

South Australia



WATER RESOURCES ACT 1997

No. 27 of 1997

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ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 27 of 1997

An Act to provide for the management of the State's water resources; to repeal the Catchment Water Management Act 1995, the Water Resources Act 1990 and other Acts; and for other purposes.

[Assented to 10 April 1997]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Water Resources Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"authorised officer" means an authorised officer appointed under this Act;

"authority under this Act" means the Minister, a catchment water management board, a water resources planning committee, a municipal or district council or a controlling authority;

"board" means a catchment water management board;

"business day" means any day except—

(a) a Saturday, Sunday or public holiday; or

(b) a day which falls between 25 December and 1 January in the following year;

"catchment area" means the area of a catchment water management board;

"catchment water management board" means a catchment water management board established under Division 3 of Part 6 and includes a body appointed to be a board under Subdivision 8 of that Division;

"channel" includes—

- (a) a drain, gutter or pipe;
- (b) part of a channel;

"committee" means a water resources planning committee or a committee established by a catchment water management board depending on the context;

"constituent council" in relation to the catchment area of a catchment water management board means a council whose area, or part of whose area, comprises or is included in the area of the board;

"controlling authority" means a controlling authority established under section 199 or 200 of the *Local Government Act 1934*;

"council" means the Water Resources Council established by this Act or a municipal or district council depending on the context;

"the Court" means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*;

"domestic purpose" in relation to the taking of water does not include—

- (a) taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or
- (b) taking water to be used in carrying on a business (except for the personal use of persons employed in the business);

"domestic wastewater" means—

- (a) water used in the disposal of human waste; and
- (b) water used for personal washing; and
- (c) water used for washing clothes or dishes; and
- (d) water used in a swimming pool;

"to drill" in relation to a well means to drill the well or to excavate the well in any other manner and includes to deepen or widen an existing well;

"effluent" means domestic wastewater or industrial wastewater;

"flood plain" of a watercourse means—

- (a) the flood plain (if any) of the watercourse identified in a catchment water management plan or a local water management plan adopted under Part 7; or

- (b) where paragraph (a) does not apply—the flood plain (if any) of the watercourse identified in a Development Plan under the *Development Act 1993*; or
- (c) where neither paragraph (a) nor paragraph (b) applies—the land adjoining the watercourse that is periodically subject to flooding from the watercourse;

"industrial wastewater" means water (not being domestic wastewater) that has been used in the course of carrying on a business (including water used in the watering or irrigation of plants) that has been allowed to run to waste or has been disposed of or has been collected for disposal;

"infrastructure" means—

- (a) artificial lakes; or
- (b) dams or reservoirs; or
- (c) embankments, walls, channels or other works; or
- (d) buildings or structures; or
- (e) pipes, machinery or other equipment;

"intensive farming" means a method of keeping animals in the course of carrying on the business of primary production in which the animals are confined to a small space or area and are usually fed by hand or by a mechanical means;

"lake" means a natural lake, pond, lagoon, wetland or spring (whether modified or not) and includes—

- (a) part of a lake; and
- (b) a body of water declared by regulation to be a lake;

"land" means land, whether under water or not and includes an interest in land and any building or structure fixed to the land;

"licensee" means a person who holds a water licence;

"licensed well driller" means a person who holds a licence under this Act to drill wells;

"Mount Lofty Ranges Watershed" means the area prescribed by regulation for the purposes of this definition;

"occupier" of land means a person who has, or is entitled to, possession or control of the land;

"owner" of land means—

- (a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;

- (b) in relation to dedicated land within the meaning of the *Crown Lands Act 1929* that has not been granted in fee simple but which is under the care, control and management of a Minister, body or other person—the Minister, body or other person;
- (c) in relation to land held under Crown lease or licence—the lessee or licensee;
- (d) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement;
- (e) in relation to any other land—the Minister who is responsible for the care, control and management of the land or, if no Minister is responsible for the land, the Minister for the Environment and Natural Resources;

"prescribed lake" means a lake declared to be a prescribed lake under this Act;

"prescribed watercourse" means a watercourse declared to be a prescribed watercourse under this Act;

"prescribed water resource" includes underground water to which access is obtained by prescribed wells;

"prescribed well" means a well declared to be a prescribed well under this Act;

"private land" means land that is not—

- (a) dedicated land within the meaning of the *Crown Lands Act 1929*; or
- (b) unalienated land of the Crown; or
- (c) vested in or under the care, control or management of an agency or instrumentality of the Crown; or
- (d) vested in or under the care, control or management of a council;

"record" means—

- (a) a documentary record;
- (b) a record made by an electronic, electro-magnetic, photographic or optical process;
- (c) any other kind of record;

"surface water" means—

- (a) water flowing over land (except in a watercourse)—
 - (i) after having fallen as rain or hail or having precipitated in any other manner; or
 - (ii) after rising to the surface naturally from underground;

- (b) water of the kind referred to in paragraph (a) that has been collected in a dam or reservoir;

"surface water prescribed area"—see section 8(2);

"to take" water from a water resource includes—

- (a) to take water by pumping or syphoning the water;
- (b) to stop, impede or divert the flow of water over land (whether in a watercourse or not) for the purpose of collecting the water;
- (c) to divert the flow of water in a watercourse from the watercourse;
- (d) to release water from a lake;
- (e) to permit water to flow under natural pressure from a well;
- (f) to permit stock to drink from a watercourse, a natural or artificial lake, a dam or reservoir;

"underground water" means—

- (a) water occurring naturally below ground level;
- (b) water pumped, diverted or released into a well for storage underground;

"water allocation"—

- (a) in respect of a water licence means the quantity of water that the licensee is entitled to take and use pursuant to the licence;
- (b) in respect of water taken pursuant to an authorisation under section 11 means the maximum quantity of water that can be taken and used pursuant to the authorisation;

"water allocation plan" means a plan prepared and adopted under Part 7 Division 3;

"watercourse" means a river, creek or other natural watercourse (whether modified or not) and includes—

- (a) a dam or reservoir that collects water flowing in a watercourse; and
- (b) a lake through which water flows; and
- (c) a channel (but not a channel declared by regulation to be excluded from the ambit of this definition) into which the water of a watercourse has been diverted; and
- (d) part of a watercourse;

"water licence" means a licence granted under this Act entitling the holder to take water from a watercourse, lake or well or to take surface water from a surface water prescribed area;

"**water plan**" means the State Water Plan or a plan prepared under Part 7;

"**water resource**" means a watercourse or lake, surface water, underground water and effluent;

"**well**" means—

- (a) an opening in the ground excavated for the purpose of obtaining access to underground water;
- (b) an opening in the ground excavated for some other purpose but that gives access to underground water;
- (c) a natural opening in the ground that gives access to underground water;

"**well driller's licence**" means a licence granted under this Act entitling the holder to drill wells;

"**wetland**" means a swamp or marsh and includes any land that is seasonally inundated with water.

(2) For the purposes of this Act—

(a) a reference to a watercourse is a reference to either—

- (i) the bed and banks of the watercourse; or
 - (ii) the water for the time being within the bed and banks of the watercourse,
- or both, depending on the context;

(b) a reference to a lake is a reference to either—

- (i) the bed, banks and shores of the lake; or
 - (ii) the water for the time being held by the bed, banks and shores of the lake,
- or both, depending on the context.

(3) A reference in this Act to varying a water licence includes a reference to varying the water allocation of the licence or the conditions attached to the licence.

(4) An explanatory note to a provision of this Act does not form part of the provision to which it relates.

Act binds Crown

4. (1) This Act binds the Crown in right of this State and also, so far as the legislative power of the State extends, in all its other capacities.

(2) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.

(3) Without derogating from or limiting subsection (1) or (2), all agencies and instrumentalities of the Crown must endeavour, as far as practicable, to act consistently with the State Water Plan and all other relevant water plans under this Act.

Application of Act

5. (1) This Act is subject to the following Acts and agreements:

- (a) the agreement (as amended from time to time) approved by the *Murray-Darling Basin Act 1993*;
- (b) the Border Groundwater Agreement (as amended from time to time) approved by the *Groundwater (Border Agreement) Act 1985*;
- (c) the indenture (as amended from time to time) ratified and approved by the *Roxby Downs (Indenture Ratification) Act 1982*;
- (d) the *Pulp and Paper Mills Agreement Act 1958*;
- (e) the *Pulp and Paper Mill (Hundred of Gambier) Indenture Act 1961*;
- (f) the *Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964*;

(2) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

PART 2
OBJECT OF THIS ACT

Object

6. (1) The object of this Act is to establish a system for the use and management of the water resources of the State—

- (a) that ensures that the use and management of those resources sustain the physical, economic and social well being of the people of the State and facilitate the economic development of the State while—
 - (i) ensuring that those resources are able to meet the reasonably foreseeable needs of future generations; and
 - (ii) protecting the ecosystems (including their biological diversity) that depend on those resources; and
- (b) that, by requiring the use of caution and other safeguards, reduces to a minimum the detrimental effects of that use and management.

(2) The Minister, the Water Resources Council, catchment water management boards, municipal and district councils, the Court and all other bodies and persons involved in the administration of this Act—

- (a) must act consistently with, and seek to further, the object of this Act set out in subsection (1); and
- (b) must have regard for the need—
 - (i) to maintain or improve the quality of naturally occurring water with resulting benefits to other natural resources of the State including the land and its soil, native vegetation and native animals; and
 - (ii) to protect watercourses, lakes, surface and underground water from degradation and, where practicable, to reverse degradation that has already occurred; and
 - (iii) to protect and enhance ecosystems that depend on naturally occurring water; and
 - (iv) to keep the state and condition of the water resources of the State under review; and
 - (v) to identify alternative sources of water and facilitate the use of water from those sources; and
 - (vi) to encourage members of the community to take an active part in planning the management of water resources and in managing those resources; and
 - (vii) to promote public awareness of the importance of the State's water resources and the use and management of those resources in accordance with this Act; and
 - (viii) to integrate, as far as practicable, the administration of this Act and other legislation dealing with natural resources.

**PART 3
RIGHTS IN RELATION TO WATER**

Right to take water

7. (1) Subject to this Act¹ and to any other Act or law to the contrary, a person who has lawful access to a watercourse, lake or well may take water from the watercourse, lake or well for any purpose.

(2) Subject to this Act¹ and to any other Act or law to the contrary, the occupier of land is entitled to take surface water from the land for any purpose.

¹ For example a person cannot build a dam to collect water in a prescribed watercourse (or a watercourse that is not prescribed if the relevant water plan so provides) without a permit. Another example is the power of the Minister, by notice under section 16, to restrict or prohibit the taking of water to protect ecosystems or for other reasons set out in that section.

(3) Subject to subsection (5), authorisation in the form of a water licence or under section 11 is required to take water from a prescribed watercourse, lake or well or to take surface water from a surface water prescribed area.

(4) Subject to subsection (5), a person must not take water from a watercourse, lake or well that is not prescribed if to do so—

- (a) would detrimentally affect the ability of another person to exercise a right to take water from the watercourse or lake or from the same underground aquifer; or
- (b) would detrimentally affect the enjoyment of the amenity of water in the watercourse or lake by the occupier of land—
 - (i) that adjoins the watercourse or through which the watercourse runs; or
 - (ii) that adjoins the lake or on which the lake is situated.

(5) Subsections (3) and (4) do not apply to the taking of water if—

- (a) the water is taken by the occupier of land from—
 - (i) a watercourse that adjoins or runs through the land; or
 - (ii) a lake that adjoins or is on the land; or
 - (iii) a well that is on the land; or

(b) the water is surface water and is taken by the occupier of land from the land,

and is used by the occupier for domestic purposes or for watering stock (other than stock subject to intensive farming).

(6) Subsection (5) does not apply to the taking of water from a prescribed watercourse, lake or well or the taking of surface water from a surface water prescribed area if the regulation declaring the watercourse, lake or well or the surface water prescribed area excludes the operation of that subsection.

(7) Subsection (3) does not apply to the taking of water for the purposes of drinking or cooking by the person who takes it or by a person to whom he or she gives the water if the rate at which the water is taken does not exceed the rate prescribed by regulation.

(8) Despite the other provisions of this section, water must not be taken contrary to the provisions of a water plan that applies in relation to that water unless the water is taken pursuant to a water licence or an authorisation under section 11.

(9) Rights at common law in relation to the taking of naturally occurring water are abolished.

Declaration of prescribed water resources

8. (1) The Governor may, by regulation made on the recommendation of the Minister, declare that a watercourse, lake or well is a prescribed watercourse, lake or well.

(2) The Governor may, by regulation made on the recommendation of the Minister, declare that part of the State is a surface water prescribed area.

(3) A regulation under subsection (1) may refer to watercourses, lakes or wells individually or by reference to the part of the State in which they are situated or by any other classification.

(4) Before making a recommendation to the Governor, the Minister must—

- (a) cause to be published in the *Gazette*, in a newspaper circulating generally throughout the State and in a local newspaper a notice outlining the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least three months) specified in the notice; and
- (b) serve a copy of the notice on all councils in the area that will be affected by the proposed regulation; and
- (c) have regard to all submissions made in accordance with the notice.

(5) The Minister must not make a recommendation under this section for a regulation declaring a water resource to be a prescribed water resource unless he or she is satisfied that the proposed regulation is necessary or desirable for the proper management of the water resource to which it will apply.

(6) After a regulation is made the Minister must cause to be published in a newspaper circulating generally throughout the State and in a local newspaper a notice stating the date on which the regulation was made and explaining its effect.

(7) In this section—

"local newspaper" means a newspaper circulating in the part of the State in which the water resource to which the regulation applies or will apply is situated.

PART 4
CONTROL OF ACTIVITIES AFFECTING WATER

DIVISION 1—CONTROL OF ACTIVITIES

Water affecting activities

9. (1) A person must not take water from a prescribed watercourse, lake or well or take surface water from a surface water prescribed area—

- (a) unless he or she is—
 - (i) authorised to do so—
 - (A) by a water licence granted by the relevant authority; or
 - (B) under section 11; or
 - (ii) entitled to take the water for domestic purposes or for watering stock under section 7; and
- (b) where the taking of water consists of the erection, construction or enlargement of a dam, wall or other structure that collects or diverts water flowing in a watercourse or flowing over any other land—unless he or she is authorised to erect, construct or enlarge the dam by a water licence or a permit referred to in subsection (3).

(2) A person must not take water from a watercourse, lake or well that is not prescribed or take surface water from land that is not in a surface water prescribed area in contravention of a water plan that applies in relation to that water.

(3) Subject to this Act, a person must not undertake any of the following activities unless authorised to do so by a permit or water licence granted by the relevant authority:

- (a) drilling, plugging, backfilling or sealing of a well;
- (b) repairing, replacing or altering the casing, lining or screen of a well;
- (c) draining or discharging water directly or indirectly into a well;
- (d) the erection, construction or enlargement of a dam, wall or other structure that will collect or divert—
 - (i) water flowing in a prescribed watercourse; or
 - (ii) water flowing in a watercourse in the Mount Lofty Ranges Watershed that is not prescribed; or
 - (iii) surface water flowing over land in a surface water prescribed area or in the Mount Lofty Ranges Watershed;
- (e) an activity of a kind referred to in subsection (4) that is identified in a water plan that applies in the area in which the activity is to be undertaken as being an activity for which a permit is required under this subsection;
- (f) an activity prescribed by regulation.

(4) Subject to this Act, a person must not undertake any of the following activities contrary to a water plan applying in the area in which the activity is undertaken:

- (a) the erection, construction or enlargement of a dam, wall or other structure that will collect or divert water flowing in a watercourse that is not in the Mount Lofty Ranges Watershed and that is not prescribed or flowing over any other land that is not in a surface water prescribed area or in the Mount Lofty Ranges Watershed;
- (b) the erection, construction or placement of any building or structure in a watercourse or lake or on the floodplain of a watercourse;
- (c) draining or discharging water directly or indirectly into a watercourse or lake;
- (d) depositing or placing an object or solid material in a watercourse or lake;
- (e) obstructing a watercourse or lake in any other manner;
- (f) depositing or placing an object or solid material on the floodplain of a watercourse or near the bank or shore of a lake to control flooding from the watercourse or lake;
- (g) destroying vegetation growing in a watercourse or lake or growing on the floodplain of a watercourse;
- (h) excavating or removing rock, sand or soil from—
 - (i) a watercourse or lake or the floodplain of a watercourse; or
 - (ii) an area near to the banks of a lake so as to damage, or create the likelihood of damage to, the banks of the lake;
- (i) using water in the course of carrying on a business in a catchment area at a rate that exceeds the rate prescribed by the plan if the water has been brought into the catchment area by means of a pipe or other channel;
- (j) using effluent in the course of carrying on a business in a catchment area at a rate that exceeds the rate prescribed by the plan;
- (k) an activity prescribed by regulation.

(5) A person who—

- (a) contravenes subsection (1), (2) or (3); or
- (b) contravenes or fails to comply with a condition to which a water licence, an authorisation under section 11 or a permit is subject,

is guilty of an offence.

Maximum penalty: where offender is a body corporate—\$10 000
 where the offender is a natural person—\$5 000.

(6) The Minister, a catchment water management board or a council that proposes to undertake an activity does not require a permit for the activity if he, she or it is the relevant authority for the purposes of granting permits for that kind of activity.

The relevant authority

10. (1) The relevant authority in relation to the granting of a water licence is the Minister.

(2) Subject to subsection (3), the relevant authority in relation to activities for which a permit is required under this Division is—

- (a) in the case of an activity referred to in section 9(3)(a), (b) or (c)—the Minister;
- (b) in the case of an activity referred to in section 9(3)(d) where—
 - (i) the activity is to be undertaken in the catchment area of a catchment water management board and a comprehensive catchment water management plan has been adopted in relation to the area—the catchment water management board;
 - (ii) where the activity is to be undertaken in a catchment area but a comprehensive plan has not been adopted—the Minister;
 - (iii) where the activity is not to be undertaken in a catchment area—the Minister;
- (c) in the case of the discharge of water into a watercourse for the purpose of running the water down the watercourse for storage in a reservoir or other facility—the Minister;
- (d) in the case of an activity (other than an activity referred to in paragraph (c)) referred to in section 9(3)(e) or (f)—the authority (being the Minister, a catchment water management board, a council or controlling authority) specified in the water plan or regulation as the authority from whom the permit must be obtained.

(3) The authority that is specified as the relevant authority by subsection (2) or by a water plan or regulation under paragraph (d) of that subsection may appoint the Minister, a catchment water management board, a water resources planning committee, a council or a controlling authority in its place to be the relevant authority and in that event the Minister, board, committee, council or controlling authority so appointed is the relevant authority.

(4) An appointment under subsection (3) must be in writing.

(5) A catchment water management plan will be taken to be a comprehensive plan in relation to a permit for an activity referred to in section 9(3)(d) if the Minister has given to the catchment water management board a certificate that, in his or her opinion, the plan deals comprehensively with matters requiring consideration before granting or refusing a permit for an activity of that kind.

Certain uses of water authorised

11. (1) Subject to subsection (2), the Minister may, by notice published in the *Gazette*, authorise the taking of water from a prescribed watercourse, lake or well, or the taking of surface water from a surface water prescribed area, for a particular purpose specified in the notice.

(2) A notice under subsection (1) cannot authorise the taking of water by stopping, impeding or diverting the flow of water for the purpose of collecting the water or diverting the flow of water from a watercourse (these are two of the ways in which water can be taken from a watercourse—see the definition of "to take" in section 3).

(3) A notice under subsection (1) may apply generally throughout the State or in relation to a particular watercourse or lake or to the wells, or the wells of a particular class, in a particular part of the State or to a particular surface water prescribed area.

(4) An authorisation under subsection (1) will be subject to such conditions as the Minister thinks fit and specifies in the notice.

(5) The Minister may vary or revoke a notice under subsection (1) by a subsequent notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

(6) Where a notice referred to in subsection (1) applies to a particular water resource but does not apply generally throughout the State, a notice varying or revoking it under subsection (5) must also be published in a newspaper circulating in the area in which the water resource is situated.

(7) A notice published under subsection (5) or (6) does not have effect, insofar as it revokes or restricts the right to take water or imposes further conditions on that right, until the expiration of seven days after its publication.

(8) Where South Australian Water Corporation has discharged water into a prescribed watercourse, the Minister may authorise the Corporation to take water from the watercourse.

(9) An authorisation under subsection (8) is subject to such conditions as the Minister thinks fit and may be varied or revoked by the Minister at any time.

Activities not requiring a permit

12. (1) Subject to subsection (2), a permit is not required—

- (a) to authorise a person to undertake an activity that he or she is authorised to undertake by a water licence;
- (b) to authorise a person to erect, construct or enlarge contour banks to divert surface water solely for the purpose of preventing or reducing soil erosion but only if—
 - (i) the land concerned is in the district of a soil conservation board under the *Soil Conservation and Land Care Act 1989*; and
 - (ii) an approved district plan or approved property plan that includes guidelines, recommendations or directions in relation to the erection or construction of contour banks is in force; and
 - (iii) the contour banks are erected or constructed in accordance with those guidelines, recommendations or directions;
- (c) to destroy vegetation growing in a watercourse or lake or on the floodplain of a watercourse pursuant to an obligation under the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* or in accordance with consent granted under the *Native Vegetation Act 1991*;
- (d) to undertake an activity that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act or under a corresponding previous enactment;

- (e) to undertake an activity that is required or authorised by an environment protection policy, an environment protection order, an environmental authorisation or a clean-up order under the *Environment Protection Act 1993*;
 - (f) to undertake an activity that is required to implement an approved property plan under the *Pastoral Land Management and Conservation Act 1989* or the *Soil Conservation and Land Care Act 1989*;
 - (g) to undertake an activity that is required to comply with a notice under section 43 of the *Pastoral Land Management and Conservation Act 1989* or a soil conservation order under the *Soil Conservation and Land Care Act 1989*;
 - (h) to authorise a person to undertake an activity that he or she is authorised to undertake by a licence granted under Part 3 Division 2 of the *South Eastern Water Conservation and Drainage Act 1992*;
 - (i) to undertake an activity in circumstances prescribed by regulation.
- (2) Subsection (1) does not apply to or in relation to—
- (a) drilling, plugging, backfilling or sealing a well;
 - (b) repairing, replacing or altering the casing, lining or screen of a well.

Notice to rectify unauthorised activity

13. (1) Where a person has—

- (a) undertaken an activity of a kind referred to in this Division in contravention of this Division or in contravention of the *Local Government Act 1934* or the *Water Resources Act 1990*; or
- (b) contravened or failed to comply with a condition of a water licence or an authorisation under section 11 or a permit,

the relevant authority may serve notice on the owner or occupier of the land on which the activity was undertaken directing him or her to take such action as is specified in the notice to rectify the effects of the activity and to take such other action as the relevant authority considers necessary or desirable in the circumstances;

(2) If the owner or occupier fails to comply with a notice—

- (a) he or she is guilty of an offence; and
- (b) the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner or occupier to the authority.

Maximum penalty: where the offender is a body corporate—\$10 000.
 where the offender is a natural person—\$5 000.

(3) In this section—

"relevant authority" means—

- (a) where subsection (1)(a) applies—the authority that has the power to grant or refuse a water licence or permit in relation to the activity referred to in subsection (1); or
- (b) where subsection (1)(b) applies in relation to a licence or a permit—the authority that granted the licence or permit; or
- (c) where subsection (1)(b) applies in relation to an authorisation under section 11—the Minister.

Obligation to maintain watercourse or lake

14. (1) The relevant authority may, by notice served on the owner or occupier of land on which a watercourse or lake is situated or that adjoins a watercourse or lake, direct the owner or occupier to take the action specified in the notice to maintain the watercourse or lake in good condition.

(2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: where the offender is a body corporate—\$10 000.
 where the offender is a natural person—\$5 000.

(3) Where the owner or occupier on whom a notice has been served under this section fails to comply with the notice, the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner or occupier to the authority.

(4) In this section—

"relevant authority" means—

- (a) where the watercourse or lake is situated in the catchment area of a catchment water management board—the board;
- (b) where the watercourse or lake is situated in the area of a council but not in the area of a board—the council;
- (c) in any other case—the Minister.

Minister may direct removal of dam, etc.

15. (1) The Minister may, on the recommendation of a catchment water management board, by notice served on the owner of land in the catchment area of the board, direct the owner to remove or modify a dam, embankment, wall or other obstruction or object that collects water, or diverts or impedes the flow of water, in a watercourse or flowing over any other land and that was lawfully placed in or near the watercourse or on the land before the commencement of this Division.

(2) Compensation is payable under section 146 in relation to the removal of a dam, embankment, wall or other obstruction or object by the owner in compliance with a notice under subsection (1).

(3) Where the owner on whom a notice has been served under this section fails to comply with the notice, the Minister may enter the land and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances.

Restrictions in case of inadequate supply or overuse of water

16. (1) Where, in the opinion of the Minister—

- (a) the rate at which water is taken from a watercourse, lake or well (whether prescribed or not)—
 - (i) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand; or
 - (ii) is affecting, or is likely to affect, the quality of the water in the watercourse, lake or underground aquifer; or
 - (iii) in the case of water taken from a watercourse or lake—is having a serious effect on another watercourse or lake, or the level of water in an underground aquifer, that depends on water from the watercourse or lake for replenishment; or
- (b) the rate at which water is taken from a well (whether prescribed or not) is such that the underground aquifer is likely to collapse or suffer any other damage; or
- (c) the rate at which surface water is taken (whether from a surface water prescribed area or not)—
 - (i) is such that the surface water available can no longer meet the demand; or
 - (ii) is having a serious effect on a watercourse or lake, or the level of water in an underground aquifer, that depends on the surface water for replenishment,

the Minister may, by notice published in the *Gazette* and in a newspaper circulating in that part of the State in which the watercourse, lake or well or the surface water is situated—

- (d) prohibit or restrict the taking of water from the watercourse, lake or well or the taking of surface water; or
- (e) direct that dams, reservoirs, embankments, walls or other structures be modified to allow water to pass over, under or through them.

(2) When determining the demands on available water under subsection (1), the need for water of the ecosystems that depend on water from the water resource concerned must be taken into account.

(3) A notice under subsection (1) has effect—

- (a) at the expiration of seven days from publication of the notice in the *Gazette* and in the newspaper;
- (b) in relation to a person on whom a copy of the notice published in the *Gazette* and newspaper has been served personally or by post—at the time of service or the time specified in paragraph (a) whichever is the earlier.

(4) A notice under subsection (1) remains in force for such period (not exceeding two years) as is stated in the notice unless it is revoked under subsection (9).

(5) Where, in the opinion of the Minister, the rate at which, or the manner in which, water is taken from a water resource that has not been prescribed is causing, or is likely to cause, damage to ecosystems that depend on water from the water resource, the Minister may, by notice served on a person taking the water—

- (a) restrict the rate and the times at which he or she may take water; or
- (b) direct him or her to take such action as is specified in the notice to rectify any problem relating to the manner in which water is taken.

(6) A notice under subsection (1) or (5)—

- (a) may require the removal of the means by which water can be taken from the watercourse, lake or well or the means by which surface water can be taken; or
- (b) may specify conditions subject to which water may be taken from the watercourse, lake or well or surface water may be taken.

(7) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Maximum penalty: where the offender is a body corporate—\$10 000
 where the offender is a natural person—\$5 000.

(8) If the owner or occupier of land fails to comply with a requirement of a notice under subsection (6)(a), the Minister may enter the land and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the owner or occupier to the Minister.

(9) Where a notice has been published under subsection (1), the Minister may vary or revoke the notice by notice published in the *Gazette* and in a newspaper circulating in that part of the State in which the water resource is situated.

(10) Where the Minister has served notice on a person under subsection (5), the Minister may vary or revoke the notice by subsequent notice served on that person.

Duty not to damage watercourse or lake

17. (1) It is the duty of the owner and occupier of land on which a watercourse or lake is situated or that adjoins a watercourse or lake to take reasonable steps to prevent damage to the bed and banks of the watercourse or the bed, banks or shores of the lake and to the ecosystems that depend on the watercourse or lake.

(2) Where, in the opinion of the relevant authority, the owner or occupier of land has failed to carry out his or her duty under subsection (1), the relevant authority may serve notice on the owner or occupier directing him or her to take such action as is specified in the notice—

- (a) to prevent damage of the kind referred to in subsection (1); and
- (b) to rectify damage that has already occurred; and
- (c) as the authority considers necessary or desirable in the circumstances.

(3) If the owner or occupier fails to comply with a notice—

(a) he or she is guilty of an offence; and

(b) the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner or occupier to the authority.

Maximum penalty: where the offender is a body corporate—\$10 000

where the offender is a natural person—\$5 000.

(4) In this section—

"damage" does not include—

(a) damage caused in the normal course of an activity authorised by or under this Act;

(b) damage of a minor nature.

"relevant authority" means—

(a) where the land is situated in the catchment area of a catchment water management board—the board;

(b) where the land is situated in the area of a council but not in a catchment area—the council;

(c) in any other case—the Minister.

DIVISION 2—PERMITS

Permits

18. (1) An application for a permit must be in a form approved by the relevant authority and must, if a fee has been prescribed by regulation in relation to the application, be accompanied by the fee.

(2) The applicant must provide the relevant authority with such information as the authority reasonably requires to consider the application.

(3) The decision of a relevant authority to grant an application must not be inconsistent with the State Water Plan and any relevant water allocation plan and—

(a) where the land on which the activity is to be undertaken is in a catchment area and a catchment water management plan for the area has been adopted—with that plan;

(b) where the land is in the area of a council but not in a catchment area and a local water management plan has been adopted for the area—with the local water management plan.

(4) A relevant authority must not grant a permit contrary to a notice for the time being in force under section 16(1) or (5).

(5) Subject to its terms, a permit is binding on and operates for the benefit of the applicant and the owner and occupier of the land to which it relates when it is granted and all subsequent owners and occupiers of the land.

(6) A permit is subject to such conditions as are prescribed by this Act or by regulation under this Act or are specified in the permit by the relevant authority.

(7) Depending on its nature, a condition may remain in force after the activity authorised by the permit has been completed.

(8) It is a condition of a permit to drill, plug, backfill or seal a well or to repair, replace or alter the casing, lining or screen of a well that the work be undertaken by a person who is a licensed well driller or is supervised in carrying out the work by a licensed well driller.

(9) If the relevant authority is satisfied that the holder of a permit or a person acting on behalf of the holder of a permit has contravened or failed to comply with a condition of the permit, the authority may, by notice served on the holder of the permit, vary, suspend or revoke the permit.

(10) Where a water plan has been varied, a relevant authority may vary a permit granted by it so that the permit is not inconsistent with the plan.

(11) Where a water plan was not in force when a permit was granted but comes into force subsequently, the relevant authority that granted the permit may vary it so that it is not inconsistent with the plan.

(12) Where it is not possible or practicable to vary a permit under subsection (10) or (11) so that the permit is not inconsistent with the plan, the relevant authority may revoke the permit.

(13) Where the rising level of underground water is—

- (a) damaging soil, rock or other structures; or
- (b) damaging ecosystems; or
- (c) affecting the natural drainage of surface water,

the relevant authority may revoke a permit to drain or discharge water directly or indirectly into a well that provides access to that underground water.

(14) In any other case, the relevant authority may vary, suspend or revoke a permit with the consent of the holder of the permit.

(15) The variation or revocation of a permit under this section will be effected by the relevant authority serving notice of the variation or revocation on the holder of the permit.

(16) The holder of a permit may appeal to the Court against the variation or revocation of the permit under this section.

(17) A relevant authority that has granted a permit to undertake an activity and a person employed by, or who acted on behalf of, the authority in granting the permit is not liable for any injury, loss or damage caused by, or resulting from—

- (a) the manner in which the activity is carried out; and

- (b) in the case of the erection, construction or enlargement of a dam, wall, building or other structure—the design of the dam, wall, building or other structure or the materials used for its erection, construction or enlargement.

(18) In this section—

"relevant authority" in relation to a permit means the authority that is for the time being the relevant authority under section 10 for the purpose of granting or refusing an application for a permit of that kind.

Requirement for notice of certain applications

19. (1) This section applies to an application for a permit if the relevant water plan provides that this section applies to the application.

(2) Notice of an application to which this section applies must be given by the relevant authority to whom the application has been made in accordance with the regulations to those persons specified in the plan and those persons (if any) prescribed by the regulations and to the public generally.

(3) Where notice of an application has been given under this section, any person who desires to do so may, in accordance with the regulations, make representations in writing to the relevant authority in relation to the granting or refusal of the permit.

(4) The relevant authority must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations.

(5) The response referred to in subsection (4) must be made within the number of days prescribed by regulation after the relevant material is forwarded to the applicant.

(6) The relevant authority must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the authority, a reasonable opportunity to appear personally or by representative before it to be heard in support of the representation.

(7) If a person appears before the relevant authority under subsection (6), the relevant authority must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative before it in order to respond to any relevant matter.

(8) Where representations have been made under this section, the relevant authority must—

(a) give to each person who made a representation, notice of its decision on the application and of the date of the decision and of the person's appeal rights under this Act; and

(b) give notice to the Court—

(i) of its decision on the application and of the date of the decision; and

(ii) of the names and addresses of persons who made representations to the relevant authority under this section.

(9) A notice under subsection (8) must be given within five business days from the date of the relevant authority's decision on the application.

(10) A person who is entitled to be given notice of the decision under subsection (8) may, within 15 business days after the date on which the notice was given to him or her, appeal to the Court against the decision.

(11) If an appeal is lodged, the applicant for the permit must be notified by the Court of the appeal and will be a party to the appeal.

(12) A decision of a relevant authority in respect of which representations have been made under this section does not operate—

- (a) until the time within which any person who made any such representation may appeal against a decision to grant the permit has expired; or
- (b) where an appeal is commenced—
 - (i) until the appeal is dismissed, struck out or withdrawn; or
 - (ii) until the questions raised by the appeal have been finally determined (other than any question as to costs).

(13) In this section—

"relevant water plan" in relation to an application for a permit means—

- (a) where the permit is required under section 9(3)(a), (b), (c) or (d) and—
 - (i) the activity is to be undertaken in the catchment area of a catchment water management board—the board's catchment water management plan; or
 - (ii) the activity is not to be undertaken in the catchment area of a board—
 - (A) where the water resource to which the permit will relate is a prescribed water resource—the water allocation plan for the resource;
 - (B) where the water resource to which the permit will relate has not been prescribed—the local water management plan (if any) that applies to the resource;
- (b) where the permit is required by a water plan under section 9(3)(e)—that water plan;
- (c) where the permit is required by section 9(3) for an activity prescribed by regulation—the water plan (if any) prescribed for that purpose by the regulation.

Refusal of permit to drill well

20. Without limiting the grounds on which an application to drill a well may be refused, a relevant authority may refuse such a permit if, in the opinion of the authority, the underground water to which the well would give access is so contaminated that its use would create a risk to the health of people or animals.

Availability of copies of permits, etc.

21. (1) The relevant authority must make—

- (a) copies of permits granted by it; and
- (b) written representations made under section 19 in relation to an application for a permit and the written response of the applicant (if any),

available for inspection and purchase by members of the public.

(2) The relevant authority must not charge for inspection of a document referred to in subsection (1) and must not charge more than the fee prescribed by regulation for sale of copies of a document referred to in subsection (1).

DIVISION 3—PROVISIONS RELATING TO WELLS**Well drillers' licences**

22. (1) The Minister may grant a well driller's licence to a natural person who—

- (a) is of or over the age of 18 years; and
- (b) holds qualifications (if any) prescribed by regulation; and
- (c) is, in the Minister's opinion, a fit and proper person to hold such a licence.

(2) An application for a licence must be in a form approved by the Minister and must be accompanied by the fee prescribed by regulation.

(3) A licence must specify the term of the licence and is subject to such conditions as are prescribed from time to time by regulation and to such further conditions as are specified in the licence by the Minister.

(4) If the holder of a well driller's licence contravenes or fails to comply with a condition of the licence—

- (a) the Minister may cancel or suspend the licence; and
- (b) the holder of the licence is guilty of an offence.

Maximum penalty: \$5 000.

(5) The Minister may cancel a well driller's licence if the Minister is satisfied that the holder of the licence is no longer a fit and proper person to hold such a licence.

(6) The holder of a well driller's licence or the former holder of a licence may appeal to the Court against a decision of the Minister under subsection (4)(a) or (5) on the ground that the decision was harsh or unreasonable.

The Water Well Drilling Committee

23. (1) The Water Well Drilling Committee established under the *Water Resources Act 1990* continues in existence.

(2) The functions of the committee are—

- (a) to examine applicants for licences under this section; and
- (b) such other functions as are prescribed by regulation.

(3) The committee has such powers as the Minister delegates to it or as are given to it by regulation.

(4) The Minister may, by notice published in the *Gazette*, vary the notice under the *Water Resources Act 1990* establishing the committee or dissolve the committee.

Renewal of licence

24. (1) A well driller's licence may be renewed from time to time.

(2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the fee prescribed by regulation.

Non-application of certain provisions

25. (1) A provision of this Division does not apply to, or in relation to, a well of a class declared by proclamation to be excluded from the operation of that provision.

(2) A proclamation referred to in subsection (1) may be varied or revoked by subsequent proclamation.

Defences

26. It is a defence to prosecution for the offence of drilling, plugging, backfilling or sealing a well or repairing, replacing or altering the casing, lining or screen of a well without being authorised to do so by a permit or without using the services of a licensed well driller or a person supervised by a licensed well driller—

- (a) to prove that the well is of a class specified by or under schedule 1; or
- (b) to prove that the person who carried out the work was the owner of the land on which the well is situated or was the employee or sharefarmer of the owner of that land and that—
 - (i) the well gives access to underground water the surface of which is at atmospheric pressure and the total dissolved salts of which exceed 1 800 milligrams per litre; and
 - (ii) the work was carried out solely for the purposes of maintenance and did not involve—
 - (A) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications; or
 - (B) a substantial repositioning of the casing, lining or screen; or
 - (C) deepening the well by more than 1.5 metres; or

(c) to prove that—

- (i) the work comprising the alleged offence was carried out to prevent or reduce pollution of water in the well and that in the circumstances it was unreasonable to expect the defendant—
 - (A) to have obtained a permit; or
 - (B) to have obtained the services of a licensed well driller; and
- (ii) the work was carried out in accordance with the regulations (if any); and
- (iii) the Minister was given written notice of the work as soon as practicable after it was completed; or

(d) to prove that—

- (i) the work comprising the alleged offence was carried out pursuant to a permit issued by the relevant authority; and
- (ii) the work comprising the alleged offence was carried out by or under the supervision of the owner of the land on which the well is situated; and
- (iii) at the time of the alleged offence the well was not more than 15 metres in depth (or such other depth as may be prescribed by regulation); and
- (iv) the work was carried out in accordance with the regulations (if any).

Obligation to maintain well

27. (1) Subject to subsection (2), the occupier of land on which a well is situated must ensure that the well (including the casing, lining, and screen of the well and the mechanism (if any) used to cap the well) are properly maintained.

Maximum penalty: where the offender is a body corporate—\$10 000
 where the offender is a natural person—\$5 000.

(2) It is a defence to prosecution for an offence against subsection (1) to prove that—

- (a) the defendant could not lawfully carry out the necessary maintenance work without a permit granted under Division 2; and
- (b) the defendant had applied for the required permit within a reasonable time but the relevant authority had refused or failed to grant it.

Requirement for remedial work

28. (1) Where the Minister is satisfied that the water of a well is likely to be degraded or wasted because—

- (a) of a defect in the well or in the casing, lining or screen of the well; or
- (b) the well or the casing, lining or screen is in need of maintenance; or

- (c) there is no mechanism for capping the well or the mechanism for capping the well is inadequate or in need of maintenance,

the Minister may, by notice served on the owner or occupier of the land on which the well is situated, direct that the work or other action specified in the notice be carried out or taken to remedy the problem.

(2) If, in the Minister's opinion, the defect resulted from work carried out by a licensed well driller, the Minister may, in addition to or instead of serving notice on the owner or occupier of the land, serve notice under subsection (1) on the well driller (but the notice must not be served later than six months after the work was carried out.)

(3) A well driller on whom a notice is served is entitled to enter the land on which the well is situated in order to comply with the notice.

(4) A person who fails to comply with a notice is guilty of an offence.

Maximum penalty: where the offender is a body corporate—\$10 000
 where the offender is a natural person—\$5 000.

(5) If a person on whom a notice has been served fails to comply with the notice the Minister may enter the land on which the well is situated and carry out the necessary work or take the necessary action and any other work or action that the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**PART 5
LICENSING AND ALLOCATION OF WATER**

DIVISION 1—LICENSING

Licences

29. (1) The Minister may grant a water licence to a person to take water from a prescribed watercourse, lake or well or to take surface water from a surface water prescribed area.

(2) An application for a licence must be in a form approved by the Minister and must—

- (a) be accompanied by the fee prescribed by regulation; and
- (b) where the water allocation of the licence will be comprised wholly or partly of an allocation purchased from the Minister—be accompanied by the amount agreed to be paid for the allocation.

(3) The Minister may refuse to grant a water licence—

- (a) if it is not possible to endorse a water allocation on the licence consistently with the relevant water allocation plan; or
- (b) if, in the opinion of the Minister, the water to be taken pursuant to the licence is so contaminated that its use would create a risk to the health of people or animals; or
- (c) to a person who formerly held a licence that was cancelled under this Act; or
- (d) to a person who has committed an offence against this Act.

(4) A licence—

- (a) must specify the water resource from which the water is to be taken; and
- (b) must be endorsed with a water allocation and—
 - (i) if the allocation is comprised of one or more components that expire on a future date, the endorsement must set out the amount of water allocated by each component and the date or dates on which the component or components of the allocation expire; and
 - (ii) if the allocation includes a component that is subject to a condition restricting the purpose for which the water can be used, the endorsement must set out the quantity of water allocated by the component and the purpose for which the water can be used; and
- (c) is subject to conditions prescribed from time to time by regulation and such other conditions as are endorsed on the licence by the Minister; and
- (d) remains in force until the licence is terminated by or under this Act; and
- (e) may specify intervals at which the Minister may vary the conditions of the licence.

(5) A licence (including the water allocation of the licence) is personal property vested in the licensee and will pass to another person under Division 3 or (subject to that Division) in accordance with any other law for the passing of property.

Variation of water licences

30. (1) A water licence may be varied by the Minister—

- (a) at any time with the consent of the licensee; or
- (b) where the licence provides for intervals at which the conditions of the licence may be varied—at those intervals if, in the Minister's opinion, the variation is necessary or desirable to more effectively regulate the use of water from the resource in accordance with the relevant water allocation plan and this Act; or
- (c) at any time if there has been an alteration to the water allocation plan in accordance with which the water allocation was endorsed on the licence and the variation is necessary, in the opinion of the Minister, to prevent the licence from being inconsistent (as to the quantity of water allocated or the basis on which it is allocated) or seriously at variance (as to the licence conditions) with the plan; or
- (d) if he or she is authorised to do so by section 39 or 43; or
- (e) at any time in order to reflect a reduction in the water allocation of the licence by the Minister under section 37.

(2) A licensee may appeal to the Court against the variation of his or her licence under subsection (1)(b) or (c).

Surrender of licence

31. (1) Subject to subsection (2), a licensee may surrender his or her licence at any time.

(2) Where the register of licences kept by the Minister includes a notation that a person has an interest in the licence, the licence cannot be surrendered without the written consent of that person.

(3) On surrender the water allocation of the licence vests in the Minister.

Availability of copies of licences, etc.

32. (1) The Minister must make copies of licences granted by the Minister available for inspection and purchase by members of the public.

(2) The Minister must not charge for inspection of a licence and must not charge more than the fee prescribed by regulation for sale of copies of a licence.

DIVISION 2—ALLOCATION OF WATER

Method of fixing water allocation

33. A water allocation may be fixed by specifying the volume of water that may be taken and used or by reference to the purpose for which the water may be taken and used or in any other manner.

Allocation of water

34. (1) The water allocation, or a component of the water allocation, of a licence may be obtained from—

- (a) the Minister; or
- (b) the holder of another licence.

(2) Subject to subsection (3), allocations obtained from the Minister will be free of charge (except for fees to cover administrative costs and expenses) unless the relevant water allocation plan provides for payment.

(3) Subsection (2) does not apply in relation to an allocation that—

- (a) the Minister has purchased; or
- (b) has been forfeited to the Minister on cancellation of the water licence on which it was endorsed.

(4) If the relevant water allocation plan provides for payment, all allocations obtained from the Minister must be sold by the Minister in accordance with the regulations by public auction or tender or, if either of those methods fail, by private contract.

(5) The Minister may allocate water subject to conditions and those conditions, or such of them as the Minister specifies, will be conditions of the licence to which the water allocation is, for the time being, attached.

(6) Before allocating water the Minister may direct that an assessment of the effect of allocating the water be made (at the expense of the person to whom the water is to be allocated) by an expert appointed or approved by the Minister.

(7) The Minister may refuse to allocate water to a person who has committed an offence against this Act.

(8) The Minister may allocate water contrary to subsection (4)—

- (a) to South Australian Water Corporation to replace an authorisation in favour of the Corporation under section 11; or
- (b) to a licensee as part of the process of transferring a water allocation from a person in another State or Territory of the Commonwealth to the licensee.

Basis of decisions as to allocation

35. (1) The Minister's decision on the grant or variation of a water licence—

- (a) as to the water allocation to be endorsed on the licence, must be consistent with the relevant water allocation plan; and
- (b) as to the conditions to be attached to the licence, must not be seriously at variance with the relevant water allocation plan,

and the Minister's decisions under both paragraphs (a) and (b) must—

- (c) be made in the public interest; and
- (d) be consistent with requirements (if any) prescribed by regulation under this paragraph.

(2) In this section—

"the relevant water allocation plan" means the water allocation plan for the water resource from which the water is to be allocated and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource¹.

¹ Section 101(7) enables a water allocation plan to include provisions relating to the taking and use of water from another resource.

Allocation on declaration of prescribed water resource

36. (1) On declaration of a watercourse, lake or well as a prescribed watercourse, lake or well or declaration of a part of the State as a surface water prescribed area, an existing user of water from the water resource concerned—

- (a) may, subject to a restriction or prohibition under section 16, continue to use water without a licence until the end of the prescribed period or, if he or she applies for a licence within six months after the publication in the *Gazette* of the regulation declaring the resource to be a prescribed resource, until the application is granted or refused;
- (b) is, subject to subsection (3), entitled to have endorsed on the licence without the payment of a purchase price a water allocation determined by the Minister under subsection (2) after consultation with the existing user.

(2) The water allocation will be the quantity of water that will, in the opinion of the Minister, meet the future requirements of the existing user—

- (a) based on his or her reasonable requirements in the establishment period; or
- (b) for water for a development, project or other undertaking to which he or she was legally committed or in respect of which he or she had committed significant financial or other resources before the commencement of the prescribed period; or
- (c) under both paragraphs (a) and (b).

(3) If at the expiration of the prescribed period, the aggregate of the allocations of water to which existing users are entitled under subsection (1) exceeds, in the opinion of the Minister, the capacity of the resource, the Minister may—

- (a) reduce the allocation to which each existing user is entitled proportionately; or
- (b) reduce the allocations pursuant to a scheme set out in regulations.

(4) Before determining the capacity of the resource the Minister must prepare a report assessing the need for water of ecosystems that depend on the resource for water.

(5) The Minister must make the report publicly available.

(6) An existing user may appeal to the Court against a determination or decision of the Minister under subsection (2).

(7) Subject to a restriction or prohibition under section 16, a person who is not an existing user may take water from the water resource without a licence until the end of the prescribed period.

(8) If the quantity of water available for allocation exceeds the entitlements of existing users, the Minister may allocate the excess in accordance with the relevant water allocation plan and section 34.

(9) An entitlement referred to in subsection (1)(b) may be transferred to another person with the approval of the Minister.

(10) In this section—

"the establishment period" in relation to the declaration of a water resource means the period prescribed for the purposes of this definition by the regulation declaring the resource to be a prescribed resource being a period that ends at the commencement of the prescribed period;

"existing user" means, subject to subsection (11), a person—

- (a) who took water from the resource at any time during the establishment period; or
- (b) who did not take any water during that period but who needs water for a development, project or undertaking to which he or she was legally committed or in respect of which he or she had, in the opinion of the Minister, committed significant financial or other resources before the commencement of the prescribed period;

"the prescribed period" in relation to a water resource commences on the date of publication in the *Gazette*, a newspaper circulating generally throughout the State or a local newspaper (whichever occurs first) of the notice inviting submissions in relation to the proposed regulation declaring the resource to be a prescribed resource and ends on the date specified for that purpose in the regulation.

(11) A person ceases to be an existing user if he or she does not apply for a water licence within six months after publication in the *Gazette* of the regulation declaring the resource to be a prescribed resource.

Reduction of water allocations

37. (1) The Minister may reduce the water allocations of the licences that have been granted to take water from a particular water resource if in his or her opinion it is necessary or desirable to do so—

- (a) to prevent a reduction, or further reduction, in the quality of the water in the resource or in a water resource that is affected by the taking of water from the firstmentioned resource; or
- (b) to prevent damage, or further damage, to an ecosystem that depends on that water or on the water from a resource that is affected by the taking of water from the firstmentioned resource; or
- (c) because there is insufficient water to meet the existing demand or expected future demand for water from that resource or from a water resource that is affected by the taking of water from the firstmentioned resource; or

(d) because there has been, or is to be, a reduction in the quantity of water available pursuant to the *Groundwater (Border Agreement) Act 1985* or the *Murray-Darling Basin Act 1993*.

(2) Subject to regulations made under subsection (3), the Minister must reduce the allocation of all of the licences that have been granted to take water from the water resource proportionately.

(3) Instead of the allocations being reduced proportionately they may be reduced pursuant to a scheme set out in regulations made by the Governor on the recommendation of the Minister.

(4) The reduction of a water allocation under this section comes into operation at the expiration of seven days after notice of the reduction is served on the licensee by the Minister.

(5) Before making a recommendation to the Governor for the purposes of subsection (3), the Minister must—

- (a) consult the water resource planning committee established in relation to the water resource; and
- (b) cause to be published in the *Gazette*, in a newspaper circulating generally throughout the State and in a local newspaper a notice outlining the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least three months) specified in the notice; and
- (c) have regard to the views of the committee and to all submissions made in accordance with the notice.

DIVISION 3—TRANSFER OF LICENCES AND WATER ALLOCATIONS

Transfer

38. (1) Subject to this Division and the relevant water allocation plan, a licensee may—

- (a) transfer the licence (including its water allocation) to another person; or
- (b) transfer the whole or part of the water allocation of the licence to another licensee or the Minister.

(2) The transfer of a licence under subsection (1) requires the approval of the Minister and may be absolute or for a limited period.

(3) The Minister may refuse to grant approval for the transfer of a water licence to a person on the same grounds as those on which the Minister would refuse to grant an application by that person for a licence.

(4) The transfer of the whole or part of the water allocation of a licence between licensees is achieved by variation of the transferring and receiving licences by the Minister and may be absolute or for a limited period.

(5) The Minister may refuse to vary the licences if the transfer of the whole or part of a water allocation is to a person who has committed an offence against this Act.

(6) A licence or a water allocation or part of a water allocation that has been transferred for a limited period reverts automatically to the transferor or the transferor's licence when the period expires.

(7) The transfer of a licence or the whole or part of a water allocation to or by South Australian Water Corporation must also be approved by the Minister for the time being administering the *Waterworks Act 1932*.

Application for transfer of licence or allocation

39. (1) An application to the Minister for his or her approval of the transfer of a licence or for the variation of licences on the transfer of the whole or part of a water allocation must—

- (a) be in a form approved by the Minister; and
- (b) be accompanied by the fee prescribed by regulation and the licence or licences affected by the application.

(2) Before granting an application the Minister may direct that an assessment of the effect of granting the application be made (at the expense of the applicant) by an expert appointed or approved by the Minister.

(3) The Minister may when granting an application under subsection (1)—

- (a) reduce the water allocation of the transferred licence;
- (b) in the case of an application for the transfer of the whole or part of the water allocation of a licence to another licence, require that the water allocation received by the receiving licence be for a quantity of water fixed by the Minister that is less than the water allocation transferred from the transferring licence;
- (c) vary any condition of the licence transferred or the receiving licence to ensure consistency with the relevant water allocation plan.

(4) As an example but without limiting subsection (3), where, following the transfer of a licence or the whole or part of the water allocation of a licence, the water will not be taken from the same part of the water resource as before, the Minister may exercise his or her powers under subsection (3)—

- (a) to ensure that the demand for water from the part of the water resource from which the water will be taken in future does not prejudice other licensees by exceeding the availability of water in that part of the water resource; or
- (b) to reflect the loss to the water resource of part of the water represented by the transferred licence or allocation by reason of evaporation or any other cause as the water flows to the part of the resource from which it will be taken in future.

Requirement for notice of application for certain transfers

40. (1) This section applies to an application for the transfer of a licence or the water allocation of a licence if the relevant water allocation plan provides that this section applies to the application.

(2) Notice of an application to which this section applies must be given by the Minister in accordance with the regulations to those persons specified in the plan and to those persons (if any) prescribed by the regulations and to the public generally.

(3) Where notice of an application has been given under this section, any person who desires to do so may, in accordance with the regulations, make representations in writing to the Minister in relation to the granting or refusal of the application.

(4) The Minister must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations.

(5) The response referred to in subsection (4) must be made within the number of days prescribed by regulation after the relevant material is forwarded to the applicant.

(6) The Minister must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the Minister, a reasonable opportunity to appear personally or by representative before the Minister to be heard in support of the representation.

(7) If a person appears before the Minister under subsection (6), the Minister must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter.

(8) Where representations have been made under this section, the Minister must—

(a) give to each person who made a representation notice of his or her decision on the application and of the date of the decision and of the person's appeal rights under this Act; and

(b) give notice to the Court—

(i) of his or her decision on the application and of the date of the decision; and

(ii) of the names and addresses of persons who made representations to the Minister under this section.

(9) A notice under subsection (8) must be given within five business days from the date of the decision on the application.

(10) A person who is entitled to be given notice of the decision under subsection (8) may, within 15 business days after the date on which the notice was given to him or her, appeal to the Court against the decision.

(11) If an appeal is lodged by a person who is entitled to be given notice of the decision under subsection (8), the applicant for the transfer must be notified by the Court of the appeal and will be a party to the appeal.

(12) A decision of the Minister in respect of which representations have been made under this section does not operate—

(a) until the time within which any person who made any such representation may appeal against a decision to grant the application has expired; or

(b) where an appeal is commenced—

(i) until the appeal is dismissed, struck out or withdrawn; or

- (ii) until the questions raised by the appeal have been finally determined (other than any question as to costs).

(13) In this section—

"the relevant water allocation plan" means the water allocation plan for the water resource in relation to which the licence was granted or from which the water was allocated.

Basis of decision as to transfer

41. (1) The Minister's decision to grant or refuse approval for the transfer of a licence or the whole or part of the water allocation of a licence—

(a) must—

- (i) as to the water allocation to be endorsed on the transferred or receiving licence—be consistent with the relevant water allocation plan; and
- (ii) as to the conditions attached to the licence—not be seriously at variance with the relevant water allocation plan; and

(b) must be made in the public interest; and

(c) must be consistent with requirements (if any) prescribed by regulation under this paragraph.

(2) Where a person is noted on the register of water licences as having an interest in a licence, the Minister must not grant approval for the transfer of the licence or the whole or part of the water allocation of the licence without the written consent of that person.

(3) In this section—

"the relevant water allocation plan" means the water allocation plan for the water resource in relation to which the licence was granted or from which the water was allocated and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource¹.

¹ Section 101(7) enables a water allocation plan to include provisions relating to the taking and use of water from another resource.

Endorsement and record of dealings

42. The Minister must—

- (a) endorse on a water licence the name and address of the person to whom the licence has been transferred;
- (b) in the case of the transfer of the whole or part of the water allocation of a licence—endorse on both licences affected such particulars as he or she thinks fit relating to the transfer.

DIVISION 4—BREACH OF LICENCE

Consequences of breach of licence, etc.

43. (1) A licensee who contravenes or fails to comply with a condition of his or her licence is guilty of an offence—see section 9(5).

(2) If a licensee, or a person acting on behalf of a licensee—

- (a) takes water in excess of the allocation endorsed on the licence; or
- (b) contravenes or fails to comply with a condition of the licence; or
- (c) uses water taken pursuant to the licence for an illegal purpose,

the Minister may cancel, suspend or vary the licence by seven days written notice served on the licensee.

(3) If a licensee, or a person acting on behalf of a licensee, commits an offence against section 16, the Minister may cancel, suspend or vary the licence by seven days written notice served on the licensee.

(4) If—

(a) a licensee, or a person acting on behalf of a licensee—

(i) has contravened an environment protection order under the *Environment Protection Act 1993*; or

(ii) has failed to comply with a clean-up order under that Act; and

(b) the Minister is satisfied that the quality of the water in the water resource to which the licence relates has been detrimentally affected by the contravention or failure,

the Minister may cancel, suspend or vary the licence by seven days written notice served on the licensee.

(5) A licensee, or former licensee, may appeal to the Court against a decision of the Minister under subsection (2), (3) or (4) on the ground that the decision was harsh or unreasonable.

Effect of cancellation of licence on water allocation

44. (1) The water allocation endorsed on a licence that has been cancelled under this Division or any other provision of this Act is forfeited to the Minister.

(2) If—

(a) the allocation has sufficient value to cover the costs associated with its sale; and

(b) the allocation can be transferred consistently with the relevant water allocation plan,

the Minister must endeavour to sell the allocation by public auction or tender.

(3) The proposal to sell the allocation must be advertised on at least two separate occasions in a newspaper circulating in the area in which the water resource is situated.

(4) If the auction or tendering process fails, the Minister may sell the allocation by private contract for the best price that can reasonably be obtained.

(5) Any money received by the Minister on the sale of the allocation under this section must be applied as follows:

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceedings under this section;
- (b) secondly—in discharging the liability (if any) of the former licensee for an unpaid levy or instalment of a levy under Part 8 Division 1 and any interest in respect of an unpaid levy or instalment;
- (c) thirdly—in discharging any other liability of the former licensee under this Act to the Minister or to any other authority under this Act;
- (d) fourthly—in discharging any liabilities of the former licensee of which the Minister knows that are secured by a charge over the allocation;
- (e) fifthly—in payment to the former licensee.

(6) If the former licensee cannot be found after making reasonable enquiries as to his or her whereabouts, an amount payable to the former licensee must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.

(7) The purchaser of an allocation under this section takes the allocation free of all charges.

**PART 6
ADMINISTRATION**

DIVISION 1—THE MINISTER

Functions of the Minister

45. (1) The functions of the Minister under this Act are:

- (a) to keep the state and condition of the water resources of the State under review; and
- (b) to develop and co-ordinate policies relating to water resource management; and
- (c) to allocate the water available from prescribed watercourses, lakes and wells and surface water from surface water prescribed areas by means of a licensing system; and
- (d) to compile, maintain and update information in relation to the water resources of the State; and
- (e) to promote public awareness of the importance of the State's water resources and to encourage the conservation of those resources; and
- (f) such other functions of the Minister as are set out in this Act.

(2) When making a decision under this Act that is based wholly or partly on an assessment of the quantity of water available or the period or periods during which water is available from a water resource, the Minister or other authority making that decision must take into account the needs of the ecosystems that depend on that resource for water.

(3) The regulations may—

- (a) . prescribe the kinds of information to which subsection (1)(d) applies; and
- (b) require persons or bodies referred to in the regulations to provide the Minister with information of that kind that is in their possession.

and

- (c) specify the kind or kinds of information to which subsection (5) applies.

(4) Subject to subsection (5), the Minister must make information referred to in subsection (1)(d) publicly available.

(5) Where a person has provided information of a kind to which this subsection applies (see subsection (3)(c)) under subsection (3)(b), the Minister—

- (a) must seek the consent of the person who provided the information to make it publicly available and must make it publicly available if consent is given;
- (b) must not disclose that information to another person without the consent of the person who provided it.

(6) Without limiting the directions that the Minister may give to a catchment water management board or a water resources planning committee, the Minister may direct a board or committee to observe practices and comply with standards specified by the Minister in relation to the gathering, recording and keeping of information.

Minister must report to Parliament

46. (1) The Minister must on or before 30 September in each year prepare a report as to—

- (a) the extent to which the State Water Plan has been implemented; and
- (b) the extent to which implementation of the plan has succeeded in achieving the object of this Act,

in the immediately preceding financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after the report was prepared.

Minister to keep register of licences and permits

47. (1) The Minister must keep a register of all water licences and permits granted under this Act in such form and containing such information as the Minister thinks fit.

(2) Where a licence is transferred, or the water allocation or part of the water allocation of a licence is transferred, the Minister must record such particulars as he or she thinks fit relating to the transaction in the register.

(3) Where an authority other than the Minister grants a permit under this Act, the authority must provide the Minister with such information as the Minister requires to comply with subsection (1).

(4) The register must be made available for public inspection.

(5) The Minister must, on application by the holder of a licence and payment of the fee prescribed by regulation, make a notation on the register of the name of a person who has an interest in the licence or the water allocation of the licence and the nature of the interest.

(6) Where—

- (a) the register includes a notation made pursuant to subsection (5); and
- (b) proceedings for an offence against this Act are commenced against the holder of the licence,

the person taking those proceedings must give, or cause to be given, to the person named in the notation written notice of the particulars of the alleged offence.

(7) Where the register includes a notation made pursuant to subsection (5) that a specified person has an interest in a licence or the water allocation of a licence, the Minister must, on application by that person, remove that notation from the register.

Minister may delegate

48. (1) Subject to subsection (3), the Minister may delegate any of his or her functions, powers or duties under this Act (except this power of delegation)—

- (a) to a catchment water management board; or
- (b) to a water resources planning committee; or
- (c) to a municipal or district council; or
- (d) to any other person or body.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to act in any matter; and
- (d) is revocable at will by the Minister.

(3) The Minister cannot delegate—

- (a) the function of making recommendations to the Governor in relation to the making of proclamations; or
- (b) the Minister's functions or powers under Part 8.

(4) A person to whom functions, powers or duties have been delegated under subsection (1)(d) who has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to perform those functions or duties or exercise those powers must disclose the nature of the interest in writing to the Minister.

Maximum penalty: \$20 000.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

DIVISION 2—THE WATER RESOURCES COUNCIL

Establishment of the council

49. The *Water Resources Council* is established.

Membership of the council

50. (1) Subject to subsection (4), the council consists of five members appointed by the Governor on the nomination of the Minister.

(2) Of those members—

- (a) one (who will be the presiding member) must be a person who has, in the opinion of the Minister, knowledge of and experience in the management of water resources and other natural resources for the purpose of protecting them and the ecosystems that depend on them for the benefit of future generations;
- (b) one must be nominated from a panel of three persons submitted by the Local Government Association each of whom has, in the opinion of the Association, knowledge of and experience in regional development and local government;

- (c) one must be nominated from a panel of three persons submitted by the Conservation Council of South Australia each of whom has, in the opinion of the Council, knowledge of and experience in conservation of ecosystems that depend on naturally occurring water;
- (d) one must be nominated from a panel of three persons submitted by the South Australian Farmers Federation Incorporated each of whom has, in the opinion of the Federation, knowledge of and experience in the use or development of water resources for primary production;
- (e) one must be a person who is, or has been, a member of a catchment water management board who has been nominated from a panel of three persons submitted by a majority of the catchment water management boards.

(3) At least one member of the council must be a man and one must be a woman.

(4) The Governor may on the nomination of the Minister appoint additional persons with special expertise to be members of the council to assist the council in examining, assessing and reporting on a particular matter.

(5) A person's appointment under subsection (4) will be limited in accordance with the terms of the instrument of appointment.

Functions of the council

51. (1) The functions of the council are—

- (a) to examine and assess as at the end of each period of five years following the commencement of this Act—
 - (i) the extent to which the State Water Plan has been implemented; and
 - (ii) the extent to which implementation of the Plan has achieved the object of this Act,

and, where the council thinks fit, make recommendations in writing to the Minister as to changes that should be made to the Plan; and

- (b) at the direction of the Minister to examine and assess—
 - (i) the extent to which a particular catchment water management board has succeeded in implementing its catchment water management plan; and
 - (ii) the extent to which implementation of the plan has achieved the object of this Act; and
- (c) at the direction of the Minister—
 - (i) to examine and assess the extent to which a particular water allocation plan has been implemented; and
 - (ii) to examine and assess the extent to which implementation of the plan has achieved the object of this Act,

and, where the council thinks fit, to make recommendations to the Minister as to the directions that the Minister should give to the appropriate catchment water management board or water resources planning committee in relation to implementation of the plan; and

- (d) at the direction of the Minister to examine and assess any other matter relating to the administration of this Act; and
- (e) on its own initiative to advise the Minister on any matter relating to the state and condition of the State's water resources or the management of those resources if it is necessary to do so in order to achieve the object of this Act; and
- (f) such other functions as are assigned to the council by this Act.

(2) The council must prepare and provide the Minister with a written report in relation to each assessment under subsection (1)(a), (b) and (c).

(3) The Minister must cause a copy of a report relating to the State Water Plan to be laid before both Houses of Parliament within 12 sitting days after he or she receives the report.

(4) The Minister must cause a copy of a report relating to a catchment water management board to be given to the board.

(5) The Minister must cause a copy of a report relating to a water allocation plan to be given to the relevant catchment water management board or water resources planning committee.

Further provisions relating to the council

52. Further provisions relating to the council are set out in schedule 2.

DIVISION 3—CATCHMENT WATER MANAGEMENT BOARDS

SUBDIVISION 1—ESTABLISHMENT OF BOARDS

Establishment of boards

53. (1) The Governor may, by proclamation made on the recommendation of the Minister, establish a catchment water management board.

(2) The proclamation must—

- (a) assign a name to the board; and
- (b) identify the catchment area in relation to which the board is established; and
- (c) set out functions of the board (if any) that are in addition to the functions prescribed by this Act; and
- (d) appoint the first members of the board.

(3) The Governor may, by subsequent proclamation made on the recommendation of the Minister, vary or revoke a proclamation under this section.

(4) A proclamation revoking a proclamation may provide that the assets and liabilities of the board will vest in or attach to—

- (a) a council or controlling authority; or
- (b) the Crown; or
- (c) any other person or body.

Recommendation by the Minister

54. (1) Before making a recommendation under this Subdivision, the Minister must—

- (a) cause to be published in the *Gazette* and in a newspaper circulating in the part of the State in which the proposed catchment area is situated a notice—
 - (i) setting out the reasons for the establishment of the proposed board and identifying the proposed catchment area of the board; and
 - (ii) inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least six weeks) specified in the notice; and
- (b) have regard to all submissions made in accordance with the notice.

(2) The Minister must not recommend the making of a proclamation establishing a board unless—

- (a) the council or councils whose area or areas, or a part of whose area or areas, will be included in the area of the board have consented to the making of the proclamation; or
- (b) where a council fails or refuses to give its consent, the Minister is of the opinion—
 - (i) that an object in establishing the board cannot be fulfilled properly without including the council's area or part of it in the area of the board; and
 - (ii) that it is fair and reasonable in all the circumstances that the council be included as a constituent council.

(3) When determining the boundaries of the catchment area of a proposed board, the Minister must take into account relevant watersheds and the boundaries of relevant underground aquifers.

Nature of boards

55. (1) A board—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) can sue and be sued in its corporate name; and
- (d) has the functions and powers assigned or conferred by or under this or any other Act.

(2) A board—

- (a) is an instrumentality of the Crown; and

- (b) holds its property on behalf of the Crown; and
- (c) is subject to direction and control by the Minister.

Common seal and execution of documents

56. (1) The common seal of a board must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two members of the board.

(2) A board may, by instrument under its common seal, authorise a member of the board, an employee of the board (whether nominated by name or by office or title) or any other person to execute documents on behalf of the board subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given that authorises two or more persons to execute documents jointly on behalf of the board.

(4) A document is duly executed by a board if—

- (a) the common seal of the board is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the board by a person or persons in accordance with an authority conferred under this section.

Membership of boards

57. (1) A board consists of at least five members but not more than nine members appointed by the Governor on the nomination of the Minister.

(2) At least one member must be a man and one must be a woman.

(3) A person may be a member of two or more boards.

(4) Although the first members of a board are appointed by the proclamation establishing the board, subsequent appointments need not be made by proclamation.

Presiding member

58. (1) The member who is to be the presiding member of a board must be appointed by the Governor on the nomination of the Minister and must be a person who, in the opinion of the Minister, has managerial skills and experience.

(2) A presiding member must not be an employee of the Crown or a member or employee of a constituent council.

Other members

59. (1) Of the other members of a board—

- (a) one must be a person who is a member of the community or one of the communities that is wholly or partly within the catchment area of the board and who, in the opinion of the Minister, actively participates in community affairs;

- (b) one must be a person who has, or two or more must be persons who collectively have, in the opinion of the Minister—
- (i) knowledge of and experience in the management or development of water resources or any other natural resources; and
 - (ii) knowledge of and experience in the use of water resources; and
 - (iii) knowledge of and experience in the conservation of ecosystems; and
 - (iv) knowledge of and experience in local government or local administration gained in the catchment area of the board as a member or employee of a council or a local administrative body in an out of council area;
- (c) the other members of the board (if any) must have, in the opinion of the Minister—
- (i) knowledge of or experience in public or business administration; or
 - (ii) knowledge of or experience in regional economic development; or
 - (iii) knowledge of or experience in any other area that is relevant in the opinion of the Minister.

(2) Before nominating a person for membership of a board the Minister must seek and have regard to the advice of the Water Resources Council.

(3) When nominating persons for membership of a board the Minister must endeavour, as far as practicable, to include persons—

- (a) who are aware of the interests of the persons who use, may use or who benefit in any other way from, the water resources in the board's catchment area; and
- (b) who have knowledge of and experience in the use of land or water for the purpose or purposes for which land or water is most commonly used in the board's catchment area.

Further provisions relating to boards

60. Further provisions relating to boards are set out in schedule 2.

SUBDIVISION 2—FUNCTIONS OF BOARDS

Functions of board

61. The functions of a board are—

- (a) to prepare and implement a catchment water management plan in accordance with this Act; and
- (b) to provide advice to the Minister and the constituent councils for the board's area in relation to the management of the water resources in the board's area in accordance with this Act; and
- (c) to promote public awareness of the importance of the proper management of the water resources in the board's area and of the sustainable use of those resources; and
- (d) such other functions as are assigned to the board by or under this Act or any other Act.

Board's responsibility for infrastructure

62. (1) Subject to this section, a board has the care, control and management and is responsible for the maintenance and repair of—

- (a) the infrastructure constructed, erected or installed by it; and
- (b) subject to section 73(5), the infrastructure the use of which is vested in the board by proclamation—*see section 73(4)*.

(2) Subsection (1) does not apply to, or in relation to, a building, structure or works constructed or erected by a board on behalf of a council or other person under section 65(2).

(3) A board may assign its responsibility under subsection (1) for maintenance and repair to the owner or occupier of the land on which the infrastructure is situated if the owner or occupier agrees to the assignment.

SUBDIVISION 3—POWERS OF BOARDS**Powers of boards**

63. (1) A board has all the powers of a natural person as well as the powers conferred on it by or under this Act or any other Act.

(2) Without limiting subsection (1), a board may—

- (a) stop or reduce the flow of water in a watercourse, divert water flowing in a watercourse to another watercourse or to a lake or control the flow of water in a watercourse in any other manner; and
- (b) hold water in a watercourse or lake or by any other means; and
- (c) divert water in a watercourse or lake to an underground aquifer; and
- (d) dispose of water to a lake, underground aquifer or to the sea; and
- (e) deepen, widen or change the course of a watercourse or deepen or widen a lake; and
- (f) construct or erect any embankment, wall, channel, road or other works; and
- (g) excavate any land for the purposes of forming a lake or for any other purpose; and
- (h) construct or erect any building or structure; and
- (i) install pipes, machinery or other equipment; and
- (j) drill observation bores; and
- (k) inspect, examine or survey any land and for that purpose—
 - (i) fix posts, stakes or other markers on the land; and
 - (ii) dig trenches or sink test holes in the land to determine the nature of the top soil and underlying strata; and
 - (iii) remove samples for analysis; and

- (l) acquire land pursuant to a contract with the owner of the land or, if it has the written approval of the Minister to do so, acquire land pursuant to the *Land Acquisition Act 1969*; and
- (m) establish committees which may, but need not, include members of the board, to advise it on any matter.

(3) A board must not exercise a power under subsection (2)(e), (f), (g), (h) or (i) in relation to private land with the intention that the works, building or structure or the installation of the pipes, machinery or other equipment will be permanent unless the board has first acquired—

- (a) the land or an easement over the land; and
- (b) land (if any) likely to be submerged as a result of the board's exercise of the power.

(4) Money received by a board under this Act or in performing its functions or duties or exercising its powers under this Act is not payable into the Consolidated Account and may be applied by the board without further appropriation by Parliament.

(5) In this section—

"lake" includes an artificial lake, dam or reservoir.

Board's power to provide financial assistance etc.

64. (1) A board may provide financial or any other form of assistance—

- (a) to constituent councils, persons carrying on business, community groups or any other persons if the council, person or group is engaged in an activity, whether in the board's area or not, that will improve the quality of water or relates in any other way to the management of the water resources of the area; or
- (b) to assist persons who have been detrimentally affected as a result of the board's implementation of its catchment water management plan.

(2) A person who wishes to obtain financial or other assistance from a catchment water management board under subsection (1) must make a written submission to the board setting out—

- (a) the nature of the assistance requested (and, in the case of financial assistance, the amount requested); and
- (b) the purpose or purposes for which and the manner in which the assistance will be used; and
- (c) the reasons why, in the applicant's opinion, the granting of the assistance by the board is justified.

(3) The board must make copies of submissions received by it under subsection (2) available for inspection and purchase by members of the public.

(4) The board must not charge for inspection of a submission and must not charge more than the fee prescribed by regulation for sale of copies of a submission.

Other activities of board

65. (1) Subject to subsection (2), a board must not undertake an activity that—

- (a) is not contemplated, or is not incidental or ancillary to an activity contemplated, by its plan; or
- (b) does not comprise, or is not incidental or ancillary to, one of its functions or duties.

(2) A board may construct or erect a building, structure or works on behalf of a constituent council or any other person if to do so would not prejudice the performance by the board of its functions under this Act.

Delegation

66. (1) Subject to this section, a board may delegate any of its functions, powers or duties—

- (a) to a member of the board; or
- (b) with the approval of the Minister—
 - (i) to a committee appointed by the board; or
 - (ii) to the person for the time being occupying a particular office or position; or
 - (iii) to any other person or body.

(2) A board cannot delegate—

- (a) the preparation of its catchment water management plan; or
- (b) the power to issue a notice as the relevant authority under section 13; or
- (c) its power of delegation.

(3) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power to act in any matter; and
- (d) is revocable at will by the board.

(4) A person to whom functions, powers or duties have been delegated under this section who has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to perform those functions or duties or exercise those powers must disclose the nature of the interest in writing to the board.

Maximum penalty: \$20 000.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

Entry and occupation of land

67. (1) This section does not apply to, or in relation to, land the use, or the care, control and management, of which is vested in a board under this Act.

(2) For the purpose of carrying out its functions, a board, or a person authorised by a board, may enter and occupy any land.

(3) A board or a person authorised by a board must give reasonable notice of his or her intention to enter, or to enter and occupy, land to the occupier of the land.

(4) The period of the notice must be at least 24 hours except—

(a) where the occupier has given his or her consent; or

(b) in an emergency in which case the person proposing to enter must give such notice (if any) as he or she considers is reasonable in the circumstances.

(5) A board or other person may not enter residential premises except with the consent of the occupier.

(6) A board or other person entering or occupying land under this section—

(a) must cause as little harm and inconvenience as practicable; and

(b) must not occupy the land for any longer than is reasonably necessary; and

(c) must remove from the land when leaving it all equipment or structures that he, she or it has brought onto the land, other than anything that the owner or occupier of the land agrees may be left there; and

(d) must leave the land as nearly as possible in the condition in which he, she or it found the land; and

(e) must co-operate as far as practicable with the owner and occupier of the land.

(7) A person must not, without reasonable excuse, obstruct or hinder a person exercising powers under this section.

Maximum penalty: \$5 000.

(8) A person may use force to enter land under this section—

(a) on the authority of a warrant issued by a magistrate; or

(b) if the person believes, on reasonable grounds, that the circumstances require immediate entry of the land.

(9) A magistrate must not issue a warrant under subsection (8) unless satisfied, on information given on oath, that the warrant is reasonably required in the circumstances.

(10) A person who has entered land under this section and who—

(a) addresses offensive language to any other person; or

- (b) without lawful authority, or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

while on the land is guilty of an offence.

Maximum penalty: \$5 000.

By-laws

68. (1) Subject to subsection (2), a board has power to make any by-laws that can be made by a constituent council or a controlling authority in relation to water, a watercourse or lake or infrastructure in the board's catchment area.

(2) A board can only make by-laws under subsection (1) that apply exclusively to, or in relation to—

- (a) water that is under the control of the board; or
- (b) a watercourse or lake or infrastructure that is under the care, control and management of the board.

(3) A council or controlling authority cannot make by-laws that apply to, or in relation to, water, a watercourse or lake or infrastructure of a kind referred to in subsection (2) but a by-law previously made by a council or controlling authority that applied to, or in relation to—

- (a) water immediately before it came under a board's control; or
- (b) a watercourse or lake or infrastructure immediately before it came under a board's care, control and management,

will continue to apply until the board revokes the by-law as it applies to that water, watercourse, lake or infrastructure.

(4) Where the care, control and management of infrastructure is shared by a board and a council or controlling authority, the board and not the council or controlling authority may make by-laws in relation to the infrastructure as though the care, control and management of the infrastructure were vested solely in the board.

(5) Before making a by-law under subsection (1), a board—

- (a) must consult the constituent council in whose area the water, watercourse or lake or infrastructure to which the by-law will apply is situated; and
- (b) must cause to be published in the *Gazette* and in a local newspaper a notice setting out the text of the proposed by-law, stating the reasons for it and inviting interested persons to make written submissions to the board in relation to the proposal within a period (being at least six weeks) specified in the notice; and
- (c) must have regard to the views of the council and to all submissions made in accordance with the notice; and
- (d) may amend the text of the proposed by-law in response to one or more of those views or submissions.

(6) Water for the time being comprising a water resource in the catchment area of a catchment water management board will be taken to be under the control of the board.

Representations by South Australian Water Corporation

69. (1) Where water is discharged into a watercourse or lake in the catchment area of a catchment water management board by South Australian Water Corporation, the Corporation may make representations to the board in respect of the performance or exercise by the board of its functions or powers in relation to that water.

(2) A board must have regard to representations made under subsection (1).

Staff of board

70. (1) A board may, with the approval of the Minister, create positions to which it may appoint employees.

(2) The employees of a board are excluded from the Public Service.

(3) The board may, with the approval of the responsible Minister, use the services of persons employed in the public service or otherwise employed by the Crown.

(4) The board may, with the approval of a constituent council, use the services of persons employed by the council or any property vested in or under the care, control and management of the council.

Exclusion of functions and powers of councils, etc.

71. Where a board and a constituent council or controlling authority have the same functions or powers in relation to the same water or the same land, watercourse, lake or infrastructure, the board may perform its functions or exercise its powers to the exclusion of the council or controlling authority.

Water recovery and other rights subject to board's functions and powers

72. The following rights are subject to the performance of functions and duties and the exercise of powers by a board under this or any other Act:

- (a) the right of a person to take water from a watercourse or lake or to take surface water or underground water whether pursuant to a water licence or not;
- (b) the right of the Minister for the time being administering the *Water Conservation Act 1936*—
 - (i) to erect or maintain buildings in, upon or across any watercourse or lake; or
 - (ii) to divert, impound or take water from a watercourse or lake; or
 - (iii) to alter the course of a watercourse or widen or deepen a watercourse or lake;
- (c) the right of South Australian Water Corporation to erect dams or reservoirs across and in the bed of the River Torrens;
- (d) the right of South Australian Water Corporation—
 - (i) to erect buildings upon any watercourse; or

- (ii) to divert, impound or take water from a watercourse or lake; or
- (iii) to alter the course of a watercourse.

SUBDIVISION 4—VESTING OF INFRASTRUCTURE IN BOARD

Vesting of works, buildings, etc., in board

73. (1) Subject to subsection (3), the Governor may, by proclamation made on the recommendation of the Minister, vest in a board the use of any infrastructure vested in or under the care, control or management of a council or controlling authority.

(2) Subject to subsection (3), the Governor may, by proclamation made on the recommendation of the Minister, vest in a board the use of any land vested in or under the care, control or management of a council or controlling authority that adjoins or is adjacent to a watercourse or lake and is specified in the board's catchment water management plan as being land that should be under the care, control and management of the board.

(3) The Governor cannot make a proclamation under subsection (1), (2) or (7) without the consent in writing of the council or controlling authority concerned.

(4) Subject to subsection (5), where the use of infrastructure or land is vested in a board under subsection (1) or (2), the care, control and management of the infrastructure or land is also vested in the board and the board is responsible for the maintenance and repair of the infrastructure or the maintenance of the land.

(5) The use of infrastructure or land will be vested exclusively in a board by a proclamation under subsection (1) or (2) unless the proclamation provides for the use to be shared by the board and a council or controlling authority in which case the proclamation must—

- (a) specify the respective responsibilities of the board and the council or controlling authority for the care, control and management and the maintenance and repair of the infrastructure or land; and
- (b) include any other conditions that are necessary or desirable, in the Governor's opinion, relating to the shared use of the infrastructure or land.

(6) A board is not liable to pay compensation to a council or controlling authority in respect of a proclamation under subsection (1) or (2).

(7) Subject to subsection (3), the Governor may, by subsequent proclamation made on the recommendation of the Minister, vary or revoke a proclamation under this section.

SUBDIVISION 5—ACCOUNTS AND AUDIT

Accounts and audit

74. (1) A board must cause proper accounts to be kept of its financial affairs and must cause financial statements to be prepared in respect of each financial year.

(2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of a board.

SUBDIVISION 6—ANNUAL REPORTS**Annual reports**

75. (1) A board must on or before 30 September in each year prepare and give to the Minister and the constituent councils a report on the performance of its functions during the preceding financial year.

(2) The report must—

(a) state—

- (i) the extent to which the board has succeeded in implementing its catchment water management plan; and
- (ii) the extent to which the implementation of the plan has succeeded in achieving the object of this Act; and

(b) provide details of the amendments (if any) made to the plan since the last annual report; and

(c) set out the amounts of money (if any) provided by the board by way of financial assistance, the persons to whom each amount was provided and the purpose for which it was provided; and

(d) include the audited accounts and financial statements of the board; and

(e) set out any disclosure made during the preceding financial year by a member of the board of an interest in a matter decided or under consideration by the board; and

(f) include information prescribed by regulation relating to the remuneration of employees of the board; and

(g) include any other information required by or under the regulations.

(3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after he or she receives the report.

(4) A board must make copies of its annual reports available for inspection and purchase by members of the public.

(5) A board must not charge for inspection of a report and must not charge more than the fee prescribed by regulation for sale of copies of a report.

SUBDIVISION 7—APPOINTMENT OF ADMINISTRATOR**Appointment**

76. (1) The Minister may on his or her own initiative or on application by—

(a) a catchment water management board or a member of a board; or

(b) a creditor of a catchment water management board; or

- (c) a person who is authorised by a water licence to take water, or is authorised by a permit to undertake an activity, in the catchment area of a catchment water management board,

appoint an administrator of the board or remove or replace an administrator previously appointed.

(2) Before appointing an administrator of a board, the Minister must be satisfied that the board—

- (a) has persistently failed properly to perform its functions; or
- (b) has contravened, or failed to comply with a provision of this Act; or
- (c) has been guilty of serious financial mismanagement.

(3) The function of an administrator is to reorganise the management and operations of the board to the extent necessary to enable it to perform its functions and duties and exercise its powers efficiently on a continuing basis in accordance with this Act.

(4) An administrator has, while the appointment remains in force, full and exclusive power to perform the functions and duties and exercise the powers of the board.

(5) An administrator must comply with any directions that the Minister may give from time to time.

(6) If an administrator has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to act as administrator under this section, he or she must disclose the nature of the interest to the Minister before acting.

Maximum penalty: \$20 000.

(7) The remuneration of an administrator will be fixed by the Minister and is payable from the board's funds.

(8) The administrator may, by written instrument, delegate any of his or her powers except this power of delegation.

(9) A delegation under subsection (8)—

- (a) may be made on such conditions as the administrator thinks fit; and
- (b) is revocable at will; and
- (c) does not derogate from the power of the administrator to act in any matter personally.

(10) A person to whom powers have been delegated under subsection (8) who has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to exercise those powers must disclose the nature of the interest in writing to the administrator.

Maximum penalty: \$20 000.

(11) It is a defence to a charge of an offence against subsection (6) or (10) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

SUBDIVISION 8—APPOINTMENT OF BODIES TO ACT AS BOARDS**Appointment of body established by or under another Act**

77. (1) The Governor may, by regulation made on the recommendation of the Minister, appoint a body established by or under another Act to be a catchment water management board under this Act.

(2) The regulation must—

- (a) identify the catchment area in relation to which the body is appointed; and
- (b) set out the functions of the body (if any) that are in addition to the functions prescribed by this Act.

(3) The Governor may, by subsequent regulation made on the recommendation of the Minister, vary or revoke a regulation under this section.

(4) A regulation revoking a regulation may provide that the assets and liabilities of the body that relate to its functions under this Act will vest in or attach to—

- (a) a council or controlling authority; or
- (b) the Crown; or
- (c) any other person or body.

Recommendation by the Minister

78. Section 54 applies in relation to the appointment of a body under this Subdivision as though the appointment of the body were the establishment of a board under Subdivision 1.

Application of other Subdivisions

79. (1) Subdivisions 2, 3, 4, 5, 6 and 7 apply to and in relation to a body appointed under this Subdivision as though it were a board established under Subdivision 1.

(2) A body appointed under this Subdivision is subject to the direction and control of the Minister in performing its functions and duties and exercising its powers under this Act.

Conflict of functions or duties

80. If there is a conflict between a function or duty of a body under the Act by or under which it was established and a function or duty of the body when acting as a board under this Act, the body must perform its function or duty under its originating Act in preference to its function or duty under this Act.

DIVISION 4—WATER RESOURCES PLANNING COMMITTEES**Establishment of water resources planning committees**

81. (1) Where a prescribed watercourse or lake or a part of the State in which prescribed wells are situated or a surface water prescribed area is not situated within the catchment area of a catchment water management board, the Minister must, by notice in the *Gazette*, either—

- (a) establish a water resources planning committee in relation to the prescribed water resource; or
- (b) commit the water resource to an existing water resources planning committee.

(2) A notice establishing a committee must—

- (a) identify the watercourse, lake or part of the State in relation to which the committee is established; and
- (b) assign a name to the committee; and
- (c) appoint the first members of the committee.

(3) A notice committing a prescribed water resource to a committee must identify the resource and the committee.

(4) The Minister may, by subsequent notice published in the *Gazette*, vary or revoke a notice under this section.

(5) A notice revoking a notice establishing a committee may provide that the assets and liabilities of the committee will vest in or attach to the Crown or any other person or body.

Nature of committees

82. (1) A committee—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) can sue and be sued in its corporate name.

(2) A committee—

- (a) is an instrumentality of the Crown; and
- (b) holds its property on behalf of the Crown; and
- (c) is subject to direction and control by the Minister.

Membership of committees

83. (1) The members of the committee must be persons who, in the opinion of the Minister, collectively have—

- (a) knowledge of and experience in the management or development of water resources or any other natural resources; and
- (b) knowledge of and experience in the use of water resources; and
- (c) knowledge of and experience in the conservation of ecosystems; and
- (d) knowledge of and experience in local government.

(2) The Minister must appoint one of the members of a committee to be the presiding member of the committee.

(3) A person may be a member of two or more committees.

Functions and powers of committees

84. (1) A committee has the following functions:

- (a) the preparation of a draft water allocation plan in relation to its water resource, or each of its water resources, for adoption by the Minister; and
- (b) if the Minister has delegated to the committee some or all of the Minister's functions under Part 5—those functions; and
- (c) such other functions (if any) as are delegated to the committee by the Minister; and
- (d) such other functions as are assigned to the committee by or under this Act.

(2) A committee has all the powers of a natural person as well as the powers conferred on it by or under this Act or any other Act.

Further provisions relating to committees

85. Further provisions relating to committees are set out in schedule 2.

DIVISION 5—COUNCILS AND CONTROLLING AUTHORITIES**Responsibility of councils and controlling authorities**

86. (1) A municipal or district council must, when performing functions or exercising powers under this Act, act consistently with the local water management plan (if any) of the council.

(2) A council or controlling authority must, when performing functions or exercising powers under the *Local Government Act 1934* relating to the drainage of land, act consistently with the local water management plan of the council or, in the case of a controlling authority established by two or more councils, the local water management plan (if any) of the council in whose area the authority is acting.

(3) A council or a controlling authority must, when performing functions or exercising powers under this Act, the *Local Government Act 1934* or any other Act in the area of a catchment water management board, have regard to the catchment water management plan of the board and in particular must give consideration to the question of whether it should implement changes to the manner in which, or the means by which, it performs a function or exercises a power or undertakes any other activity that has been identified in the plan as requiring change.

DIVISION 6—AUTHORISED OFFICERS**Appointment of authorised officers**

87. (1) Subject to subsection (2), the Minister may appoint such persons to be authorised officers for the purposes of this Act as the Minister thinks fit.

(2) The Minister may only appoint a person who is an officer or employee of a council to be an authorised officer at the request of the council.

(3) A person may be appointed by name or by reference to the office or position that he or she is holding or acting in for the time being.

(4) An appointment—

- (a) will be for a period stated in the instrument of appointment; and

(b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorised officer.

(5) A person appointed as an authorised officer must be issued with an identity card in a form approved by the Minister.

(6) The Minister may, by notice in writing served on an authorised officer—

(a) vary or revoke a condition of the appointment; or

(b) revoke the appointment.

Powers of authorised officers

88. (1) An authorised officer may, at any reasonable time, exercise any of the following powers—

(a) enter any land;

(b) inspect any land (including any stratum lying below the surface of the land) and water on or under any land;

(c) measure the flow of water on or under any land;

(d) where the authorised officer has reason to believe that an offence against this Act has been, is being, or is about to be, committed—enter or inspect any vehicle, vessel or aircraft and for that purpose give a direction to stop or move the vehicle, vessel or aircraft;

(e) take samples of water on or under any land;

(f) take samples of any material of a kind that, in the officer's opinion, has entered or may enter water on or under any land;

(g) inspect any machinery or equipment on land or in a vehicle, vessel or aircraft;

(h) inspect any well on land and any pipes, fittings or equipment connected to or used in conjunction with any well;

(i) inspect any pipes, fittings or equipment connected to or used in relation to a watercourse or surface water;

(j) take photographs, films or video or audio recordings or make a record in any other manner or by any other means;

(k) put to any person on land or to the person in charge of a vehicle, vessel or aircraft any question relating to the administration of this Act;

(l) require a person who the officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence;

(m) require a person holding or required to hold a licence or permit under this Act to produce the licence or permit for inspection.

(2) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably necessary in the circumstances.

(3) An authorised officer must at the request of the owner or occupier of land or the agent of the owner or occupier or the person in charge of a vehicle, vessel or aircraft, produce the identity card issued to the officer.

(4) An authorised officer may use force to enter land, a building or structure on land or a vehicle, vessel or aircraft—

- (a) on the authority of a warrant issued by a magistrate; or
- (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(5) A magistrate must not issue a warrant under subsection (4) unless satisfied, on information given on oath—

- (a) that there are reasonable grounds to suspect that an offence against this Act has been, is being, or is about to be, committed; or
- (b) that the warrant is reasonably required in the circumstances.

(6) An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

Hindering, etc., persons engaged in the administration of this Act

89. A person who—

- (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
- (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
- (c) produces a written statement of the contents of a record that he or she knows, or ought to know, is false or misleading in a material particular; or
- (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
- (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(f) falsely represents, by words or conduct, that he or she is an authorised officer,
is guilty of an offence.

Maximum penalty: \$5 000.

**PART 7
WATER PLANS**

DIVISION 1—STATE WATER PLAN

The State Water Plan

90. (1) The State Water Plan is the document entitled "South Australia—Our Water, Our Future" signed by the Minister for the Environment and Natural Resources in September 1995 or such other plan as is substituted for it under this Division.

(2) The purpose of the State Water Plan is to set out policies for achieving the object of this Act throughout the State.

(3) The Plan must—

- (a) assess the state and condition of the water resources of the State; and
- (b) identify existing and future risks of damage to, or degradation of, the water resources of the State; and
- (c) include proposals for the use and management of the water resources of the State to achieve the object of this Act; and
- (d) include an assessment of the monitoring of changes in the state and condition of the water resources of the State and include proposals for monitoring those changes in the future.

(4) If the document "South Australia—Our Water, Our Future" referred to in subsection (1) does not meet one or more of the requirements of subsection (3), the Minister must, as soon as practicable after the commencement of this Act, amend it or substitute a new plan so that those requirements are satisfied.

Amendment of the State Water Plan

91. (1) The Minister must keep the State Water Plan under review and must amend the plan or substitute a new plan whenever it is necessary, in the opinion of the Minister, to comply with section 90(3) or to achieve the object of this Act.

(2) When preparing a draft amendment or a draft plan in substitution, the Minister must, by notice published in the *Gazette* and in a newspaper circulating generally throughout the State, invite interested persons to make submissions to the Minister in respect of the amendment or plan.

(3) The notice must state—

- (a) the place or places at which copies of the draft amendment or plan are available for inspection (without charge) and purchase; and
- (b) the name and address of the person to whom submissions may be sent and the time by which submissions must be received.

(4) Before adopting an amendment or plan in substitution, the Minister must have regard to all submissions made in accordance with the notice.

(5) Where, in the opinion of the Minister, information on which the State Water Plan is based has been superseded by information that is more reliable or accurate, the Minister may amend the Plan without following the procedures for public consultation set out in this section.

(6) On adoption of an amendment or plan or the amendment of the plan under subsection (5), the Minister must by notice published in the *Gazette* and in a newspaper circulating generally throughout the State, specify the place or places at which copies of the amendment or plan are available for inspection (without charge) and purchase.

DIVISION 2—CATCHMENT WATER MANAGEMENT PLANS

Catchment water management plans

92. (1) A catchment water management board must prepare a draft catchment water management plan in relation to the water resources of its catchment area.

(2) The plan must be in a form approved by the Minister and must comply with this Division.

(3) The plan must—

(a) include information (which must be, as far as practicable, accurate at the date of publication of the draft plan) of a kind prescribed by regulation as to—

(i) the quantity and the quality of the water comprising the water resources of the board's catchment area; and

(ii) the health of the ecosystems that depend on that water; and

(b) assess the need for water of those ecosystems; and

(c) identify the water resources (if any) in the board's catchment area that are suitable for recreational use and should be preserved or enhanced for that purpose; and

(d) outline the relevant economic, environmental and social considerations relating to the management of water resources in the board's catchment area; and

(e) set out the board's goals in relation to water resource management in the board's catchment area and explain how achievement of those goals will implement the object of this Act; and

(f) set out the method or methods the board will use—

(i) to assess the extent to which it has succeeded in implementing its plan; and

(ii) to assess the extent to which implementation of its plan has succeeded in achieving the board's goals; and

(iii) to monitor the quantity and quality of the water in its water resources and the health of the ecosystems that depend on that water; and

(g) set out the board's program for implementing its plan including, if applicable—

(i) the diversion of water from, or to, a specified watercourse, lake or underground aquifer; and

- (ii) the holding of water in a specified lake or underground aquifer; and
 - (iii) modification of a specified watercourse or lake or excavation of an artificial lake; and
 - (iv) methods for improving the quality of water of the water resources in the board's catchment area and the health of ecosystems that depend on that water; and
 - (v) drainage of specified land; and
 - (vi) methods for encouraging the sustainable use of water; and
- (h) take into account any relevant bushfire prevention plan prepared under the *Country Fires Act 1989*; and
- (i) identify the changes (if any) that are necessary or desirable to—
- (i) a Development Plan under the *Development Act 1993* or to any Act or subordinate legislation; or
 - (ii) any activity of a constituent council or controlling authority or to the manner in which, or the means by which, a constituent council or controlling authority performs its functions or exercises its powers; or
 - (iii) the activities of any other person,
- to further the object of this Act; and
- (j) identify land that adjoins or is adjacent to a watercourse or lake the use of which should be vested in the board by proclamation; and
- (k) identify the infrastructure the use of which should be vested in the board by proclamation; and
- (l) set out the matters that the board will consider when exercising its power to grant or refuse permits for activities affecting water; and
- (m) if staff are to be employed by the board—identify the number that the board is likely to employ, the qualifications they will require and the likely salary range for each position; and
- (n) include an estimate of the expenditure necessary in each year of the first three years of the plan for the implementation of the plan; and
- (o) state the source of funds necessary to meet the expenditure for each year and, if more than one source, the proportion of the funds to be raised from each source; and
- (p) if the source, or one of the sources, of those funds is a levy under Division 1 or 2 of Part 8—include an assessment of the expected social impact of the imposition of the levy; and
- (q) include such other information or material as is contemplated by this Act or is required by regulation.

(4) The program to be set out under subsection (3)(g) must relate to a period of three financial years which must be specified in the plan.

(5) If a plan is adopted after 1 July in a financial year the period from its adoption to 30 June in that year will be regarded as the first year for the purposes of subsection (4).

(6) A plan must be consistent with the State Water Plan.

(7) A plan, when adopted, and amendments made to a plan must, as far as practicable, be consistent with—

- (a) any relevant management plan under the *Coast Protection Act 1972*; and
- (b) any relevant Development Plan under the *Development Act 1993*; and
- (c) any relevant environment protection policy under the *Environment Protection Act 1993*; and
- (d) any relevant plan of management under the *National Parks and Wildlife Act 1972*; and
- (e) any relevant district plan under the *Soil Conservation and Land Care Act 1989*; and
- (f) guidelines relating to the management of native vegetation adopted by the Native Vegetation Council under the *Native Vegetation Act 1991*; and
- (g) such other plans, policies or guidelines as are prescribed by regulation.

(8) The board must inform the Minister of the inconsistencies (if any) between the plan and plans, policies or guidelines referred to in subsection (7).

Proposal statement

93. (1) Before preparing a draft plan a board must prepare a proposal statement.

(2) The proposal statement must—

- (a) set out in general terms the proposed content of the catchment water management plan; and
- (b) specify matters to be investigated by the board before preparation of the draft plan; and
- (c) set out the proposals (if any) for consultation on the draft plan that are in addition to the requirements of this Act for consultation.

(3) Before preparing the proposal statement the board must—

- (a) by notice published in a newspaper circulating in the catchment area of the board, invite members of the public to provide it with written submissions as to the contents of the proposal statement; and
- (b) reach agreement with the Minister as to the contents of the proposal statement; and
- (c) in the course of reaching agreement with the Minister have regard to submissions made under paragraph (a).

(4) The proposal statement must be referred for comment to—

- (a) the Minister for the time being administering the *Development Act 1993*; and
- (b) all Government Departments and other agencies (if any) that have a direct interest in the proposed plan; and
- (c) the constituent councils of the board's area; and
- (d) the public (by notice published in a newspaper circulating in the catchment area of the board).

(5) The Minister and the board must consider all comments made to the Minister or the board by persons or bodies referred to in subsection (4) within six weeks after referral of the proposal statement and the Minister and the board may amend the statement as a result of those comments.

(6) If the board has identified a change that, in its opinion, is necessary or desirable to a Development Plan, it must—

- (a) submit proposals for the amendment of the Development Plan to the municipal or district council or councils whose area or areas will be affected by the amendment; and
- (b) submit the proposals to the Minister for the time being administering the *Development Act 1993* together with submissions relating to the proposals (if any) made to the board by a council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and
- (c) if it has the agreement of that Minister to do so, include the proposals for the amendment of the Development Plan in the proposal statement.

Preparation of plans and consultation

94. (1) A board must prepare a draft plan based on the proposal statement and the results of the board's investigations and must submit the draft plan to the Minister.

(2) The board must consult the following persons when preparing the draft plan:

- (a) each of the constituent councils; and
- (b) the owner or owners of the land (if any) that the board considers should be acquired by the board; and
- (c) where water is discharged by South Australian Water Corporation into a watercourse or lake in the catchment area of the board—South Australian Water Corporation; and
- (d) such other persons as are prescribed by regulation; and
- (e) the public.

(3) If the proposal statement includes proposals for the amendment of a Development Plan, the board must, after—

- (a) consulting the Minister for the time being administering the *Development Act 1993*; and

- (b) seeking and considering the advice of a person with qualifications prescribed by regulation under section 26(1) of that Act,

prepare a report in relation to the proposed amendment and must, if it has the approval of the Minister for the time being administering the *Development Act 1993* to do so, include the report in the draft plan.

- (4) When the draft plan is completed the board must—

- (a) give a copy of it to the Minister, to each constituent council and to such other persons as are prescribed by regulation; and
- (b) where water is discharged by South Australian Water Corporation into a watercourse or lake in the catchment area of the board—give a copy to the Corporation; and
- (c) consult the public in relation to the plan.

(5) A board must consult the public under subsections (2) and (4) by inviting the public to make written submissions to the board and to attend a public meeting to be held in relation to the preparation of the draft plan and another meeting to be held in relation to the plan as drafted.

- (6) An invitation under subsection (5) must be by advertisement in—

- (a) a newspaper circulating generally throughout the State; and
- (b) a newspaper circulating in the catchment area,

and in such other form (if any) as the board thinks fit.

- (7) The advertisement must—

- (a) identify the relevant catchment area; and
- (b) in the case of an invitation for submissions—state the name and address of the person to whom submissions must be sent and the time by which submissions must be received; and
- (c) in the case of an invitation to attend a public meeting—state the time and place at which the meeting will be held; and
- (d) in the case of an invitation relating to a plan that has been drafted—include an address at which copies of the plan can be inspected and purchased.

(8) An invitation for submissions in relation to the preparation of a plan must provide a period of at least one month after the advertisement was last published in a newspaper as the period during which submissions must be received.

(9) An invitation for submissions in relation to a plan that has been drafted must provide a period of at least two months after the advertisement was last published in a newspaper as the period during which submissions must be received.

(10) A public meeting must be held—

- (a) at least 14 days but not more than 28 days after the advertisement inviting attendance at the meeting was last published in a newspaper; and
- (b) at a time and place that will, in the opinion of the board, be convenient for a majority of those persons who are likely to attend the meeting.

(11) The board must appoint a member or employee of the board or some other suitable person to conduct the meeting.

(12) A person who has conducted a meeting must, as soon as practicable after the meeting has concluded, submit a written report to the board summarising the comments made at the meeting by members of the public in relation to the plan.

Adoption of plan by Minister

95. (1) The Minister must consult the following persons before adopting a draft plan:

- (a) the board; and
- (b) each of the constituent councils; and
- (c) the Local Government Association; and
- (d) where a report prepared under section 94(3) forms part of the draft plan—the Minister for the time being administering the *Development Act 1993*; and
- (e) the owner or owners of the land (if any) that the board considers should be acquired by the board; and
- (f) where water is discharged by South Australian Water Corporation into a watercourse or lake in the catchment area of the board—the Corporation; and
- (g) such other persons as are prescribed by regulation.

(2) The Minister may consult with such other persons or authorities as he or she thinks fit.

(3) The Minister must, before adopting a plan, have regard to the submissions (if any) received from members of the public and to the reports of the person or persons who conducted the public meetings.

(4) After complying with the requirements of this section, the Minister may—

- (a) adopt the plan with or without amendment; or
- (b) refer the plan back to the board for further consideration.

(5) If the Minister adopts the plan with amendment, he or she must give—

- (a) a copy of the plan as amended; or
- (b) if the part or parts of the plan that have been amended can conveniently be substituted in the draft plan—a copy of that part or those parts as amended,

to the board and to each constituent council.

(6) If the Minister refers the plan back to the board, it must prepare a new draft plan and follow the procedures as to consultation provided for by this Division in respect of the new draft.

(7) The Minister adopts a plan by signing a certificate endorsed on the plan that he or she has adopted the plan.

(8) Within seven days after adopting a plan that provides that the whole or part of the funds required for implementation of the plan should be raised by a levy under Division 1 of Part 8 or should comprise an amount to be contributed by the constituent councils of the board's catchment area under Division 2 of Part 8 (in this section referred to as a "levy proposal") the Minister must refer the plan to the Economic and Finance Committee of Parliament.

(9) The Economic and Finance Committee must, after receipt of a plan under subsection (8)—

- (a) resolve that it does not object to the levy proposal; or
- (b) resolve to suggest amendments to the levy proposal; or
- (c) resolve to object to the levy proposal.

(10) If, at the expiration of 21 days from the day on which the plan was referred to the Economic and Finance Committee, the Committee has not made a resolution under subsection (9), it will be conclusively presumed that the Committee does not object to the levy proposal and does not propose to suggest any amendments to it.

(11) If an amendment is suggested under subsection (9)(b)—

- (a) the Minister may make the suggested amendment; or
- (b) if the Minister does not make the suggested amendment, he or she must report back to the Committee that he or she is not willing to make the amendment suggested by the Committee (in which case the Committee may resolve that it does not object to the levy proposal as originally adopted, or may resolve to object to the proposal).

(12) If the Economic and Finance Committee resolves to object to a levy proposal, a copy of the plan must be laid before the House of Assembly.

(13) If the House of Assembly passes a resolution disallowing the levy proposal of a plan laid before it under subsection (12) the proposal ceases to have effect.

(14) A resolution is not effective for the purposes of subsection (13) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the plan was laid before the House.

(15) Where a resolution is passed under subsection (13), notice of the resolution must forthwith be published in the *Gazette*.

Amendment of a Development Plan

96. (1) The Minister must, when amending a report in relation to the proposed amendment of a Development Plan that forms part of a draft catchment water management plan following consultation on the draft plan—

- (a) consult the Minister for the time being administering the *Development Act 1993*; and
- (b) seek and consider the advice of a person with qualifications prescribed by regulation under section 26(1) of the *Development Act 1993*; and
- (c) consult the municipal or district council or councils whose area or areas will be affected by the proposed amendment of the Development Plan.

(2) The Minister administering this Act must not adopt a draft plan that includes a report referred to in subsection (1) unless the Minister for the time being administering the *Development Act 1993* has approved the report.

(3) If the Minister administering the *Development Act 1993* refuses to approve a report, the Minister for the time being administering this Act may remove the report from the draft plan.

(4) If a draft catchment water management plan that includes a report referred to in subsection (1) is adopted in accordance with this Act, the Minister for the time being administering the *Development Act 1993* must under section 29 of that Act amend the Development Plan to which the report relates in accordance with the report.

Review and amendment of plans

97. (1) A board must review the parts of its plan setting out its program for implementing the plan and dealing with estimated expenditure and source of funds annually.

(2) A board must review the entire plan at least once during each period of five years following adoption of the plan.

(3) On the annual review, the board—

(a) must amend the plan so that it—

- (i) specifies the following three financial years as the period to which its implementation program relates; and
- (ii) includes an estimate of the expenditure for the last year of that period; and
- (iii) states the source of funds necessary to meet the expenditure for each year and, if more than one source, the proportion of the funds to be raised from each source;

(b) must propose amendments (if any) that are required for consistency with the State Water Plan;

(c) may propose such other amendments to the plan that the board considers to be necessary or desirable.

(4) When reviewing its plan the board must have regard to all relevant reports of the Water Resources Council relating to the board.

(5) Subject to section 118 and subsection (6), the procedures provided by or under this Division for the preparation and adoption of the original plan must be followed when the plan is amended.

(6) Subject to subsection (7), if the only amendments to the plan are those referred to in subsection (3)(a) or amendments to the information included in the plan under section 92(3)(a), it is not necessary to follow the procedures referred to in subsection (5) if—

- (a) the board publishes a copy of the proposed amendments in a newspaper circulating in the catchment area of the board together with a notice inviting members of the public to provide it with written submissions in relation to the proposed amendments within six weeks after publication of the notice; and
- (b) the board forwards copies of the submissions received by it in accordance with the notice to the Minister; and
- (c) the Minister has regard to those submissions before adopting the amendment.

(7) If an amendment provides under subsection (3)(a)(iii) that funds should be raised by a levy under Part 8 Division 1 or should comprise or include an amount to be contributed by constituent councils, the procedures set out in section 95(8) to (15) must be followed when the plan is amended.

Time for preparation and review of plans

98. (1) The initial plan prepared by a board need not satisfy all the requirements of this Act but the board must bring it into a form that satisfies those requirements by an amendment, or series of amendments, or must substitute a comprehensive plan that satisfies those requirements as soon as practicable.

(2) If, in the opinion of the Minister, the scope of an initial plan will be so limited that no useful purpose will be served by the preparation of a proposal statement or by the public and other consultation required by this Act, the Minister may dispense with the requirements for the proposal statement and consultation in relation to the preparation and adoption of that plan.

(3) A board must undertake the annual review of its plan within sufficient time to allow the amendments and procedures relating to amendments required by this Act to be completed before the commencement of the next financial year.

Time for implementation of plans

99. (1) Subject to subsection (2), a catchment water management plan cannot be implemented unless it has been adopted by the Minister.

(2) A draft plan or amendments to a plan that have not been adopted by the Minister may be implemented by the board with the consent of the Minister and the constituent councils and, in the case of a plan referred to in subsection (3), the consent of the Minister for the time being administering the *Waterworks Act 1932*.

(3) The consent of the Minister for the time being administering the *Waterworks Act 1932* is required if, in the opinion of the Minister for the time being administering this Act, implementation of the plan or the amendments under subsection (2) would affect the quality or quantity of water flowing into the waterworks under the *Waterworks Act 1932*.

Availability of copies of plans, etc.

100. (1) A board must make—

- (a) its catchment water management plan; and

- (b) all submissions made in respect of the draft plan in accordance with the consultation procedures under this Act; and
- (c) such other documents as are prescribed by regulation,

available for inspection and purchase by members of the public.

(2) A board must not charge for inspection of a document referred to in subsection (1) and must not charge more than the fee prescribed by regulation for sale of copies of a document referred to in subsection (1).

DIVISION 3—WATER ALLOCATION PLANS

Preparation of water allocation plans

101. (1) A catchment water management board must prepare a draft water allocation plan in relation to each of the prescribed water resources in its area in accordance with this Division.

(2) A water resources planning committee must prepare a draft water allocation plan in relation to its water resource, or each of its water resources, in accordance with this Division.

(3) A plan prepared by a board under subsection (1) will form part of the board's catchment water management plan and procedures relating to the preparation and adoption of the plan may be undertaken in conjunction with procedures for the preparation and adoption of the catchment water management plan.

(4) A water allocation plan must—

- (a) include an assessment of the quantity and quality of water needed by the ecosystems that depend on the water resource and the times at, or the periods during, which those ecosystems will need that water; and
- (b) include an assessment as to whether the taking or use of water from the resource will have a detrimental effect on the quantity or quality of water that is available from any other water resource; and
- (c) provide for the allocation (including the quantity of water that is to be available for allocation) and use of water so that—
 - (i) an equitable balance is achieved between social, economic and environmental needs for the water; and
 - (ii) the rate of use of the water is sustainable; and
- (d) in providing for the allocation of water take into account the present and future needs of the occupiers of land in relation to the existing requirements and future capacity of the land and the likely effect of those provisions on the value of the land; and
- (e) assess the capacity of the resource to meet the demands for water on a continuing basis and provide for regular monitoring of the capacity of the resource to meet those demands; and
- (f) provide for the transfer of and other dealings with water allocations; and

- (g) specify the applications for the transfer of a licence or the water allocation of a licence (if any) in relation to which section 40 will apply; and
- (h) identify the changes (if any) that are necessary or desirable to a Development Plan under the *Development Act 1993* or to any Act or subordinate legislation; and
- (i) include such other information or material as is contemplated by this Act or is required by regulation.

(5) The draft plan must be consistent with the State Water Plan.

(6) Where the taking, or the taking and use, of water from a water resource has, or is likely to have, a detrimental effect on the quantity or quality of water that is available from another water resource, the water allocation plan for the firstmentioned resource must take into account the needs of persons and ecosystems using water from the other resource as well as the needs of persons and ecosystems using water from its own resource and may, to achieve an equitable balance between competing interests, include provisions designed to prevent or reduce those detrimental effects.

(7) Where the taking, or the taking and use, of water from a water resource affects, or is likely to affect, the management of water in another water resource, the water allocation plan for the secondmentioned water resource may include provisions relating to the taking, or the taking and use of water from the firstmentioned water resource.

(8) A water allocation plan may, in order to improve the management of a water resource, change the basis on which water is allocated from the resource notwithstanding that a consequential variation of a water licence to maintain consistency with the plan results in a reduction or increase in the quantity of water allocated by the licence.

(9) When preparing a draft water allocation plan the board or committee must have regard to the benefits of consistency of the plan with—

- (a) relevant management plans under the *Coast Protection Act 1972*; and
- (b) relevant Development Plans under the *Development Act 1993*; and
- (c) relevant environment protection policies under the *Environment Protection Act 1993*; and
- (d) relevant plans of management under the *National Parks and Wildlife Act 1972*; and
- (e) relevant district plans under the *Soil Conservation and Land Care Act 1989*; and
- (f) guidelines relating to the management of native vegetation adopted by the Native Vegetation Council under the *Native Vegetation Act 1991*; and
- (g) such other plans, policies or guidelines as are prescribed by regulation.

Proposal statement

102. (1) Before preparing a draft plan the board or committee must prepare a proposal statement.

(2) The proposal statement must—

- (a) set out in general terms the proposed content of the water allocation plan; and

- (b) specify matters to be investigated by the board or committee before preparation of the draft plan; and
 - (c) set out the proposals (if any) for consultation on the draft plan that are in addition to the requirements of this Act for consultation.
- (3) Before preparing the proposal statement the board or committee must—
- (a) by notice published in a newspaper circulating in the area in which the water resource is situated, invite members of the public to provide it with written submissions as to the contents of the proposal statement; and
 - (b) reach agreement with the Minister as to the contents of the proposal statement; and
 - (c) in the course of reaching agreement with the Minister have regard to submissions made under paragraph (a).
- (4) The proposal statement must be referred for comment to—
- (a) the Minister for the time being administering the *Development Act 1993*; and
 - (b) all Government Departments and other agencies (if any) that have a direct interest in the proposed plan; and
 - (c) in the case of a plan to be prepared by a board—the constituent council or councils of the board's area in whose area or areas the water resource is situated; and
 - (d) in the case of a plan to be prepared by a committee—the council or councils (if any) in whose area or areas the water resource is situated; and
 - (e) the public (by notice published in a newspaper circulating in the area in which the water resource is situated).
- (5) The Minister and the board or committee must consider all comments made to the Minister or the board or committee by persons or bodies referred to in subsection (4) within six weeks after referral of the proposal statement and the Minister and the board or committee may amend the statement as a result of those comments.
- (6) If the board or committee has identified a change that, in its opinion, is necessary or desirable to a Development Plan, it must—
- (a) submit proposals for the amendment of the Development Plan to the municipal or district council or councils whose area or areas will be affected by the amendment; and
 - (b) submit the proposals to the Minister for the time being administering the *Development Act 1993* together with submissions relating to the proposals (if any) made to the board or committee by a council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and
 - (c) if it has the agreement of that Minister to do so, include the proposals for the amendment of the Development Plan in the proposal statement.

Preparation of plans and consultation

103. (1) A board or committee must prepare a draft plan based on the proposal statement and the results of the board's or committee's investigations and must submit the draft plan to the Minister.

(2) The board or committee must consult the following persons when preparing the draft plan:

- (a) in the case of a plan prepared by a board—the constituent council or councils in whose area or areas the water resource is situated; and
- (b) in the case of a plan prepared by a committee—the council or councils (if any) in whose area or areas the water resource is situated; and
- (c) such other persons as are prescribed by regulation; and
- (d) the public.

(3) If the proposal statement includes proposals for the amendment of a Development Plan, the board or committee must, after—

- (a) consulting the Minister for the time being administering the *Development Act 1993*; and
- (b) seeking and considering the advice of a person with qualifications prescribed by regulation under section 26(1) of that Act,

prepare a report in relation to the proposed amendment and must, if it has the approval of the Minister for the time being administering the *Development Act 1993* to do so, include the report in the draft plan.

(4) When the draft plan is completed the board or committee must give a copy of it to—

- (a) the Minister; and
- (b) in the case of a plan prepared by a board—the constituent councils; and
- (c) in the case of a plan prepared by a committee—the council or councils (if any) in whose area or areas the water resource is situated; and
- (d) such other persons as are prescribed by regulation,

and must consult the public in relation to the plan.

(5) A board or committee must consult the public under subsections (2) and (4) by inviting the public to make written submissions to the board or committee and to attend a public meeting to be held in relation to the preparation of the draft plan and another meeting to be held in relation to the plan as drafted.

(6) An invitation under subsection (5) must be by advertisement in a newspaper circulating in the area in which the water resource is situated and in such other form (if any) as the board or committee thinks fit.

(7) The advertisement must—

- (a) identify the water resource; and
- (b) in the case of an invitation for submissions—state the name and address of the person to whom submissions must be sent and the time by which submissions must be received; and
- (c) in the case of an invitation to attend a public meeting—state the time and place at which the meeting will be held; and
- (d) in the case of an invitation relating to a plan that has been drafted—include an address at which copies of the plan can be inspected and purchased.

(8) An invitation for submissions in relation to the preparation of a plan must provide a period of at least one month after the advertisement was last published in a newspaper as the period during which submissions must be received.

(9) An invitation for submissions in relation to a plan that has been drafted must provide a period of at least two months after the advertisement was last published in a newspaper as the period during which submissions must be received.

(10) A public meeting must be held—

- (a) at least 14 days but not more than 28 days after the advertisement inviting attendance at the meeting was last published in a newspaper; and
- (b) at a time and place that will, in the opinion of the board or committee, be convenient for a majority of those persons who are likely to attend the meeting.

(11) The board or committee must appoint a member or employee of the board or committee or some other suitable person to conduct the meeting.

(12) A person who has conducted a meeting must, as soon as practicable after the meeting has concluded, submit a written report to the board or committee summarising the comments made at the meeting by members of the public in relation to the plan.

Adoption of plan by Minister

104. (1) The Minister must consult the following persons before adopting a draft plan:

- (a) the board or committee; and
- (b) in the case of a plan prepared by a board—the constituent council or councils in whose area or areas the water resource is situated; and
- (c) in the case of a plan prepared by a committee—the council or councils (if any) in whose area or areas the water resource is situated; and
- (d) where a report prepared under section 103(3) forms part of the draft plan—the Minister for the time being administering the *Development Act 1993*; and
- (e) the Local Government Association; and
- (f) such other persons as are prescribed by regulation.

(2) The Minister may consult with such other persons or authorities as he or she thinks fit.

(3) The Minister must, before adopting a plan, have regard to the submissions (if any) received from members of the public and to the reports of the person or persons who conducted the public meetings.

(4) After complying with the requirements of this section, the Minister may—

- (a) adopt the plan with or without amendment; or
- (b) refer the plan back to the board or committee for further consideration.

(5) If the Minister adopts the plan with amendment, he or she must give—

- (a) a copy of the plan as amended; or
- (b) if the part or parts of the plan that have been amended can conveniently be substituted in the draft plan—a copy of that part or those parts as amended,

to the board and to the constituent council or councils in whose area or areas the water resource is situated or to the committee and the council or councils (if any) in whose area or areas the water resource is situated.

(6) If the Minister refers the plan back to the board or committee, it must prepare a new draft plan and follow the procedures as to consultation provided for by this Division in respect of the new draft.

(7) The Minister adopts a plan by signing a certificate endorsed on the plan that he or she has adopted the plan.

Amendment of a Development Plan

105. (1) The Minister must, when amending a report in relation to the proposed amendment of a Development Plan that forms part of a draft water allocation plan following consultation on the draft plan—

- (a) consult the Minister for the time being administering the *Development Act 1993*; and
- (b) seek and consider the advice of a person with qualifications prescribed by regulation under section 26(1) of the *Development Act 1993*; and
- (c) consult the municipal or district council or councils whose area or areas will be affected by the proposed amendment of the Development Plan.

(2) The Minister administering this Act must not adopt a draft plan that includes a report referred to in subsection (1) unless the Minister for the time being administering the *Development Act 1993* has approved the report.

(3) If the Minister administering the *Development Act 1993* refuses to approve a report, the Minister for the time being administering this Act may remove the report from the draft plan.

(4) If a draft water allocation plan that includes a report referred to in subsection (1) is adopted in accordance with this Act, the Minister for the time being administering the *Development Act 1993* must under section 29 of that Act amend the Development Plan to which the report relates in accordance with the report.

Amendment of allocation plans

106. (1) A water allocation plan may be amended at any time.

(2) A plan must be amended when required for consistency with the State Water Plan.

(3) Subject to section 118, the procedures provided by or under this Division for the preparation and adoption of the original plan must be followed when the plan is amended.

Availability of copies of plans

107. (1) A board must make a water allocation plan prepared by it available for inspection and purchase by members of the public separately from its catchment water management plan.

(2) A water resources planning committee must make a water allocation plan prepared by it available for inspection and purchase by members of the public.

(3) A board and a committee must make—

(a) all submissions made in respect of the draft plan in accordance with the consultation procedures under this Act; and

(b) such other documents as are prescribed by regulation,

available for inspection and purchase by members of the public.

(4) A board or committee must not charge for inspection of a document referred to in this section and must not charge more than the fee prescribed by regulation for sale of copies of such a document.

DIVISION 4—LOCAL WATER MANAGEMENT PLANS**Local water management plans**

108. (1) Each council in the State may prepare a local water management plan.

(2) A local water management plan is a plan for the performance of functions and the exercise of powers by the council under this Act and the performance of functions and the exercise of powers in relation to the management of water resources by the council under all other relevant Acts.

(3) The plan must be consistent with—

(a) the State Water Plan; and

(b) if the area, or part of the area, of the council comprises the catchment area, or part of the catchment area of a catchment water management board—the board's catchment water management plan; and

(c) the water allocation plan or plans (if any) for the water resource or water resources situated in the area of the council.

(4) A plan when adopted, and amendments made to a plan, must as far as practicable, be consistent with—

(a) any relevant management plan under the *Coast Protection Act 1972*; and

- (b) any relevant Development Plan under the *Development Act 1993*; and
- (c) any relevant environment protection policy under the *Environment Protection Act 1993*; and
- (d) any relevant plan of management under the *National Parks and Wildlife Act 1972*; and
- (e) any relevant district plan under the *Soil Conservation and Land Care Act 1989*; and
- (f) guidelines relating to the management of native vegetation adopted by the Native Vegetation Council under the *Native Vegetation Act 1991*; and
- (g) such other plans, policies or guidelines as are prescribed by regulation.

(5) The council must inform the Minister of the inconsistencies (if any) between the plan and plans, policies or guidelines referred to in subsection (4).

Proposal statement

109. (1) Before preparing a draft plan a council must prepare a proposal statement.

(2) The proposal statement must—

- (a) set out in general terms the proposed content of the local water management plan; and
- (b) specify matters to be investigated by the council before preparation of the draft plan; and
- (c) set out the proposals (if any) for consultation on the draft plan that are in addition to the requirements of this Act for consultation.

(3) Before preparing the proposal statement the council must—

- (a) by notice published in a newspaper circulating in the area of the council, invite members of the public to provide it with written submissions as to the contents of the proposal statement; and
- (b) reach agreement with the Minister as to the contents of the proposal statement; and
- (c) in the course of reaching agreement with the Minister have regard to submissions made under paragraph (a).

(4) The proposal statement must be referred for comment to—

- (a) the Minister for the time being administering the *Development Act 1993*; and
- (b) all Government Departments and other agencies (if any) that have a direct interest in the proposed plan; and
- (c) where the area of the council comprises part or the whole of the catchment area of a catchment water management board—the board; and
- (d) the public (by notice published in a newspaper circulating in the area of the council).

(5) The Minister and the council must consider all comments made to the Minister or the council by persons or bodies referred to in subsection (4) within six weeks after referral of the proposal statement and the Minister and the council may amend the statement as a result of those comments.

(6) If the council has identified a change that, in its opinion, is necessary or desirable to a Development Plan, it must—

- (a) submit proposals for the amendment of the Development Plan to any other municipal or district council or councils whose area or areas will be affected by the amendment; and
- (b) submit the proposals to the Minister for the time being administering the *Development Act 1993* together with submissions relating to the proposals (if any) made to the council by another council referred to in paragraph (a) within six weeks after the proposals were submitted to the council; and
- (c) if it has the agreement of that Minister to do so, include the proposals for the amendment of the Development Plan in the proposal statement.

Preparation of plans and consultation

110. (1) A council must prepare a draft plan based on the proposal statement and the results of the council's investigations and must submit the draft plan to the Minister.

(2) The council must consult the following persons when preparing the draft plan:

- (a) where the area of the council comprises part or the whole of the catchment area of a catchment water management board—the board; and
- (b) such other persons as are prescribed by regulation; and
- (c) the public.

(3) If the proposal statement includes proposals for the amendment of a Development Plan, the council must, after—

- (a) consulting the Minister for the time being administering the *Development Act 1993*; and
- (b) seeking and considering the advice of a person with qualifications prescribed by regulation under section 26(1) of that Act,

prepare a report in relation to the proposed amendment and must, if it has the approval of the Minister for the time being administering the *Development Act 1993* to do so, include the report in the draft plan.

(4) When the draft plan is completed the council must—

- (a) give a copy of it to the Minister, to the relevant catchment water management board (if any) and to such other persons as are prescribed by regulation; and
- (b) consult the public in relation to the plan.

(5) A council must consult the public under subsections (2) and (4) by inviting the public to make written submissions to the council and to attend a public meeting to be held in relation to the preparation of the plan and another meeting to be held in relation to the draft plan.

(6) An invitation under subsection (5) must be by advertisement in a newspaper circulating in the area of the council and in such other form (if any) as the council thinks fit.

(7) An advertisement must—

- (a) in the case of an invitation for submissions—state the name and address of the person to whom submissions must be sent and the time by which submissions must be received; and
- (b) in the case of an invitation to attend a public meeting—state the time and place at which the meeting will be held; and
- (c) in the case of an invitation relating to a plan that has been drafted—include an address at which copies of the plan can be inspected and purchased.

(8) An invitation for submissions in relation to the preparation of a plan must provide a period of at least one month after the advertisement was last published in a newspaper as the period during which submissions must be received.

(9) An invitation for submissions in relation to a plan that has been drafted must provide a period of at least two months after the advertisement was last published in a newspaper as the period during which submissions must be received.

(10) A public meeting must be held—

- (a) at least 14 days but not more than 28 days after the advertisement inviting attendance at the meeting was last published in a newspaper; and
- (b) at a time and place that will, in the opinion of the council, be convenient for a majority of those persons who are likely to attend the meeting.

(11) The council must appoint a member or employee of the council or some other suitable person to conduct the meeting.

(12) A person who has conducted a meeting must, as soon as practicable after the meeting has concluded, submit a written report to the council summarising the comments made at the meeting by members of the public in relation to the plan.

Adoption of plan by Minister

111. (1) The Minister must consult the following persons before adopting a draft plan:

- (a) the council; and
- (b) the relevant catchment water management board (if any); and
- (c) where a report prepared under section 110(3) forms part of the draft plan—the Minister for the time being administering the *Development Act 1993*; and
- (d) such other persons as are prescribed by regulation.

(2) The Minister may consult with such other persons or authorities as he or she thinks fit.

(3) The Minister must, before adopting a plan, have regard to the submissions (if any) received from members of the public and to the reports of the person or persons who conducted the public meetings.

(4) After complying with the requirements of this section, the Minister may—

- (a) adopt the plan with or without amendment; or
- (b) refer the plan back to the council for further consideration.

(5) If the Minister adopts the plan with amendment, he or she must give—

- (a) a copy of the plan as amended; or
- (b) if the part or parts of the plan that have been amended can conveniently be substituted in the draft plan—a copy of that part or those parts as amended,

to the council and to the relevant catchment water management board (if any).

(6) If the Minister refers the plan back to the council, it must prepare a new draft plan and follow the procedures as to consultation provided for by this Division in respect of the new draft.

(7) The Minister adopts a plan by signing a certificate endorsed on the plan that he or she has adopted the plan.

Amendment of a Development Plan

112. (1) The Minister must, when amending a report in relation to the proposed amendment of a Development Plan that forms part of a draft local water management plan following consultation on the draft plan—

- (a) consult the Minister for the time being administering the *Development Act 1993*; and
- (b) seek and consider the advice of a person with qualifications prescribed by regulation under section 26(1) of the *Development Act 1993*; and
- (c) consult the other municipal or district council or councils (if any) whose area or areas will be affected by the proposed amendment of the Development Plan.

(2) The Minister administering this Act must not adopt a draft plan that includes a report referred to in subsection (1) unless the Minister for the time being administering the *Development Act 1993* has approved the report.

(3) If the Minister administering the *Development Act 1993* refuses to approve a report, the Minister for the time being administering this Act may remove the report from the draft plan.

(4) If a draft local water management plan that includes a report referred to in subsection (1) is adopted in accordance with this Act, the Minister for the time being administering the *Development Act 1993* must under section 29 of that Act amend the Development Plan to which the report relates in accordance with the report.

Amendment of plan

113. (1) A council may institute procedures for the amendment of its plan at any time and must institute those procedures if—

- (a) directed to do so by the Minister; or
- (b) amendment is required to maintain consistency with the State Water Plan or with a catchment water management plan or with a water allocation plan.

(2) A council must review its plan to determine whether it needs amendment—

- (a) when directed to do so by the Minister;
- (b) at least once during each period of five years following adoption of the plan.

(3) Subject to section 118, the procedures provided by this Division for the preparation and adoption of the original plan must be followed when the plan is amended.

Preparation etc., of plan by controlling authority

114. (1) A council may establish a controlling authority under the *Local Government Act 1934* to undertake the preparation of a local water management plan or amendments to a local water management plan on its behalf.

(2) A council may instruct a controlling authority established for some other purpose to undertake the preparation of a local water management plan or amendments to a local water management plan on its behalf.

Availability of copies of plans, etc.

115. (1) A council must make—

- (a) its local water management plan; and
- (b) all submission made in respect of the draft plan in accordance with the consultation procedures under this Act; and
- (c) such other documents as are prescribed by regulation,

available for inspection and purchase by members of the public.

(2) A council must not charge for inspection of a document referred to in subsection (1) and must not charge more than the fee prescribed by regulation for sale of copies of a document referred to in subsection (1).

DIVISION 5—GENERAL**Consent of the Minister administering the Waterworks Act 1932**

116. (1) Subject to subsection (2), if in the opinion of the Minister the implementation of a proposed water plan under this Part would affect the quality or quantity of water flowing into the waterworks under the *Waterworks Act 1932* the Minister must not adopt the plan without the consent of the Minister for the time being administering that Act.

(2) If the Minister and the Minister for the time being administering the *Waterworks Act 1932* cannot reach agreement on a plan, the Minister may adopt the plan with the consent of the Governor.

Validity of plans

117. (1) A catchment water management plan, or a provision of a catchment water management plan, is not invalid because it is inconsistent with the State Water Plan.

(2) A water allocation plan, or a provision of a water allocation plan, is not invalid because it is inconsistent with the State Water Plan.

(3) A local water management plan, or a provision of a local water management plan, is not invalid because it is inconsistent with the State Water Plan, a catchment water management plan or a water allocation plan.

Amendment of plans without formal procedures

118. The authority responsible for the preparation or amendment of a plan under this Part may amend the plan in order—

- (a) to correct an error in the plan; or
- (b) to achieve consistency with a water plan with which the plan is required to be consistent by this Act; or
- (c) to make a change of form (not involving a change of substance) in the plan,

without following the procedures for amendment required by this Part.

Water plans may confer discretionary powers

119. A water plan may confer discretionary powers.

PART 8
FINANCIAL PROVISIONS

DIVISION 1—LEVIES IN RELATION TO TAKING WATER

Interpretation

120. In this Division, unless the contrary intention appears—

"**accounting period**" means a financial year, or part of a financial year, in respect of which a levy is payable in accordance with a notice served under section 125;

"**consumption period**" in relation to an accounting period means a period of approximately the same length as the accounting period that commences or terminates during the accounting period and in respect of which the quantity of water taken is measured by meter readings;

"**to irrigate**" land includes to water land by any means for the purpose of growing any kind of plant or plants;

"**levy**" includes an instalment of a levy.

Report as to management of water in water resource

121. (1) The Minister may prepare a report—

- (a) relating to the management of the water in a prescribed watercourse or lake or in an underground aquifer or the surface water in a surface water prescribed area; and
- (b) identifying particular problems (if any) relating to the management of the water resource and suggesting solutions to those problems; and
- (c) estimating the cost of implementing the management proposals set out in the report; and
- (d) explaining why it is necessary to declare a levy or levies under this Division in relation to the water resource.

(2) The Minister may cause to be published in a newspaper circulating in the area in which the water resource is situated and in a newspaper circulating generally throughout the State a notice stating the place or places at which copies of the report can be inspected or purchased.

Declaration of levies by the Minister

122. (1) The Minister may, by notice in the *Gazette*, declare a levy or levies payable by persons who are authorised by a water licence or under section 11 to take water from a prescribed watercourse, lake or well or to take surface water from a surface water prescribed area.

(2) A levy can only be declared if—

- (a) the water resource is within the catchment area of a catchment water management board; or
- (b) a report referred to in section 121 has been prepared and has been published in the manner set out in that section in relation to the water resource during the immediately preceding five years.

(3) Where the water resource is in the catchment area of a board, a levy declared by the Minister under this section must be set at a level that will return an amount that is as near as reasonably practicable to the amount stated in the board's catchment water management plan as the amount to be raised by way of levy under this Division.

(4) A levy is not invalid because it raises more or less than the amount referred to in subsection (3) or, in the case of a levy in relation to a water resource in relation to which a report has been prepared and published under section 121, more or less than the amount of the estimated cost of management proposals set out in the report.

(5) Levies may be declared for the right to take water or for the water taken or both (but not in relation to the taking of water for domestic purposes or for watering stock that are not subject to intensive farming).

(6) A levy for the right to take water can only be declared in respect of water to be taken pursuant to a licence and the amount of the levy must be based on the quantity of water allocated by the licence.

(7) The amount of a levy for water taken must be based on the quantity of water taken.

(8) Different levies may be declared in respect of the same water resource based on the quantity of water allocated or taken and one or both of the following factors:

- (a) the part of the resource from which the water may be, or is, taken;
- (b) the purpose for which the water will be used.

(9) A notice under subsection (1)—

- (a) has effect in relation to the financial year specified in the notice; and
- (b) subject to subsection (10), must be published in the *Gazette* on or before the first day of that year.

(10) A notice under subsection (1) in relation to water to be taken, or that is taken, from a watercourse, lake or well or surface water to be taken, or that is taken, from a particular area of the State may be published in the *Gazette* within one month after the watercourse, lake or well became a prescribed watercourse, lake or well or the area became a surface water prescribed area.

Special purpose levy

123. (1) Where, in the opinion of the Minister—

- (a) it is necessary or desirable to raise money for a particular purpose related to the management of a prescribed water resource; and
- (b) it is not fair or reasonable that all persons who take, or have the right to take, water from the resource should contribute, or contribute to the same extent, to the amount needed for that purpose,

the Minister may, by notice in the *Gazette*, declare a levy (a special purpose levy) which is payable by those persons specified in the notice.

(2) A person cannot be specified in a notice unless, at some time during the period of one month immediately preceding publication of the notice, he or she had the right to take water from the resource (whether he or she actually took water during that period or not).

(3) The Minister may only declare a special purpose levy if a majority of the persons named in the notice have given their consent to it in writing but if a majority do consent then all of the persons named are primarily liable for the levy even though their entitlement to take water has subsequently ceased.

(4) The consent must be in a form prescribed by regulation and must include the following information:

- (a) the proposed levy and the amount that imposition of the levy is expected to raise; and
- (b) the purpose for which money raised by the levy will be used; and
- (c) the names of the persons to be specified in the notice who will be primarily liable to pay the levy.

(5) The Minister must serve the form of consent on all persons to be named in the notice as being primarily liable for the levy.

(6) For the purpose of determining whether a majority of persons have given their consent to a levy, two or more persons who would be primarily liable for the levy in respect of the same water licence or the same land or business will be counted as one person.

(7) For the purpose of determining whether consent has been given, all of the persons (if more than one) who would be primarily liable for the levy in respect of the same water licence or the same land or business must give their consent.

(8) A form of consent that purports to have been signed by a person who will be liable to pay a special purpose levy must, in the absence of proof to the contrary, be taken in proceedings before a court or other tribunal to have been signed by that person.

(9) Where the water resource is situated in the catchment area of a catchment water management board, the Minister may only declare a special purpose levy if the board's catchment water management plan has identified the levy as a source of funds for the purpose concerned.

(10) Unless the contrary intention appears, this Division applies to and in relation to a special purpose levy as though it were a levy declared under section 122.

(11) The naming of the persons who will be primarily liable for a special purpose levy in a notice under subsection (1) does not exclude the liability for the levy under section 124 of an existing owner of land or a person who subsequently owns or occupies the land.

(12) Liability for a special purpose levy is in addition to liability for a levy under section 122.

(13) Nothing in this section limits the ability of the Minister to declare differential levies under section 122 on the bases set out in that section.

Liability for levy

124. (1) Subject to subsection (8), a person who holds a licence at any time during a financial year in respect of which a levy for the right to take water has been declared is liable to pay to the Minister the full amount of that levy whether he or she holds the licence throughout the year or not.

(2) Subject to subsection (6), a person who holds a licence at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken pursuant to the licence.

(3) Subject to subsection (6), a person who takes water pursuant to an authorisation under section 11 at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken.

(4) Where a levy for the right to take water or for the taking of water applies in relation to water that is intended to be used, or is used, for irrigating land or in the course of carrying on a business on land, the following persons are jointly and severally liable to the Minister for payment of the levy in addition to the person primarily liable under subsection (1), (2) or (3):

- (a) in the case of a levy for the right to take water—the owner of the land (if the owner is not the person primarily liable under subsection (1))—
 - (i) where the levy was declared during the financial year to which the levy relates—at the time the levy was declared; or
 - (ii) where a licence was not in existence in relation to that land at the commencement of the financial year to which the levy relates but a licence was granted after the commencement of that year—at the time when the licence was granted; or
 - (iii) where the levy is payable in respect of an increase in the water allocation—at the time of the increase; or
 - (iv) in any other case—at the commencement of the financial year to which the levy relates; and
- (b) in the case of a levy for water taken—the owner of the land (if the owner is not the person primarily liable under subsection (2) or (3)) when the water was taken; and
- (c) all persons who own or occupy the land at any time—
 - (i) after the person primarily liable under subsection (1), (2) or (3) or the person liable under paragraph (a) or (b); and
 - (ii) before the levy is paid.

(5) A person who makes a payment to the Minister in respect of his or her liability under subsection (4) may recover the amount of the payment from the person primarily liable under subsection (1), (2) or (3).

(6) Where two or more persons are liable under subsection (2) or (3) for water taken during different parts of an accounting period and the water used by those persons is used to irrigate the same land or is used in the course of carrying on a business on the same land, the following provisions apply:

- (a) the last of those persons to take water during the accounting period will be taken to be liable under subsection (2) or (3) to the Minister for the amount of the levy for water taken during the whole of that period; and
- (b) that person is entitled to contribution from the other person or persons who have taken water during another part or parts of the accounting period on the basis of the quantity of water taken by each of them.

(7) A person is liable under this section for a levy for the right to take water, or for water taken, pursuant to a licence whether the licence was granted before or after the commencement of this Act.

(8) Where—

- (a) a licence is granted after the commencement of a financial year or the water allocation of a licence is increased after the commencement of a financial year; and
- (b) the water allocation, or part of the water allocation, of the licence or the increase, or part of the increase, in the water allocation of the licence is attributable to the surrender of another licence or a reduction in the water allocation of another licence,

a levy for the right to take water is not payable for that year in respect of that part of the water allocation of the licence that is attributable to the surrender of the other licence or the reduction in the water allocation of the other licence.

(9) A levy for the right to take water is payable even though taking water has been prohibited or restricted under this Act or under the licence concerned.

(10) A levy becomes payable on the date for payment stated in the notice under section 125.

(11) A levy or instalments of a levy are payable pursuant to a notice served under section 125 notwithstanding that the person liable disputes the amount of the levy, but any overpayment must be refunded by the Minister when the correct amount is finally determined.

Notice to person liable for levy

125. (1) The Minister may serve the notice referred to in subsection (2) on a person who is liable to pay a levy under section 124(1), (2) or (3).

(2) The notice must—

- (a) state whether the levy is for the right to take water, or for water taken or both; and
- (b) state the amount of the levy payable and the accounting period or periods to which the notice relates; and
- (c) state the factor, or combination of factors, on which the levy is based; and
- (d) state the date on or before which the levy must be paid or, where the Minister is prepared to accept payment in instalments, state the amount of each instalment and the date on or before which it must be paid.

(3) The accounting period or periods to which a notice relates must be confined to one financial year or to part of a financial year.

Determination of quantity of water taken

126. (1) Where a levy is based on the quantity of water taken the following provisions apply:

- (a) meter readings will be used to determine the quantity of water taken except where—
 - (i) a meter has not been installed; or
 - (ii) the readings given by the meter are unreliable in the opinion of the Minister;
- (b) where meter readings are used, the quantity of water taken during an accounting period will be taken to be the quantity of water taken during the consumption period for that accounting period;
- (c) where meter readings are not used, the quantity of water taken during an accounting period will, subject to subsection (3), be assessed by the Minister on—
 - (i) the basis of the pumping capacity of the pump (if any) used to take the water; or
 - (ii) the basis of the area of land irrigated and the crop grown on that land; or
 - (iii) such other basis as the Minister thinks fit;
- (d) water taken—
 - (i) by the occupier of land for domestic purposes on the land or for providing stock (other than stock subject to intensive farming) kept on the land with drinking water;
 - (ii) for firefighting,must be disregarded;
- (e) where water taken for domestic or stock purposes or for firefighting is not measured by meter, or the water taken is used for other purposes as well, the Minister must make an assessment of the quantity of water taken for those purposes in accordance with paragraph (c).

(2) Where the Minister uses meter readings or uses any other measuring instrument to determine the quantity of water taken under this Act, he or she will be taken not to be using a measuring instrument for trade for the purposes of the *Trade Measurement Act 1993*.

(3) The Minister cannot make an assessment under subsection (1)(c) of the quantity of water taken (except for domestic or stock purposes) unless, before the commencement of the accounting period in relation to which the assessment is to be made, he or she had published in the *Gazette*—

- (a) where the basis of assessment is to be pumping capacity—the method to be used in assessing the quantity of water on that basis;
- (b) where the basis of assessment is to be crop area—water use rates for the crop concerned;
- (c) where some other basis of assessment is to be used—the basis to be used and the method by which it will be used.

(4) If a person liable to pay a levy for water taken from a prescribed water resource is dissatisfied with the accuracy of the meter that measured the quantity of water taken, he or she may, on payment of the fee prescribed by regulation, require the Minister to test the meter.

(5) If on testing the meter, the Minister finds—

- (a) that the quantity of water measured by the meter was not more than five per cent more or less than the quantity of water actually taken, the quantity of water measured by the meter will be the quantity in respect of which the levy is payable;
- (b) that the quantity of water as measured by the meter was inaccurate by more than five per cent and the Minister is able to determine the degree of inaccuracy, the Minister may serve a further notice under section 125 based on the quantity of water taken appropriately adjusted;
- (c) that the quantity of water as measured by the meter was inaccurate by more than five per cent but the Minister is unable to determine the degree of inaccuracy, the Minister may serve a further notice under section 125 based on the Minister's assessment under subsection (1)(c) (subsection (3) does not apply in relation to an assessment in these circumstances).

(6) If the Minister finds that the quantity of water as measured by the meter was inaccurate by more than five per cent, the Minister must refund the fee referred to in subsection (4).

(7) A person who is dissatisfied with the finding or determination of the Minister under subsection (5) may appeal to the Court against the finding or determination.

(8) Where the Minister assesses—

- (a) the quantity of water taken under subsection (1)(c); or
- (b) the quantity of water used for domestic or stock purposes or for firefighting under subsection (1)(e); or
- (c) the quantity of water taken by a person who is not authorised by a licence or under section 11 to take the water,

the assessment and the basis on which it was made cannot be called into question by, or before, any court, tribunal or other authority except on the ground that the assessment was not made in good faith.

Interest

127. (1) Interest accrues—

- (a) on an unpaid levy; and
- (b) on unpaid instalments of a levy; and
- (c) on unpaid interest

in accordance with the regulations.

(2) A person who is liable to pay a levy is also liable to pay interest that accrues, or has accrued, on or in relation to the levy under this section.

(3) The Minister may release a person suffering financial hardship from liability to pay the whole or part of interest that has accrued under this section.

Cancellation, etc., of licence for non-payment of levy

128. (1) Where a person who holds a water licence under this Act has failed to pay a levy, or an instalment of a levy, within three months after being served with a notice under section 125, the Minister may serve further notice on the licensee requiring payment within a period of not less than one month and stating that the licence may be cancelled, suspended or varied by the Minister if the amount is not paid within that time.

(2) The Minister may cancel, suspend or vary the licence by seven days written notice served on the licensee if the levy or instalment is not paid in accordance with the notice referred to in subsection (1).

Levy first charge on land

129. A levy for the right to take water, or for taking water, that is intended to be used, or is used, for irrigating land, or in the course of carrying on a business on land, and interest in relation to the levy are a first charge on the land.

Sale of land for non-payment of a levy

130. (1) Where a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for one year or more, the Minister may sell the land.

(2) Before the Minister sells land in pursuance of this section, he or she must serve notice on the owner and occupier of the land—

- (a) stating the period for which the levy and interest have been in arrears; and
- (b) stating the amount of the total liability for the levy and interest presently outstanding and charged on the land; and
- (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the levy or interest.

(3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).

(4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.

(5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).

(6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

(7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.

(8) If—

- (a) an auction fails; or
- (b) the land is held from the Crown under a lease, licence or agreement to purchase,

the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.

(9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
- (b) secondly—in discharging the liability for the levy and interest and any other liabilities to the Minister in respect of the land;
- (c) thirdly—in discharging the liability (if any) to any other authority under this Act that relates to the administration of this Act;
- (d) fourthly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);
- (e) fifthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;
- (f) sixthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
- (g) seventhly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
- (h) eighthly—in payment to the former owner of the land.

(10) If the former owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.

(11) Where land is sold by the Minister in pursuance of this section, an instrument of transfer executed by the Minister will operate to vest title to the land in the purchaser.

(12) The title vested in a purchaser under subsection (11) will be free of—

- (a) all mortgages and charges; and
- (b) except in the case of land held from the Crown under lease or licence—all leases and licences.

(13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Chief Executive of the Department of Environment and Natural Resources stating that the requirements of this section in relation to the sale of the land have been observed.

(14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event he or she must cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(15) A reference in this section to land, or title to land, held from the Crown under lease, licence or agreement to purchase, is a reference to the interest of the lessee, licensee or purchaser in the land.

Discounting levies

131. The Minister may discount a levy in accordance with the regulations to encourage early payment of the levy.

Declaration of penalty in relation to the unauthorised taking of water

132. (1) The Minister may, by notice in the *Gazette*, declare a penalty payable by—

- (a) a licensee who takes water in excess of the water allocation of the licence;
- (b) a person who takes water but is not the holder of a water licence and is not authorised under section 11 to take the water.

(2) The Minister may declare different penalties in relation to water taken from different water resources.

(3) Sections 124 to 131 inclusive apply to, and in relation to, a penalty under this section as though it were a levy declared under section 122.

Appropriation of levies, penalties and interest

133. (1) Money paid to the Minister in satisfaction of a liability for a levy, penalty or interest under this Division must—

- (a) in the case of a penalty under section 132—be paid into the Consolidated Account;
- (b) in the case of a special purpose levy under section 123—be applied for the purpose for which it was raised;
- (c) in all other cases—
 - (i) where the water resource in relation to which the levy was declared was in the catchment area of a catchment water management board when the levy was declared—be paid to the board;
 - (ii) where the water resource was not in the area of a board when the levy was declared—be paid into the Water Resources Levy Fund.

(2) The Water Resources Levy Fund must be applied for a purpose relating to the management of the State's water resources.

(3) The Minister must, as far as practicable, apply money comprising the Fund so as to benefit proportionately the water resources in relation to which the money was paid into the Fund.

(4) Before applying money under subsection (2) the Minister must consult the Treasurer and have regard to his or her views.

(5) The Minister may invest money standing to the credit of the Fund that is not immediately required for the purposes referred to in subsection (2) in such manner as is approved by the Treasurer.

(6) Income derived from investment of the Fund must be credited to the Fund.

(7) A refund of a levy payable by the Minister under Division 3 must be paid from the Fund.

Accounts and audit

134. (1) The Minister must cause proper accounts to be kept of money paid to and from the Water Resources Levy Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

DIVISION 2—CONTRIBUTIONS BY COUNCILS TO BOARDS

Contributions

135. (1) If the catchment water management plan of a board specifies an amount to be contributed by the constituent councils of the board's catchment area in respect of a financial year, the constituent councils must contribute an amount determined by the Minister under subsection (2) to the board's costs of performing its functions under this Act for that year.

(2) The amount to be contributed by the constituent councils is the amount specified in the board's plan increased by the Minister's estimate (made after consultation with the constituent councils) of the amount by which the shares of the constituent councils will be reduced in respect of rebates and remissions under section 136 and exemptions under section 138(11) or (12).

(3) Liability for the amount to be contributed by the constituent councils will be shared between them—

- (a) where the levy under section 138 is based on the capital value of rateable land—in the proportions that the capital value of the rateable land in the area of the board is distributed amongst the areas of the councils (this paragraph applies despite the fact that an individual council uses a different basis to impose its levy—*see section 138(4)*);
- (b) where the levy is a fixed amount on all rateable land—in proportion to the number of rateable properties situated in the area of each council being properties that are also situated in the area of the board;
- (c) where the levy is a fixed amount that depends on the purpose for which rateable land is used—in proportion to the number of rateable properties used for each relevant purpose that are in the area of each council and are also in the area of the board;
- (d) where the levy is based on the area of rateable land—in the proportions that the area of the rateable land in the area of the board is distributed amongst the areas of the councils;
- (e) where the levy is based on the purpose for which rateable land is used and the area of rateable land—in the proportions that the area of the rateable land in the area of the board that is used for each purpose is distributed amongst the areas of the councils.

(4) The share of each council must be determined by the Minister under subsection (3) after consultation with the constituent councils and must be submitted to the Governor for approval.

(5) A council must, at the request of the Minister, supply the Minister with information in the possession of the council to enable the Minister to make the estimation required under subsection (2) and the determination of shares under subsection (4).

(6) The Minister must cause notice of the share of each council approved by the Governor under subsection (4) to be given to each of the constituent councils and to be published in the *Gazette*.

Reduction of council's share

136. (1) Subject to subsection (2), a council's share of the amount to be contributed by the constituent councils determined under section 135 is reduced by an amount equivalent to the amount by which the return to the council on the levy imposed under section 138 ("the section 138 levy")—

- (a) is rebated or remitted in accordance with Part 10 of the *Local Government Act 1934*; or
- (b) is reduced on adjustment following an alteration to the value of land or a decision to attribute a particular land use to land; or
- (c) is reduced because of an exemption from payment of the levy by section 138(11) or (12).

(2) If—

- (a) a rebate or remission of the section 138 levy in respect of particular land is more generous or is subject to less onerous conditions than the rebate or remission of general rates in respect of that land; or
- (b) there is no equivalent rebate or remission of general rates in respect of that land,

the rebate or remission of the section 138 levy in respect of that land will not be taken into account when determining the amount by which the council's share will be reduced under subsection (1).

Payment of contributions

137. (1) Subject to subsection (2), a council's share of the amount to be contributed by the constituent councils is payable by the council in approximately equal instalments on 30 September, 31 December, 31 March and 30 June in the year to which the contribution relates and interest accrues on any amount unpaid at the rate and in the manner prescribed by regulation.

(2) If notice of the section 138 levy imposed by a council in respect of a financial year could not be included in the notice of general rates for that year because the share to be contributed by the council was not approved by the Governor on or before 1 June preceding that year, the council may pay its share in approximately equal instalments on 31 December, 31 March and 30 June in that year.

(3) An amount payable by a council to the board under this section and any interest that accrues in respect of that amount is recoverable by the board as a debt.

(4) If an amount paid by a council is not spent by the board in the financial year in respect of which it was paid, it may be spent by the board in a subsequent financial year.

Imposition of levy by constituent councils

138. (1) In order to reimburse themselves for the amounts contributed to the board under this Division, the constituent councils must impose a levy on rateable land in the area of the board.

(2) Except to the extent that the contrary intention appears, Part 10 of the *Local Government Act 1934* applies to and in relation to the levy as though it were a separate rate under that Part.

(3) The basis for the levy must be selected from the following list by the Minister after consultation with the constituent councils and must be submitted to the Governor for approval:

- (a) the capital value of rateable land; or
- (b) a fixed levy of the same amount on all rateable land; or
- (c) a fixed levy of an amount that depends on the purpose for which rateable land is used; or
- (d) the area of rateable land; or
- (e) the purpose for which rateable land is used and the area of the land.

(4) Where capital value is the basis for the levy selected by the Minister, a council that uses some other basis to impose general rates in its area may use that other basis to impose the levy.

(5) A levy based on a fixed amount can only be imposed as follows:

- (a) the levy cannot be imposed against land that constitutes less than the whole of a single allotment; and
- (b) if two or more pieces of contiguous rateable land are owned by the same owner and occupied by the same occupier, only one levy may be imposed against the whole of that land.

(6) The purposes for which land is used that may be the basis for the levy under subsection (3) must be prescribed by regulation.

(7) A council—

- (a) must fix the levy at a level calculated to return the same amount as the council's share of the amount to be contributed to the board before that share is reduced by rebates and remissions under section 136 and exemptions under subsection (11) or (12); and
- (b) must not take into account when fixing the levy the fact that rebates, remissions and exemptions will reduce the amount returned by imposition of the levy.

(8) The Minister must cause notice of the basis on which the levy will be imposed approved by the Governor under subsection (3) to be given to each of the constituent councils and to be published in the *Gazette*.

(9) If the amount of a levy due under this section is known when notices for general rates are issued by a council, the amount of the levy must be shown separately on the notice for the general rates.

(10) In this section—

"allotment" means—

- (a) the whole of the land comprised in a certificate of title; or
- (b) the whole of the land subject to a separate lease or a separate licence coupled with an interest in land;

"capital value" has the same meaning as in Part 10 of the *Local Government Act 1934*;

"contiguous" has the meaning given to it by section 194A of the *Local Government Act 1934*;

"rateable land" has the same meaning as in Part 10 of the *Local Government Act 1934*.

(11) Where a person has paid or is liable to pay a levy under Division 1 in relation to water that is intended to be used, or is used, for irrigating land or in the course of carrying on a business on land in respect of a financial year, that person is not liable to pay a levy under this section in respect of that land for that year.

(12) Where a person has paid or is liable to pay a water supply charge under the *Irrigation Act 1994* in respect of a financial year to the Minister administering that Act or to a trust under that Act and the Minister or trust has paid or is liable to pay in respect of that financial year a levy under Division 1 in relation to water supplied to that person for irrigating land, that person is not liable to pay a levy under this section in respect of that land for that year.

Administrative costs of councils

139. (1) A catchment water management board is liable to pay to each of the constituent councils of its catchment area an amount determined by the Minister under subsection (2).

(2) The amount is the amount that in the opinion of the Minister represents the reasonable administrative costs of the council in complying with the requirements of this Division less an amount that, in the opinion of the Minister, represents the financial benefit to the council of receiving payment of the section 138 levy before it pays its share of the amount to be contributed to the board under this Division.

DIVISION 3—REFUND OF LEVIES

Refund

140. (1) A catchment water management plan or regulations under this Act may set out water usage or land management practices that are designed to conserve water or maintain or improve the quality of water that will form the basis of an application for a refund of the levy imposed under Division 1 or Division 2.

(2) The plan or the regulations must specify the amount of the refund that may be applied for.

(3) A person who has adopted practices referred to in subsection (1) in a financial year may apply for a refund of the whole or a part of a levy under Division 1 paid by that person to the Minister for that year.

(4) If the water resource to which the levy relates is in the area of a board, the application must be made to the board.

(5) In any other case the application must be made to the Minister.

(6) The owner or occupier of land in the catchment area of a catchment water management board in relation to which practices referred to in subsection (1) have been adopted in a financial year may apply to the board for a refund of the whole or a part of the levy under Division 2 paid by that person to the council in respect of the land for that year.

(7) The board or the Minister must grant an application under this section if the relevant criteria set out in the management plan or the regulations have been satisfied.

(8) Without limiting the criteria that may be used, the plan or regulations may specify accreditation by a specified body as the criterion or one of the criteria on which an application will be granted.

(9) An applicant may appeal to the Court against a decision of the Minister or a board under this section.

(10) On granting an application, the board or the Minister must pay to the applicant the amount of the refund applied for.

PART 9
CIVIL REMEDIES

Civil remedies

141. (1) Applications may be made to the Court for one or more of the following orders:

- (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person to take any specified action;
- (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;
- (c) if a person has suffered injury or loss or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
- (d) if the Court considers it appropriate to do so, an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court.

(2) The power of the Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—

- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial harm or damage if the person engages in conduct of that kind.

(3) The power of the Court to make an order requiring a person to take specified action may be exercised—

- (a) if the Court is satisfied that the person has refused or failed to take that action—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to take that action; or
- (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will refuse or fail to take that action—whether or not the person has previously refused or failed to take that action and whether or not there is an imminent danger of substantial harm or damage if the person refuses or fails to take that action.

(4) In assessing an amount to be ordered in the nature of exemplary damages, the Court must have regard to—

- (a) any damage to a water resource or any other part of the environment or detriment to the public interest resulting from the contravention; and

- (b) any financial saving or other benefit that the respondent stood to gain by committing the contravention; and
- (c) any other matter it considers relevant.

(5) The power to order payment of an amount in the nature of exemplary damages may only be exercised by a Judge of the Court.

(6) An application under this section may be made—

- (a) by the Minister or other authority under this Act; or
- (b) by any person whose interests are affected by the subject matter of the application; or
- (c) by any other person with the leave of the Court.

(7) Before the Court may grant leave for the purposes of subsection (6)(c), the Court must be satisfied that—

- (a) the proceedings on the application would not be an abuse of the process of the Court; and
- (b) it is not unlikely that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
- (c) it is in the public interest that the proceedings should be brought.

(8) If an application is made by a person other than the Minister—

- (a) the applicant must serve a copy of the application on the Minister within three days after filing the application with the Court; and
- (b) the Court must, on application by the Minister, join the Minister as a party to the proceedings.

(9) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).

(10) An application may be made in the absence of the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, it may grant leave to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(11) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the application).

(12) If, on an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(13) An interim order—

- (a) may be made in the absence of the respondent or any other party; and
- (b) may be made whether or not the proceedings have been referred to a conference; and
- (c) will be made subject to such conditions as the Court thinks fit; and
- (d) will not operate after the proceedings in which it is made are finally determined.

(14) The Court may order an applicant in proceedings under this section—

- (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
- (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (15).

(15) If, on an application under this section alleging a contravention of this Act, the Court is satisfied—

- (a) that the respondent has not contravened this Act; and
- (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
- (c) that in the circumstances it is appropriate to make an order under this provision,

the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.

(16) The Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.

(17) Proceedings under this section based on a contravention of this Act may be commenced at any time within three years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.

(18) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section must be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(19) The Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.

**PART 10
APPEALS**

Right of appeal

142. (1) The following rights of appeal lie to the Court:

- (a) an applicant for the grant of a water licence, a well driller's licence or a permit may appeal to the Court against a refusal to grant the licence or permit or the imposition of conditions in relation to the licence or permit;
- (b) an applicant for the transfer of a water licence or the water allocation or part of the water allocation of a licence may appeal to the Court against a refusal to grant the application or a decision to reduce the water allocation or to vary the conditions of the transferred licence or the licence to which the water allocation is transferred;
- (c) the holder of a licence or permit may, if authorised to do so by another provision of this Act, appeal to the Court against the variation, suspension or cancellation of the licence or the variation, suspension or revocation of the permit;
- (d) a person who is subject to a direction by the Minister or other authority under this Act may appeal to the Court against the direction;
- (e) a person who is subject to a restriction under section 16(5) may appeal to the Court against the restriction;
- (f) a person who is expressly given a right of appeal by another provision of this Act may appeal to the Court in pursuance of that right.

(2) Subsection (1)(d) does not apply to a direction to a catchment water management board under section 55(2)(c) or 79(2) or a water resources planning committee under section 82(2)(c).

(3) The Crown in right of the State of Victoria has a right of appeal to the Court against a decision to grant a water licence or to issue a permit on the ground that the decision is contrary to the Border Groundwaters Agreement approved by the *Groundwater (Border Agreement) Act 1985*.

(4) An appeal under subsection (1) must be instituted in the manner and form determined by the Court within six weeks of the decision, direction or restriction appealed against or within such further time as the Court considers to be reasonable in the circumstances.

(5) An appeal under subsection (3) must be instituted in the manner and form determined by the Court within two months after the Victorian Government receives notice of the decision or within such further time as the Court considers to be reasonable in the circumstances.

(6) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

(7) On an appeal the Court may—

- (a) affirm or vary the decision, direction or restriction appealed against, or substitute any decision, direction or restriction that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Minister or other authority for further consideration;

(c) make or give any consequential or ancillary order or direction.

Decision or direction may be suspended pending appeal

143. (1) Where a decision, direction or restriction has been made, given or imposed by the Minister or other authority and the Minister, the authority or the Court is satisfied that an appeal against the decision, direction or restriction has been instituted, or is intended, the Minister, the authority or the Court may suspend the operation of the decision, direction or restriction until the determination of the appeal.

(2) A suspension granted under subsection (1) by the Minister, an authority or the Court may be terminated by the Minister, the authority or the Court (as the case requires) at any time.

**PART 11
MISCELLANEOUS**

Constitution of Environment, Resources and Development Court

144. (1) The following provisions apply in respect of the constitution of the Environment, Resources and Development Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Presiding Member of the Court so determines, be constituted of a Judge and one commissioner;
- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and one commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) the commissioner's appointment was on the basis that he or she has, in the opinion of the Governor, wide practical knowledge of, and experience in, the use, conservation or management of water resources; and
 - (ii) the commissioner has been designated by the Governor, by instrument in writing, as a commissioner for the purposes of the Court's jurisdiction under this Act.

False or misleading information

145. A person who furnishes information to the Minister or another authority under this Act or to an authorised officer that is false or misleading in a material particular is guilty of an offence.

Maximum Penalty: where the offender is a body corporate—\$10 000
 where the offender is a natural person—\$5 000.

Compensation

146. (1) A catchment water management board is liable to pay compensation—

- (a) to a person who has the right to take water from a watercourse or lake whether pursuant to a water licence or not, for loss or damage resulting from the effect on the exercise of the right by that person of the board stopping, reducing or diverting the flow of water in the watercourse or in a watercourse that flows into the lake;
- (b) to the owner or occupier of land that the board, or a person authorised by the board, has entered, or entered and occupied, for loss or damage caused by the entry or occupation of the land.

(2) Where the exercise of rights under a water licence or a permit has the effect of stopping, reducing or diverting the flow of water in a watercourse, a board that allocated water to the licence or approved the transfer of the licence or a water allocation to the licence (as a delegate of the Minister) or granted the permit is not responsible for the purposes of subsection (1)(a) for stopping, reducing or diverting the flow of water in the watercourse.

(3) The Minister is liable to pay compensation to the owner of land for—

- (a) the value of a dam, embankment, wall or other obstruction or object removed by the owner in compliance with a notice under section 15(1); and
- (b) the costs of removal incurred by the owner.

(4) For the purposes of subsection (3), the value of a dam, embankment, wall or other obstruction or object will be taken to be—

- (a) the amount by which the dam, embankment, wall or other obstruction or object increased the value of the land; or
- (b) the cost, at the time of removal, of replacing the dam, embankment, wall or other obstruction or object,

whichever is the lesser.

(5) The Minister is liable to pay compensation to the occupier of land for the loss of water (if any) held by a dam, embankment, wall or other obstruction or object when it is removed in compliance with a notice under section 15(1).

(6) A claim for compensation under this section against a board must be made by written notice served on the board—

- (a) in the case of compensation under subsection (1)(a)—within six months after the loss or damage first occurred;
- (b) in the case of compensation under subsection (1)(b)—within three months after the board, or a person authorised by the board, entered the land or ceased to occupy the land.

(7) A claim for compensation under this section against the Minister must be made by written notice served on the Minister within six months after the removal of the dam, embankment, wall or other obstruction or object.

(8) If the claimant and the board or the Minister cannot reach agreement within three months after the notice is served on the board or the Minister, the claimant may apply to a court of competent jurisdiction for determination of the amount of compensation payable.

(9) Compensation is not payable under subsection (1)(b) in respect of the entry or occupation of land pursuant to an easement.

(10) Compensation is not payable under subsection (1), (3) or (5) to the Crown or an agent or instrumentality of the Crown or to a council or controlling authority.

Immunity from liability

147. (1) Except as otherwise provided by this Act—

- (a) a member, employee or delegate of a catchment water management board or a municipal or district council; or
- (b) a member of the Water Resources Council or a water resources planning committee; or
- (c) an authorised officer,

incurs no civil liability for an honest act or omission in the performance or discharge, or purported performance or discharge, of functions or powers under this Act.

(2) A liability that would, but for subsection (1), lie against—

- (a) a member, employee or delegate of a board or a council, lies instead against the board or the council;
- (b) a member of the Water Resources Council or a water resources planning committee, lies instead against the Crown;
- (c) an authorised officer, lies instead (subject to subsection (3)) against the Crown.

(3) A liability that would, but for subsection (1), lie against an authorised officer who is an officer or employee of a council lies instead against the council.

Determination of costs and expenses

148. (1) A reference in this Act to the costs of an authority under this Act in taking action or performing work includes a reference to expenses incurred in taking the action or performing the work.

(2) The costs and expenses of an authority under this Act in taking action or performing work must be determined by reference to the costs and expenses that would have been incurred if an independent contractor had been engaged to take the action or perform the work.

Interference with works or other property

149. (1) A person must not interfere with any property of the Crown used in, or in connection with, the administration of this Act without the permission of the Minister.

Maximum Penalty: where the offender is a body corporate—\$10 000
where the offender is a natural person—\$5 000.

(2) Where a meter is used for the purposes of this Act to measure the quantity of water taken from a water resource, a person (including the owner of the meter) must not interfere with the meter without the permission of the Minister.

Maximum penalty: where the offender is a body corporate—\$10 000
where the offender is a natural person—\$5 000.

(3) A person must not interfere with any infrastructure or other property that is vested in or is under the care, control and management of a catchment water management board or a person acting on behalf of a board without the board's permission.

Maximum penalty: where the offender is a body corporate—\$10 000
where the offender is a natural person—\$5 000.

(4) The Minister's or the board's permission under this section may be conditional or unconditional and if conditional it is an offence to contravene or fail to comply with the condition.

Maximum penalty: where the offender is a body corporate—\$10 000
where the offender is a natural person—\$5 000.

Vicarious liability

150. For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

Offences by bodies corporate

151. Where a body corporate is guilty of an offence against this Act, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.

Evidentiary

152. (1) If, in criminal or civil proceedings under this Act relating to the taking of water from a prescribed watercourse, lake or well without authority, it is proved that at the time at which the water is alleged to have been taken the watercourse, lake or well was connected by pipes or channels to land occupied by the defendant, it must be presumed (in the absence of proof to the contrary) that the defendant took water from the watercourse, lake or well.

(2) An allegation in criminal or civil proceedings under this Act that on a particular date or during a particular period—

- (a) the defendant, respondent or any other person was, or was not, the holder of a licence or permit under this Act; or
- (b) a particular person was, or was not, the owner or occupier of any specified land or the owner of any specified vehicle, vessel or aircraft; or
- (c) a specified watercourse, lake or well or a specified area was, or was not, a prescribed watercourse, lake or well or a surface water prescribed area; or
- (d) a particular person was an authorised officer,

must, in the absence of proof to the contrary, be accepted as proved.

(3) A document that purports to have been certified by the Minister, a catchment water management board, a council or an authorised officer to be an accurate copy of a licence or permit granted or issued under this Act must, in the absence of proof to the contrary, be accepted in criminal or civil proceedings under this Act as an accurate copy of that licence or permit.

(4) Where in proceedings before a court or other tribunal it is proved that—

- (a) a meter used to measure the quantity of water taken from a prescribed water resource has been adjusted or modified in a manner that affects the accuracy of the meter; or
- (b) a pipe has been installed to bypass a meter referred to in paragraph (a); or
- (c) any other pipe or fitting has been interfered with,

it must be presumed (in the absence of proof to the contrary) that the occupier of the land on which the meter, pipe or other fitting is situated, or a person acting on his or her behalf, was the person who—

- (d) adjusted or modified the meter; or
- (e) installed the pipe bypassing the meter; or

(f) interfered with the pipe or other fitting.

(5) A document purporting to be a water plan prepared and adopted under this Act must in proceedings before a court or other tribunal, be presumed in the absence of proof to the contrary, to be a plan prepared, adopted and for the time being in force under this Act.

General defence

153. It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Proceedings for offences

154. (1) Proceedings for an offence against this Act—

- (a) may be commenced by an authorised officer or any other person with the authorisation in writing of the Minister; and
- (b) must be commenced within five years after the date on which the offence is alleged to have been committed.

(2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

Money due to Minister, etc., first charge on land

155. (1) Money that is due to the Minister or other authority under this Act in respect of the Minister's or the authority's costs in carrying out the requirements of a notice served on the owner or occupier of land is a first charge on the land.

(2) Money that is due to the Minister or other authority and is a first charge on land under subsection (1) may be recovered by the Minister or other authority by selling the land in accordance with section 130 and for the purposes of applying that section the money due will be taken to be a levy and an authority other than the Minister to which the money is due will be taken to be the Minister.

Exemption from Act

156. (1) The Governor may, by regulation—

- (a) exempt, or empower the Minister to exempt, a person, or a person of a class, from the operation of any provision of this Act;
- (b) declare that this Act, or any provision of this Act, does not apply to, or in relation to, a water resource or a water resource of a class, specified in the regulation.

(2) An exemption under subsection (1) is subject to such limitations and conditions as are specified in the regulation.

Service of notices

157. (1) Where this Act requires or authorises a notice to be served on, or given to, a person, the notice may—

- (a) be served on, or given to, the person or an agent of the person; or

- (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
- (c) be sent by post to the person or an agent of the person at his or her last known address; or
- (d) be sent to the person by facsimile transmission.

(2) Without limiting subsection (1), a notice to be served on or given to a company may be served on the company in accordance with section 220 of the Corporations Law.

Regulations

158. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may—

- (a) make provisions for, or relating to, the transfer of licences; and
- (b) make provisions for, or relating to, the assessment of the quantity of water taken by the holder of a water licence or a person authorised to take the water under section 11; and
- (c) make provisions for, or in relation to, the keeping of records and the provision of information by licensees and other persons to the Minister; and
- (d) fix, and provide for the payment and recovery of, fees—
 - (i) for the installation, maintenance and testing of water meters or for any other service provided by the Minister; or
 - (ii) in relation to any other matter connected with the administration of this Act; and
- (e) provide for the payment and recovery of rental for water meters; and
- (f) make provision for, or in relation to, flood management including the registration of flood maps in the General Registry Office; and
- (g) prohibit or regulate—
 - (i) the use of water in a watercourse or lake; or
 - (ii) activities on or in the water of a watercourse or lake; or
 - (iii) activities on land that is under the care, control or management of a catchment water management board; and
- (h) provide for the form and content of catchment water management plans; and
- (i) empower the Minister to fix the maximum fee that may be charged on sale of copies of draft or adopted water plans; and
- (j) make provisions for, or relating to, the composition, powers, functions and procedures of the Water Well Drilling Committee; and

- (k) prescribe fines not exceeding \$1 250 for contravention of or failure to comply with a regulation.

(3) A regulation made under this section or any other provision of this Act may confer discretionary powers.

(4) The regulations may adopt, wholly or partially and with or without modification, a code relating to matters in respect of which regulations may be made under this Act.

(5) The code may be adopted either as in force at the time the regulations are made or as in force from time to time.

(6) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary or desirable.

(7) The regulations or a code adopted by the regulations may—

- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a body prescribed by regulation, either as in force at the time the regulations are made or as in force from time to time; and
- (b) be of general or limited application; and
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply.

(8) Where a code, standard or other document is adopted under subsection (4) or (7) as it is in force from time to time, any alteration to the code, standard or other document will not take effect for the purposes of this Act—

- (a) before the day on which notice of the alteration is published by the Minister in the *Gazette*; or
- (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.

(9) Where—

- (a) a code is adopted by the regulations; or
- (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a body prescribed by regulation,

then—

- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (e) the code, standard or other document has effect as if it were a regulation made under this Act.

SCHEDULE 1*Classes of wells in relation to which a permit is not required*

1. A well that is 2.5 metres or less in depth (or such other depth as may be prescribed by regulation).
2. A well—
 - (a) that is not used to provide a supply of water or to drain water into, or to recharge, an underground aquifer; and
 - (b) in relation to which requirements imposed by or under the *Mining Act 1971* or the *Petroleum Act 1940* are in force;
3. A well of one or more of the following classes if the well is not used to provide a supply of water from the well:
 - (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
 - (b) a drain that is under the control of the Commonwealth or State Government or a municipal or district council;
 - (c) an excavation for or in relation to a building or for a swimming pool;
 - (d) a private mine within the meaning of the *Mining Act 1971*;
 - (e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;
 - (f) an excavation for the purposes of a toilet;
 - (g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of water pressure.
4. (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water or other material for scientific research.

(2) A well comprising an excavation (not exceeding three metres in depth) for the purposes of conducting an underground test or extracting material for testing.
5. A well of a class declared by proclamation to be excluded from the operation of Part 4.
6. A proclamation referred to in this schedule may be varied or revoked by subsequent proclamation made by the Governor.

SCHEDULE 2***Provisions Relating to the Water Resources Council and to Catchment Water Management Boards and Water Resources Planning Committees*****Interpretation**

1. In this schedule, unless the contrary intention appears—

"member" means a member of the Water Resources Council, a catchment water management board or a water resources planning committee.

"relative" in relation to a person means—

(a) the spouse or a parent or remoter lineal ancestor; or

(b) a son, daughter or remoter issue; or

(c) a brother or sister,

of the person;

"relevant interest" has the same meaning as in the *Corporations Law*;

"spouse" includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*).

Term of office of members

2. (1) Subject to subclause (2), the term of office of members is four years.

(2) The Governor in the case of the council or a board and the Minister in the case of a committee may appoint not more than one-half of the first members of the council, board or committee for a term of two years.

(3) A member is eligible for reappointment at the expiration of his or her term of appointment.

(4) A person appointed to fill a casual vacancy will be appointed for the balance of the term of his or her predecessor.

Conditions of membership

3. (1) A member is appointed on such conditions and is entitled to such remuneration, allowances and expenses as the Governor determines in the case of a member of the council or a board or the Minister determines in the case of a member of a committee.

(2) The Governor in the case of the council or a board or the Minister in the case of a committee may remove a member from office—

(a) for misconduct;

(b) for failure or incapacity to carry out the duties of his or her office satisfactorily;

(c) without limiting paragraph (b)—for contravention of, or non-compliance with, a condition of his or her appointment or for non-compliance with a duty imposed by this Act.

(3) 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 by written notice to the Minister; or

- (d) in the case of the presiding member of a board—becomes an employee of the Crown or a member or employee of a municipal or district council; or
- (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (g) is removed from office under subclause (2).

(4) On the office of a member becoming vacant, a person must be appointed under this Act to the vacant office.

Vacancies or defects in appointment of members

4. An act of the council, a board or a committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Procedure at meetings

5. (1) The quorum for a meeting of the council, a board or a committee is determined by dividing the number of members by two, ignoring any fraction and adding one.

(2) If the presiding member is absent from a meeting, a member chosen by the members present at the meeting will preside at the meeting.

(3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the council, board or committee.

(4) Each member present at a meeting has one vote on any question arising for decision, and if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) The council, a board or committee must cause accurate minutes to be kept of its proceedings.

(6) Subject to this Act, the council, a board or committee may determine its own procedures.

Meetings to be held in public subject to certain exceptions

6. (1) Subject to this clause, a meeting of the council, a board or committee must be conducted in a place open to the public.

(2) The council, a board or committee must, by notice in a newspaper circulating generally throughout the State and (in the case of a board or committee) in a newspaper or newspapers circulating in its area or in the area of its water resource or water resources, give at least fourteen days notice of its intention to hold a meeting that will be open to the public.

(3) The notice must state the time and place at which the meeting will be held.

(4) Fourteen days notice is not required if a meeting needs to be held to deal with an emergency but, in that event, the council, board or committee must give as much notice under subclause (2) as is practicable or, if no notice can be given before the meeting is held the council, board or committee must give notice under subclause (2) of the date on which the meeting was held and of the emergency that it dealt with.

(5) The council, a board or committee may order that the public be excluded from attendance at a meeting—

- (a) in order to consider in confidence information or a matter within the ambit of subclause (6) if the council, board or committee is satisfied that it is reasonably foreseeable that the public disclosure or discussion of the information or matter at the meeting could—

- (i) cause significant damage or distress to a person; or

(ii) cause significant damage to the interests of the council, board, or committee or to the interests of a person; or

(iii) confer an unfair commercial or financial advantage on a person,

and that accordingly, on this basis, the principle that meetings should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential; or

(b) in order to consider in confidence information provided by a public official or authority (not being an officer or employee of the council, board or committee or a person engaged by the council, board or committee) with a request or direction by that public official or authority that it be treated as confidential; or

(c) in order to ensure that the council, board or committee does not breach any law, order or direction of a court or tribunal constituted by law, or other legal obligation or duty, or in order to ensure that the council, board or committee does not unreasonably expose itself to any legal process or liability.

(6) The following information or matters are within the ambit of this subclause:

(a) legal advice, or advice from a person employed or engaged by the council, board or committee to provide specialist professional advice;

(b) information relating to actual or possible litigation involving the council, board or committee or an officer or employee of the council, board or committee;

(c) complaints against an officer or employee of the council, board or committee, or proposals for the appointment, suspension, demotion, disciplining or dismissal of an officer or employee of the council, board or committee, or proposals relating to the future remuneration or conditions of service of an officer or employee of the council, board or committee;

(d) tenders for the supply of goods or the provision of services (including the carrying out of works), or information relating to the acquisition or disposal of land;

(e) information relating to the health or financial position of a person, or information relevant to the safety of a person;

(f) information that constitutes a trade secret, that has commercial value to a person (other than the council, board or committee) or that relates to the commercial or financial affairs of a person (other than the council, board or committee).

(7) A member of the public who, knowing that an order is in force under subclause (5), enters or remains in a room in which a meeting of the board is being held is guilty of an offence.

Maximum penalty: \$750.

(8) If a person referred to in subclause (7) fails to leave the room on request, it is lawful for a member or employee of the council, board or committee or a member of the police force forcibly to remove him or her from the room.

(9) Where an order is made under subclause (5), a note must be made in the minutes of the making of the order and of the grounds on which it was made.

Agenda and minutes of meeting to be provided to Minister, etc.

7. (1) The council, a board or committee must provide—

(a) the Minister; and

- (b) in the case of a board or committee—the member or members of the House of Assembly whose electoral district or districts include the whole or part of the area of the board or the area in which the committee's water resource or water resources are situated; and
- (c) in the case of a board—each constituent council,

with a copy of the agenda for, and the minutes of, each meeting, or the part of each meeting, of the council, board or committee that is open to members of the public.

(2) An agenda must be provided under subclause (1) at least three days before the meeting to which it relates is held except where the meeting is held to deal with an emergency.

(3) The council, a board or committee must make available for inspection and purchase by members of the public copies of the agenda for, and the minutes of, each meeting, or the part of each meeting, that is open to members of the public.

(4) The council, a board or committee must not charge for inspection of an agenda or minutes and must not charge more than the fee prescribed by regulation for sale of copies of an agenda or minutes.

(5) The council, a board or committee must, at the request of the Minister, provide the Minister with a copy of the agenda or the minutes or both of each meeting, or the part of each meeting, that is closed to members of the public.

Member's duties of care, etc.

8. (1) A member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions, and (without limiting the effect of the foregoing) for that purpose—

- (a) must take reasonable steps to inform himself or herself about the council, board or committee and its activities and the circumstances in which it operates; and
- (b) must take reasonable steps through the processes of the council, board or committee to obtain sufficient information and advice about all matters to be decided by the council, board or committee to enable him or her to make conscientious and informed decisions; and
- (c) must exercise an active discretion with respect to all matters to be decided by the council, board or committee.

(2) A member is not bound to give continuous attention to the affairs of the council, board or committee but is required to exercise reasonable diligence in attendance at and preparation for meetings.

(3) In determining the degree of care and diligence required to be exercised by a member, regard must be had to the skills, knowledge or acumen possessed by the member and to the degree of risk involved in any particular circumstances.

(4) If a member is culpably negligent in the performance of his or her functions, the member is guilty of an offence.

Maximum penalty: \$20 000.

(5) A member is not culpably negligent for the purposes of subclause (4) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act of the member to warrant the imposition of a criminal sanction.

(6) A member does not commit any breach of duty under this section by acting in accordance with a direction or requirement of the Minister under this Act.

Member's duties of honesty

9. (1) A member must at all times act honestly in the performance of the functions of his or her office.

Maximum penalty: \$20 000 or four years imprisonment.

(2) A member or former member must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the council, board or committee.

Maximum penalty: \$20 000 or four years imprisonment.

(3) A member must not, whether within or outside the State, make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the council, board or committee.

Maximum penalty: \$20 000 or four years imprisonment.

Conflict of interest

10. (1) A member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the council, board or committee—

- (a) must, as soon as reasonably practicable, disclose to the council, board or committee full and accurate details of the interest; and
- (b) must not take part in any discussion by the council, board or committee relating to the matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$20 000.

(2) If a member makes a disclosure of interest and complies with the other requirements of subclause (1) in respect of a proposed contract—

- (a) the contract is not liable to be avoided by the council, board or committee; and
- (b) the member is not liable to account to the council, board or committee for profits derived from the contract.

(3) If a member fails to make a disclosure of interest or fails to comply with any other requirement of subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the council, board or committee.

(4) A contract may not be avoided under subclause (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

(5) Where a member has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the council, board or committee, the member must, as soon as reasonably practicable, disclose full and accurate details of the interest or office to the council, board or committee.

Maximum penalty: \$20 000.

(6) A disclosure under this clause must be recorded in the minutes of the council, board or committee and reported to the Minister.

(7) If, in the opinion of the Minister, a particular interest or office of a member is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the member, the Minister may require the member either to divest himself or herself of the interest or office or to resign from the council, board or committee (and non-compliance with the requirement constitutes misconduct which is a ground for removal of the member).

(8) Without limiting the effect of this clause, a member will be taken to have an interest in a matter for the purposes of this clause if an associate of the member has an interest in the matter.

(9) This clause does not apply in relation to a matter in which a member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the member the burden will lie on the member to prove that he or she was not, at the material time, aware of his or her interest.

(10) Where a constituent council or a controlling authority has a direct or indirect interest in a matter decided or under consideration by a board, a member of the board who is also a member of the council or controlling authority does not have an interest in that matter for the purposes of this clause by virtue only of the fact that he or she is a member of the council or authority.

(11) For the purposes of subclause (8), a person is an associate of another person if—

(a) the other person is a relative of the person or of the person's spouse; or

(b) the other person—

(i) is a body corporate; and

(ii) the person or a relative of the person or of the person's spouse has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or

(c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or a body corporate referred to in paragraph (b) is a beneficiary; or

(d) the person is declared by the regulations to be an associate of the other person.

Civil liability if member or former member contravenes this Schedule

11. (1) If a member or former member is convicted of an offence for a contravention of clause 9 or 10 the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the council, board or committee—

(a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

(b) if the court is satisfied that the council, board or committee suffered loss or damage as a result of the contravention—compensation for the loss or damage.

(2) If a member or former member is guilty of a contravention of clause 9 or 10 for which a criminal penalty is fixed, the council, board or committee may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—

(a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

(b) if the council, board or committee suffered loss or damage as a result of the contravention—compensation for the loss or damage.

SCHEDULE 3
Repeal and Transitional Provisions

Repeal of Acts

1. The following Acts are repealed:

- (a) the *Catchment Water Management Act 1995*; and
- (b) the River Torrens (Prohibition of Excavations) Act 1927; and
- (c) the River Torrens Protection Act 1949; and
- (d) the *Water Resources Act 1990*.

Transitional provisions

2. (1) A watercourse, lake or well that was proclaimed under the *Water Resources Act 1990* will, if the proclamation was in force immediately before the commencement of this Act, be taken to have been declared to be a prescribed watercourse, lake or well under this Act.

(2) A proclamation under the *Water Resources Act 1990* referred to in subclause (1)—

- (a) will be taken to be a regulation under this Act; and
- (b) in the case of a proclamation proclaiming a well, will, unless varied by regulation, be taken to exclude the operation of section 7(5).

(3) A water recovery licence or a well driller's licence under the *Water Resources Act 1990* that was in force immediately before the commencement of this Act will be taken to have been granted under this Act.

(4) An authorisation in force under section 39 of the *Water Resources Act 1990* immediately before the commencement of this Act will be taken to be an authorisation under section 11 of this Act.

(5) A permit granted under the *Water Resources Act 1990* that was in force immediately before the commencement of this Act will be taken to have been granted under this Act.

(6) A notice published in the *Gazette* or served on a person under section 40 of the *Water Resources Act 1990* will be taken to have been published or served on that person under the corresponding provision of this Act.

(7) A notice served on a person under section 62 or 69 of the *Water Resources Act 1990* will be taken to have been served on that person under the corresponding provision of this Act.

(8) A person who was an authorised officer under the *Water Resources Act 1990* immediately before the commencement of this Act will be taken to have been appointed as an authorised officer under this Act.

(9) A catchment water management board established under the *Catchment Water Management Act 1995* and in existence immediately before the commencement of this Act will be taken to be a catchment water management board established under this Act and the catchment area of the board under this Act will be taken to be the board's catchment area under the *Catchment Water Management Act 1995*.

(10) The Governor may by proclamation made on the recommendation of the Minister under Part 6 Division 3 Subdivision 1 set out functions of a board referred to in subclause (9) that are in addition to the functions prescribed by this Act.

(11) A catchment water management plan prepared and approved under the *Catchment Water Management Act 1995* and in force immediately before the commencement of this Act will be taken to be a catchment water management plan prepared and adopted under this Act.

(12) Procedures undertaken and comments or approvals given in the course of preparing or amending a catchment water management plan under the *Catchment Water Management Act 1995* that correspond to procedures or comments or approvals required under this Act in the preparation or amendment and adoption of a catchment water management plan will be taken to have been undertaken or given under this Act.

(13) A water resources committee established under the *Water Resources Act 1990* and in existence immediately before the commencement of this Act will be taken to be a water resources planning committee established under this Act.

(14) Any procedures undertaken before the commencement of this Act by a water resources committee established under the *Water Resources Act 1990* for, or in relation to, the preparation of a water allocation plan will, to the extent that they comply with the requirements of this Act, be regarded as having been validly undertaken under this Act.

(15) The Minister may, by notice in the *Gazette*, adopt a management policy prepared by a water resources committee under the *Water Resources Act 1990* in relation to its water resource and on adoption, the policy will be taken to be a water allocation plan under this Act and will remain in force until—

- (a) the expiration of one year after the commencement of this Act or such longer period as is prescribed by regulation; or
- (b) it is superseded by a water allocation plan prepared and adopted under this Act,

whichever occurs first.

(16) Where a management policy is taken to be a water allocation plan under this Act, the water allocation of a water recovery licence under the *Water Resources Act 1990* that is taken to have been granted under this Act and that authorises the taking of water from the water resource to which the plan applies will be taken to have been endorsed on the licence in accordance with the plan.

(17) The Minister may, in the period of 12 months immediately preceding the commencement of this Act, undertake the procedures set out in section 54 and may, on the basis of those procedures, make a recommendation to the Governor after the commencement of this Act for the establishment of the board to which those procedures related.

(18) Despite the repeal of the *Water Resources Act 1990*, Part 4 Division 3A of that Act will continue in force in relation to the 1996/1997 financial year to the exclusion of Part 8 Division 1 of this Act which will operate in relation to the 1997/1998 financial year and subsequent financial years.

(19) Despite the repeal of the *Catchment Water Management Act 1995*, Part 6 of that Act will continue in force in relation to the 1996/1997 financial year to the exclusion of Part 8 Division 2 of this Act which will operate in relation to the 1997/1998 financial year and subsequent financial years.

(20) The Water Resources Levy Fund established under the *Water Resources Act 1990* continues in existence under that title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL, Governor