (1) of the Act, Sydney Water Corporation Limited is a prescribed authority.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 8—AMENDMENT OF REGULATIONS—*continued*

(2) Clause 41A:

After clause 41, insert:

Regulation of use of land not held by a prescribed authority

41A. For the purposes of paragraph (c) of the definition of “prescribed authority” in section 88E (1) of the Act, Sydney Water Corporation Limited is a prescribed authority.

Land Tax Management Regulation 1992

Schedule 1 (**Public Authorities**):

Omit “Water Board”.

Roads (General) Regulation 1994

Clause 79 (**Public authorities**):

At the end of the clause, insert:

(2) For the purposes of the definition of “public authority” in the Dictionary to the Act, Sydney Water Corporation Limited is prescribed as a public authority for the purposes of the Act.

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 111)

Regulations

1. (1) 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 Water Board or any member or employee of the Water Board or to the Water Board Act 1987 or any provision of that Act).

(2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(3) 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 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 Water Board or any authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Continuation of certain regulations

2. (1) The following are excluded from repeal under section 106:

- (a) Part 1, clauses 11 and 12 of Part 2, and Part 4, of the Water Board (Finance) Regulation 1988;
- (b) Parts 1 and 2, and clause 24, of the Water Board (Plumbing and Drainage) Regulation 1989;
- (c) the Water Board (Special Areas) Regulation 1989;
- (d) the Water Board (Water Restrictions) Regulation 1994.

(2) The provisions and the Regulation referred to in subclause (1) (a), (b) and (d) as in force immediately before the commencement of this clause are taken to have been made under this Act.

(3) The Water Board (Special Areas) Regulation 1989 as in force immediately before the commencement of this clause is taken to be made under:

- (a) section 85 so far as it relates to special areas; and
- (b) section 89 so far as it relates to controlled areas.

(4) In the provisions referred to in subclause (1) (a)–(d):

- (a) a reference to a provision of the Water Board Act 1987 is to be read as a reference to the corresponding provision (if any) of this Act; and
- (b) a reference to the Managing Director of the Board includes a reference to the chief executive of the Corporation.

Further amendment or repeal of regulations amended by Schedule 8

3. The amendments made by this Act to the regulations referred to in Schedule 8 do not affect the future amendment or repeal of those regulations.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Dissolution of Water Board

4. (1) The Water Board is dissolved.

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

(3) Section 7 applies to that transfer in the same way as it applies to the transfer of the Water Board's business undertaking to the Corporation.

Members of Water Board to vacate office

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

(a) ceases to hold office as such; and

(b) except as provided by subclause (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 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 Water Board

6. (1) On the dissolution of the 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 Water Board.

(2) This clause does not affect any transfer of assets, rights and liabilities under clause 4 of this Schedule or Part 3 of this Act.

Declaration of outer catchment area

7. (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 part of the outer catchment area of the Corporation.

(2) A State environmental planning policy or a regional environmental plan under the Environmental Planning and Assessment Act 1979 may amend or repeal an order declaring an outer catchment area. This subclause does not affect the power under section 43 of the Interpretation Act 1987 for the Governor to make an order amending or repealing such an order.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(3) The lands specified in a proclamation under section 56A of the Metropolitan Water, Sewerage, and Drainage Act 1924 as in force immediately before the repeal of that section (but excluding any lands within a special area or a controlled area) are taken to be the subject of an order declaring them to be part of the outer catchment area of the Corporation. Such an order is taken to be an order made under this clause, and accordingly may be amended or repealed by an order made by the Governor or by a policy or plan referred to in subclause (2).

(4) An order may not be made under this clause in relation to any land within an area while there is in force a State environmental planning policy or regional environmental plan under the Environmental Planning and Assessment Act 1979 requiring the consent authority to give the Corporation notice of applications in relation to the land of the kind referred to in clause 8.

Consent authority to notify Corporation of development applications in outer catchment area

8. (1) In this clause, “**consent authority**” has the same meaning as in the Environmental Planning and Assessment Act 1979.

(2) If a consent authority within the outer catchment area of the Corporation receives a development application in relation to any matter that would adversely affect the quality of the water from which the Corporation draws its supply of water, 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 in determining whether to consent to the development 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 of which notice has been given under this clause if no such submissions are received by the consent authority within 21 days after the notice was given to the Corporation.

(5) The obligations imposed on a consent authority under this clause are taken to be obligations imposed on the consent authority by an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979 and a person, including the Corporation, has the same entitlement to bring proceedings in the Land and Environment Court in respect of a contravention of those requirements as the person would have in respect of a contravention of the requirements of an environmental planning instrument.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Survival of unpaid amounts and amounts charged on land at transfer of business undertaking

9. (1) Any amount that was due but unpaid to the 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 clause 10, any amount that was due but unpaid to the 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.

Certain amounts levied by Water Board not charged on land

10. (1) No service charges or fees levied by the 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.

(2) In this clause, “**charging period**”, in relation to the Water Board means a period declared by an order in force under section 28 (2) of the Water Board Act 1987 (as in force immediately before the commencement of section 106 of this Act) to be a charging period for the Board.

Pending applications for compliance certificates

11. (1) An application for a compliance certificate under the Water Board Act 1987 and pending at the commencement of this clause is taken to be an application for a compliance certificate under this Act.

(2) Any agreement in force or notice operative under Division 2 of Part 3 of the Water Board Act 1987 at the commencement of this clause continues to be in force and operative after that commencement, and for that purpose the relevant provisions of that Act are taken to continue in force in relation to such an agreement or notice (and not otherwise).

(3) The provisions of this clause are subject to the provisions of regulations made under clause 1.

Guarantees

12. Nothing in this Act affects any guarantee given by or in relation to the Water Board before the commencement of this clause and any such guarantee is, after the commencement of this clause, taken to be a guarantee for the payment by the Corporation of the amounts specified or described in the guarantee.

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

Environmental planning instruments: reservation of land

13. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the reservation of land and its acquisition by the Water Board, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 27 of the Environmental Planning and Assessment Act 1979.

Environmental planning instruments: concurrence role

14. A reference in an environmental planning instrument as in force at the commencement of this clause to the Water Board, in the context of the granting of its concurrence to the granting of consent to a development application in relation to lands with a special area, is to be read as a reference to the Corporation. For this purpose, the Corporation is taken to be a public authority referred to in section 30 (2) of the Environmental Planning and Assessment Act 1979.

Environmental impact statements and other planning matters

15. (1) If, before the commencement of this clause:

- (a) the Director of Planning has notified the Water Board of requirements as to the form and content of a proposed environmental impact statement or any other matter to be attended to by or on behalf of the Water Board in accordance with Part 5 of the Environmental Planning and Assessment Act 1979; or
- (b) the Water Board or a person on its behalf has commenced the preparation of an environmental impact statement under that Part; or
- (c) an environmental impact statement has been prepared by or on behalf of the Water Board under that Part,

that Part applies in relation to the activity concerned as if the Water Board had continued in existence and the Corporation were the Water Board.

(2) Part 4 of the Environmental Planning and Assessment Act 1979 does not apply so as to require development consent in relation to an activity referred to in this clause.

Operation of Evidence Act 1898 (sec. 43C)

16. (1) The provisions of section 43C of the Evidence Act 1898 continue to apply in relation to the admissibility in evidence of a print from photographic film of an object referred to in that section prepared by or on behalf of the Water Board before the commencement of this clause if tendered in evidence by or on behalf of the Corporation.

(2) The Corporation is taken to be a “**prescribed corporation**” within the meaning of section 43C (5) of the Evidence Act 1898 for the purposes of this clause.

*Water Board (Corporatisation) Act 1994 No. 88*SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Permits**

17. Without limiting clause 2 of this Schedule, a permit issued under Part 2 of the Water Board (Plumbing and Drainage) Regulation 1989 before the commencement of this clause is taken to have been issued under the authority of a regulation made under this Act.

Existing interests in special areas

18. Nothing in section 82 affects the rights of a person who has entered into an arrangement with the Water Board before the commencement of that section relating to the alienation, mortgage, charging or demise of land in a special area and, in particular, the entitlement of such a person to require due performance or completion (or both) of such an arrangement.

SCHEDULE 10—LIST OF SUBSTANCES

(Sec. 23 (9))

Aluminium
 Ammonia (insofar as it is a toxicant)
 Arsenic
 Barium
 Benzidene
 Boron
 Cadmium
 Chloride
 Chromium
 Cobalt
 Copper
 Cyanide
 Dichlorobenzidine
 Diphenylhydrazine
 Halogenated aliphatic compounds, including chlorinated alkanes and alkenes
 Iron
 Lead
 Manganese
 Mercury
 Molybdenum
 Monocyclic aromatic compounds, including chlorinated benzenes, chlorinated phenols
 and phenolic compounds
 Nickel
 Nitrate and nitrite (insofar as they are toxicants)
 Pesticides, including organochlorines and organophosphates

Water Board (Corporatisation) Act 1994 No. 88

SCHEDULE 10—LIST OF SUBSTANCES—*continued*

Polyaromatic hydrocarbons, including chlorinated naphthylenes, polychlorinated biphenyls (PCBs) and polycyclic aromatic hydrocarbons (PAHs)
Selenium
Silver
Sulphate
Surfactants
Tin
Trihalomethanes
Total residual chlorine, including available chloramines
Zinc

*[Minister's second reading speech made in—
Legislative Assembly on 22 September 1994
Legislative Council on 5 December 1994]*

