

South Australia

# Safe Drinking Water Act 2011

An Act to make provision for the supply of safe drinking water; to amend the *Food Act 2001*; and for other purposes.

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Application of Act

### Part 2—Registration of drinking water providers

- 5 Drinking water providers to be registered
- 6 Duration of registration
- 7 Person ceasing to supply drinking water
- 8 Conditions of registration
- 9 Suspension of registration
- 10 Appeals
- 11 List of registered drinking water providers and provision of information

### Part 3—Risk management plans

- 12 Drinking water providers to prepare, implement and review risk management plans
- 13 Risk management plan
- 14 Related matters

### Part 4—Auditing and inspections

#### Division 1—Auditors and inspectors

- 15 Approval of auditors and inspectors
- 16 Term of approval
- 17 Conditions
- 18 Conflict of interest to be avoided
- 19 List of approved auditors and inspectors to be maintained

#### Division 2—Audits and inspections

- 20 Scheme for audits and inspections
- 21 Audits and inspections
- 22 Reporting requirements
- 23 Assistance to facilitate an audit or inspection

## Part 5—Quality of water and provision of reports

### Division 1—Quality of water

- 24 Drinking water must be safe
- 25 Testing requirements

### Division 2—Provision of reports

- 26 Officer to report known or suspected contamination
- 27 Water quality monitoring information to be made publicly available

## Part 6—Approval of laboratories

- 28 Approval of laboratories
- 29 Recognised laboratories
- 30 Term of approval
- 31 Conditions
- 32 List of approved laboratories to be maintained

## Part 7—Administration and enforcement

### Division 1—Interpretation

- 33 Interpretation

### Division 2—Authorised officers

- 34 Appointment of authorised officers
- 35 Certificates of authority
- 36 Powers of authorised officers
- 37 Seizure orders

### Division 3—Notices and emergencies

- 38 Notices
- 39 Action or non-compliance with a notice
- 40 Action in emergency situations
- 41 Specific power to require information
- 42 Appeals

## Part 8—Miscellaneous

- 43 Delegations
- 44 Service of notices or other documents
- 45 Disclosure of certain confidential information
- 46 Protection from liability
- 47 False information
- 48 Offences by bodies corporate
- 49 Offences
- 50 Agreement and consultation with local government sector
- 51 Annual report by Minister
- 52 Annual reports by enforcement agencies
- 53 Regulations

## Schedule 1—Consequential amendments and transitional provisions

## Part 1—Consequential amendments

- 1 Amendment provisions

## Part 2—Amendment of *Food Act 2001*

- 2 Substitution of section 11  
11 Application of Act to drinking water

## Part 3—Transitional provisions

- 3 Transitional provisions—initial period of operation of Act  
4 Other provisions

## Legislative history

---

### **The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Safe Drinking Water Act 2011*.

### **2—Commencement**

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

### **3—Interpretation**

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

***approved auditor*** means a person approved as an auditor under Part 4 Division 1;

***approved auditor/inspector*** means, as the case requires, an approved auditor or an approved inspector;

***approved inspector*** means a person approved as an inspector under Part 4 Division 1;

***approved laboratory*** means a laboratory approved under Part 6;

***authorised officer*** means a person appointed as an authorised officer under Part 7;

***Chief Executive*** means the Chief Executive of the Department and includes a person for the time being acting in that position;

***council*** means—

- (a) a council under the *Local Government Act 1999*; or

- (b) a body established by a council or councils under the *Local Government Act 1999*;

***Department*** means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

***District Court*** means the Administrative and Disciplinary Division of the District Court;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**drinking water** means water that is intended for human consumption or for purposes connected with human consumption (such as the washing, preparation or cooking of food or the making of ice intended for human consumption, or for the preservation of unpackaged food), whether or not the water is used for other purposes, but does not include water that has been packaged in a bottle, cask or other container;

**drinking water provider** means—

- (a) a person who supplies drinking water to members of the public—
  - (i) by means of a reticulated water system; or
  - (ii) after the water has been extracted from, or has formed part of, a body constituting a water resource (without being supplied by means of a reticulated water system); or
  - (iii) after the water has been collected or stored by means of a tank or other form of infrastructure or works for the collection or storage of water (without being supplied by means of a reticulated water system); or
  - (iv) after obtaining water in circumstances described in a preceding subparagraph and then supplying the water in bulk; or
- (b) any other person, or person of a class, brought within the ambit of this definition by the regulations,

but does not include a person, or person of a class, excluded from the ambit of this definition by the regulations;

**enforcement agency** means an enforcement agency under Part 7;

**reticulated water system** means a network for the provision of water to 2 or more locations, other than a network, or a network of a class, excluded from the ambit of this definition by the regulations;

**risk management plan**—see Part 3;

**spouse**—a person is a spouse of another if they are legally married;

**vehicle** includes an aircraft, vessel, trailer, train or rolling stock;

**water resource** has the same meaning as in the *Natural Resources Management Act 2004*.

- (2) For the purposes of this Act (but subject to subsection (3)), a person will be taken not to be a drinking water provider if—
  - (a) the person supplies drinking water that has been directly obtained from another drinking water provider; and
  - (b) the other drinking water provider is registered under this Act; and
  - (c) the person has not altered the water, or has not altered the water to any material degree, from the water supplied by the other drinking water provider; and

- (d) the person satisfies the requirements (if any) prescribed by the regulations for the purposes of this subsection.
- (3) Subsection (2) does not apply to a person within a class of persons excluded from the ambit of that subsection by the regulations.
- (4) For the purposes of determining whether or not a person is a drinking water provider, it is immaterial that the water to be supplied to the public has, after being collected or obtained, been subject to any process or treatment.
- (5) For the purposes of this Act, water is supplied in bulk if—
  - (a) the water is supplied through the use of a vehicle; and
  - (b) the amount of water being supplied exceeds a volume prescribed by the regulations for the purposes of this subsection.
- (6) For the purposes of this Act, the collection of water includes the recovery or harvesting of water.
- (7) For the purposes of this Act, drinking water is unsafe if the water—
  - (a) causes, or is likely to cause, harm to a person who consumes the water; or
  - (b) is the means by which an illness has been, or is likely to be, transmitted; or
  - (c) contains any pathogen, substance, chemical or blue-green algal toxin, whether alone or in combination, at levels that may pose a risk to human health (subject to any tolerance, condition or circumstance determined or agreed by the Minister or the Chief Executive for the purposes of this provision); or
  - (d) is not otherwise, or may not otherwise be, reasonably fit for human consumption.
- (8) For the purposes of this Act, a person is an *associate* of another if—
  - (a) they are partners; or
  - (b) 1 is a spouse, domestic partner, parent or child of another; or
  - (c) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
  - (d) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
  - (e) 1 is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or
  - (f) a relationship of a prescribed kind exists between them; or
  - (g) a chain of relationships can be traced between them under any 1 or more of the above paragraphs.
- (9) For the purposes of subsection (8), a *beneficiary* of a trust includes an object of a discretionary trust.

## **4—Application of Act**

- (1) This Act does not apply in relation to—
  - (a) any water collected or recovered at domestic premises of a prescribed class for use at those premises; or
  - (b) rainwater collected at any place of a prescribed kind for use at that place if a notice relating to the use of the water is provided in accordance with the regulations; or
  - (c) rainwater supplied as an optional alternative to water obtained from a registered drinking water provider if the person, in supplying the water, complies with the requirements (if any) prescribed by the regulations for the purposes of this paragraph; or
  - (d) rainwater, or water recovered from a bore, well or a source prescribed by the regulations, supplied at a park, reserve or other place constituting open space that is available for public recreational purposes where it is reasonable to expect that members of the public would not usually expect to rely on the provision of water for human consumption at that place; or
  - (e) water supplied, collected or recovered in any other circumstance prescribed by the regulations.
- (2) Without limiting subsection (1), the Minister may, by notice in the Gazette, confer exemptions from this Act or specified provisions of this Act, on specified persons or persons of a specified class.
- (3) An exemption under subsection (2) may be granted by the Minister on such conditions as the Minister thinks fit.
- (4) The Minister may, at any time, by further notice in the Gazette—
  - (a) vary or revoke an exemption; or
  - (b) vary or revoke a condition of an exemption.
- (5) The condition of an exemption may be varied by the addition or substitution of 1 or more conditions.
- (6) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.  
Maximum penalty: \$25 000.  
Expiation fee: \$750.

## **Part 2—Registration of drinking water providers**

### **5—Drinking water providers to be registered**

- (1) A person must not supply drinking water as a drinking water provider unless the person is registered under this Act.  
Maximum penalty: \$25 000.  
Expiation fee: \$750.
- (2) An application for registration under this Act—
  - (a) must be made to the Minister; and

- (b) must be made in a manner and form determined by the Minister.
- (3) An applicant for registration must furnish the Minister with such information as the Minister may require.
- (4) On due application under this section, the Minister must register the applicant as a drinking water provider.

## **6—Duration of registration**

The registration of a drinking water provider will remain in force until such time as—

- (a) it is cancelled or suspended under this Act; or
- (b) the drinking water provider dies or, in the case of a body corporate, is dissolved.

## **7—Person ceasing to supply drinking water**

- (1) A person registered under this Act must, within the prescribed period after ceasing to be engaged in the supply of drinking water, notify the Minister of that fact in a manner and form determined by the Minister.

Maximum penalty: \$2 500.

Expiation fee: \$125.

- (2) If the Minister—
  - (a) receives a notification in accordance with subsection (1); or
  - (b) is otherwise satisfied that a registered drinking water provider has ceased to be engaged in the supply of drinking water,the Minister may cancel the registration.

## **8—Conditions of registration**

- (1) The registration of a person as a drinking water provider under this Act will be subject to any condition—
  - (a) imposed by the Minister in relation to the registration; or
  - (b) prescribed by the regulations.
- (2) The Minister may, if the Minister considers it appropriate to do so, by notice in writing to a registered drinking water provider, vary a condition of the registration.
- (3) A person who holds a registration may, on application to the Minister in a manner and form determined by the Minister, request the variation of a condition to which the registration is subject and the Minister may, as the Minister thinks fit—
  - (a) grant the variation; or
  - (b) refuse to grant the variation.
- (4) The condition of a registration may be varied by the addition, substitution or deletion of 1 or more conditions.

- (5) A registered drinking water provider must not contravene or fail to comply with a condition of registration.

Maximum penalty: \$25 000.

Expiation fee: \$750.

## **9—Suspension of registration**

- (1) The Minister may suspend the registration of a person as a drinking water provider if proper cause exists under this section.
- (2) There is proper cause for suspending a registration if—
- (a) the person has contravened or failed to comply with a condition of registration; or
  - (b) the person has failed to comply with a requirement relating to a risk management plan under Part 3 (including as to the implementation of, or compliance with, the requirements set out in a risk management plan); or
  - (c) the person has failed to ensure that an audit or inspection is conducted in accordance with a requirement under Part 4 Division 2; or
  - (d) the person has breached, or failed to comply with, a requirement under Part 5 Division 1; or
  - (e) the person has failed to comply with a notice under Part 7 Division 3; or
  - (f) the person has failed to furnish a report or other form of information of a class prescribed by the regulations for the purposes of this section.
- (3) The Minister may, after taking into account the grounds set out in subsection (2), notify a drinking water provider that the Minister considers that the person's registration should be suspended.
- (4) A notice under subsection (3) must set out the grounds on which the Minister is acting under this section.
- (5) The drinking water provider may, within 14 days after receiving the notice, lodge with the Minister a written objection (setting out the grounds of objection).
- (6) On the receipt of an objection under subsection (5), the Minister must give the drinking water provider a reasonable opportunity to make submissions to the Minister in relation to the matter and must then decide whether or not, in the circumstances of the case, it is appropriate to proceed with the suspension.
- (7) If a drinking water provider does not make an objection under subsection (5) or, on an objection, the Minister decides to proceed despite the objection, the Minister may, by written notice served on the drinking water provider, suspend the registration.
- (8) A suspension of registration may be of indefinite duration or for a period specified in the notice.
- (9) A suspension takes effect when notice of the suspension is served on the drinking water provider or at such later date (if any) specified in the notice.
- (10) A person whose registration has been suspended may make application to the Minister for the cancellation of the suspension.



## **10—Appeals**

- (1) An appeal lies to the District Court against—
  - (a) a condition imposed by the Minister in relation to a registration under this Part; or
  - (b) a variation of a condition of registration made by the Minister on the Minister's own initiative; or
  - (c) a decision of the Minister to refuse to grant an application to vary a condition of registration; or
  - (d) a decision of the Minister to suspend a registration under this Part.
- (2) An appeal must be instituted within 28 days of the date of the decision appealed against but the District Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend the period (whether or not it has already expired).

## **11—List of registered drinking water providers and provision of information**

- (1) The Minister is to prepare and maintain a register of drinking water providers registered under this Part.
- (2) The register is to be made publicly available and is to be revised from time to time as required.
- (3) The Minister must, on registering a drinking water provider under this Part, furnish notice of the registration to the council for the area where the drinking water provider is, or will be, located.

## **Part 3—Risk management plans**

### **12—Drinking water providers to prepare, implement and review risk management plans**

- (1) A drinking water provider must—
  - (a) prepare a risk management plan in relation to the supply of drinking water to the public; and
  - (b) keep the plan under continuous review with a view to updating and improving it; and
  - (c) revise any aspect of the plan that is found, on review, to need revision.
- (2) The Chief Executive may publish a standard risk management plan that may apply in relation to a specified class of drinking water providers.
- (3) If a standard risk management plan is in place under subsection (2), a drinking water provider who falls within the specified class may, subject to any requirement published by the Chief Executive in connection with the risk management plan and in a manner and form determined by the Chief Executive, adopt the standard risk management plan rather than preparing a separate plan under subsection (1)(a).

### **13—Risk management plan**

- (1) A risk management plan in relation to the supply of water is a document—
  - (a) that contains a detailed description of the system of supply; and

- (b) that—
    - (i) identifies the risks to the quality of the water and the risks that may be posed by the quality of the water; and
    - (ii) assesses those risks; and
    - (iii) sets out the steps to be taken to manage those risks (including the development and implementation of preventative strategies); and
  - (c) that sets out—
    - (i) monitoring and testing requirements associated with the quality of the water (a *monitoring program*); and
    - (ii) incident identification, notification and response procedures (an *incident identification and notification protocol*); and
  - (d) that sets out maintenance schedules; and
  - (e) that contains any other matter required by the regulations.
- (2) A risk management plan must—
- (a) be consistent with any standard, guideline or code specified by the regulations; and
  - (b) comply with any other requirement prescribed by the regulations.

Maximum penalty: \$25 000.

Expiation fee: \$750.

#### 14—Related matters

- (1) A drinking water provider must not supply drinking water to the public unless or until—
- (a) the drinking water provider has prepared or adopted a risk management plan under this Part; and
  - (b) the Minister has approved—
    - (i) the monitoring program; and
    - (ii) the incident identification and notification protocol,under the drinking water provider's risk management plan.
- Maximum penalty: \$25 000.
- Expiation fee: \$750.
- (2) For the purposes of subsection (1)(b), a drinking water provider must furnish to the Minister in a manner and form determined by the Minister a copy of his or her monitoring program and incident identification and notification protocol.
- (3) The Minister may on the receipt of a program and protocol submitted for the purposes of this section—
- (a) approve the program and protocol without alteration; or
  - (b) require alterations to the program or protocol (or both) after consultation with the relevant drinking water provider.

- (4) A drinking water provider required to make an alteration under subsection (3) may appeal to the District Court against the requirement.
- (5) An appeal must be instituted within 28 days after the date of the imposition of the requirement but the District Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend the period (whether or not it has already expired).
- (6) A drinking water provider who has adopted a risk management plan under section 12(3) will, subject to any requirements determined by the Minister, be taken to have an approval under subsection (1)(b).
- (7) A drinking water provider must implement his or her risk management plan and comply with the requirements set out in the plan.  
Maximum penalty: \$25 000.  
Expiation fee: \$750.

## **Part 4—Auditing and inspections**

### **Division 1—Auditors and inspectors**

#### **15—Approval of auditors and inspectors**

- (1) The Chief Executive may approve a natural person to be—
  - (a) an auditor for the purposes of this Act; or
  - (b) an inspector for the purposes of this Act.
- (2) The Chief Executive must, before granting an approval to a person under this section, be satisfied that the person is competent to carry out the functions of an auditor or inspector (as the case requires) having regard to—
  - (a) the person's technical skills and experience; and
  - (b) any guidelines relating to competency criteria determined by the Chief Executive for the purposes of this Part.
- (3) A natural person may make an application, in a manner and form determined by the Chief Executive, to the Chief Executive for an approval under this Part.
- (4) An application must be accompanied by the fee prescribed by the regulations.
- (5) An applicant for approval must furnish the Chief Executive with such information as the Chief Executive may require.
- (6) The Chief Executive may, after considering an application for approval—
  - (a) grant the application, with or without conditions; or
  - (b) refuse the application.
- (7) If the Chief Executive grants an application for approval, the Chief Executive must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
- (8) Without limiting any other provision, a condition of an approval may limit the kinds of audits or inspections that may be carried out under the approval.

- (9) An approved auditor will be taken to be an approved inspector for the purposes of this Act.
- (10) If the Chief Executive refuses an application for approval, the Chief Executive must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

## **16—Term of approval**

Except during any period of suspension, an approval under this Part remains in force for the period specified in the approval unless sooner cancelled.

## **17—Conditions**

- (1) The Chief Executive may, if the Chief Executive considers it appropriate to do so, by notice in writing to an approved auditor/inspector, vary a condition of the approval.
- (2) A person who holds an approval may, on application to the Chief Executive in a manner and form determined by the Chief Executive, request a variation of a condition to which the approval is subject and the Chief Executive may, as the Chief Executive thinks fit—
  - (a) grant the variation; or
  - (b) refuse to grant the variation.
- (3) The condition of an approval may be varied by the addition, substitution or deletion of 1 or more conditions.
- (4) An approved auditor/inspector must not contravene or fail to comply with a condition of approval.  
Maximum penalty: \$25 000.  
Expiation fee: \$750.
- (5) If an approved auditor/inspector contravenes or fails to comply with a condition of approval, the Chief Executive may notify the auditor or inspector that the Chief Executive considers that the approval should be suspended.
- (6) The approved auditor/inspector may, within 14 days after receiving the notice, lodge with the Chief Executive a written objection (setting out the grounds of objection).
- (7) On the receipt of an objection under subsection (6), the Chief Executive must give the auditor or inspector a reasonable opportunity to make submissions to the Chief Executive in relation to the matter and must then decide whether or not, in the circumstances of the case, it is appropriate to proceed with the suspension.
- (8) If an approved auditor/inspector does not make an objection under subsection (6) or, on an objection, the Chief Executive decides to proceed despite the objection, the Chief Executive may, by written notice served on the auditor or inspector, suspend the approval.
- (9) A suspension of approval may be of indefinite duration or for a period specified in the notice.
- (10) A suspension takes effect when notice of the suspension is served on the auditor or inspector or at such later date (if any) specified in the notice.

- (11) A person whose approval has been suspended may make application to the Chief Executive for the cancellation of the suspension.

### **18—Conflict of interest to be avoided**

A person must not act as an auditor or inspector in relation to a risk management plan—

- (a) that the person has written or assisted in preparing; or
- (b) that has been prepared by a drinking water provider who is an associate of the person; or
- (c) if the person has a direct or indirect pecuniary or personal interest in the supply of the relevant drinking water.

Maximum penalty: \$25 000.

Expiation fee: \$750.

### **19—List of approved auditors and inspectors to be maintained**

- (1) The Chief Executive is to prepare and maintain a list of approved auditors and a list of approved inspectors.
- (2) A list is to be made publicly available and is to be revised from time to time as required.

## **Division 2—Audits and inspections**

### **20—Scheme for audits and inspections**

- (1) The Chief Executive will, by notice in the Gazette—
  - (a) determine that specified classes of drinking water providers will be subject to audits under this Division, being audits every year or every 2 years, according to the determination;
  - (b) determine that specified classes of drinking water providers will be subject to inspections under this Division, being inspections every year or every 2 years, according to the determination.
- (2) The Chief Executive may, by subsequent notice in the Gazette, vary a notice under subsection (1), or substitute a new notice for a notice under subsection (1).
- (3) The criteria to be applied by the Chief Executive for the purposes of subsections (1) and (2) will relate to the size and complexity of operations carried out by drinking water providers, and may relate to such other matters as the Chief Executive thinks fit.
- (4) A drinking water provider must ensure that an audit or inspection is carried out by an approved auditor or an approved inspector (as the case requires) in accordance with a determination of the Chief Executive under this section.

Maximum penalty: \$25 000.

Expiation fee: \$750.

- (5) Without limiting a preceding subsection, a drinking water provider must ensure that an audit or inspection is carried out by an approved auditor or inspector (as the case requires) in accordance with the criteria applying under subsection (1) before the drinking water provider begins to supply drinking water to the public.

Maximum penalty: \$25 000.

Expiation fee: \$750.

## **21—Audits and inspections**

- (1) An auditor or inspector has the following duties:
- (a) to determine whether the drinking water provider has complied with the requirements of Part 3 relating to risk management plans during the audit or inspection period;
  - (b) to carry out any follow up audits or inspections, if necessary, to check to see if action has been taken to remedy any deficiencies of any risk management plan identified by the auditor or inspector;
  - (c) to report in accordance with the requirements of this Division;
  - (d) to undertake any other functions prescribed by the regulations in relation to audits or inspections.
- (2) In conducting an audit or inspection, the auditor or inspector must—
- (a) inspect all documents that are specified by the regulations for the purposes of this section in relation to audits or inspections; and
  - (b) comply with any other requirements prescribed by the regulations for the purposes of this section in relation to audits or inspections.

## **22—Reporting requirements**

- (1) An auditor or inspector must report in writing to the Chief Executive the results of any audit or inspection carried out under this Division.
- Maximum penalty: \$5 000.
- (2) A report under subsection (1) must—
- (a) be in the prescribed form; and
  - (b) report on the matters indicated by the regulations; and
  - (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the auditor or inspector.
- (3) A report must be furnished to the Chief Executive within the period prescribed by the regulations.
- (4) In addition, an auditor or inspector who, as a result of an audit or inspection, believes that water supplied, or to be supplied, for drinking water purposes may be unsafe must immediately report his or her belief to the Chief Executive in a manner and form determined by the Chief Executive.
- Maximum penalty: \$5 000.

- (5) An auditor or inspector who makes a report under subsection (4) must provide the Chief Executive with such information as the Chief Executive may require in connection with, or as a result of, a report under subsection (4).
- (6) A copy of a report provided to the Chief Executive under subsection (1) or (4) must be given to the relevant drinking water provider.

### **23—Assistance to facilitate an audit or inspection**

- (1) A drinking water provider must comply with any reasonable request or requirement of an auditor or inspector in or in connection with the conduct of an audit or inspection under this Division.  
Maximum penalty: \$5 000.
- (2) A person must not, without reasonable excuse, resist, obstruct or attempt to obstruct, an auditor or inspector in the exercise of a function under this Division.  
Maximum penalty: \$5 000.
- (3) A person must not, in connection with the conduct of an audit or inspection, provide any information or produce any document that the person knows is false or misleading in a material particular.  
Maximum penalty: \$25 000.

## **Part 5—Quality of water and provision of reports**

### **Division 1—Quality of water**

#### **24—Drinking water must be safe**

- (1) A drinking water provider must not supply drinking water to the public that the drinking water provider knows to be unsafe.  
Maximum penalty:
  - (a) if the offender is a body corporate—\$500 000;
  - (b) if the offender is a natural person—\$100 000 or imprisonment for 4 years.
- (2) A drinking water provider must not supply drinking water to the public that the drinking water provider ought reasonably to know is unsafe.  
Maximum penalty:
  - (a) if the offender is a body corporate—\$375 000;
  - (b) if the offender is a natural person—\$75 000.
- (3) A drinking water provider must not supply drinking water to the public that is unsafe.  
Maximum penalty:
  - (a) if the offender is a body corporate—\$250 000;
  - (b) if the offender is a natural person—\$50 000.  
Expiation fee: \$1 000.

## **25—Testing requirements**

- (1) A drinking water provider must ensure that drinking water supplied by the drinking water provider is collected and tested in accordance with—
  - (a) the requirements specified in any regulations made for the purposes of this section; or
  - (b) the requirements set out in a notice served on the drinking water provider by the Chief Executive.

Maximum penalty: \$25 000.

Expiation fee: \$750.

- (2) The Chief Executive may issue a notice under subsection (1)(b) if—
  - (a) the Chief Executive has reasonable grounds to believe that there is a risk to the public; or
  - (b) the Chief Executive considers that testing is required under this section on some other reasonable basis.
- (3) Any testing required for the purposes of subsection (1)—
  - (a) must, if the regulations or Chief Executive so require, be carried out at an approved laboratory; and
  - (b) must be carried out in accordance with the requirements specified in any regulations made for the purposes of this section, or in a notice furnished by the Chief Executive.
- (4) The results of any testing required under subsection (1) must be furnished to the Chief Executive in a manner and form determined by the Chief Executive within the period specified by the regulations or, in a case where subsection (1)(b) applies, by the Chief Executive.
- (5) Nothing in this section limits any requirements for testing under a risk management plan.

## **Division 2—Provision of reports**

### **26—Officer to report known or suspected contamination**

- (1) This section applies if an officer of a drinking water provider believes or suspects, on reasonable grounds, that water supplied, or to be supplied, for drinking water purposes is unsafe.
- (2) On forming that belief or suspicion, the officer must immediately report his or her belief or suspicion to the Chief Executive in a manner and form determined by the Chief Executive.

Maximum penalty: \$25 000.

Expiation fee: \$500.

- (3) An officer who makes a report under subsection (2) must provide the Chief Executive with such information as the Chief Executive may require in connection with, or as a result of, a report under subsection (2).



(4) In this section—

*officer*, in relation to a drinking water provider, means—

- (a) a person who is concerned, or takes part, in the management of the affairs of the drinking water provider; or
- (b) without limiting paragraph (a), a person who holds an office as an executive within the staffing structures of the drinking water provider.

## **27—Water quality monitoring information to be made publicly available**

(1) A drinking water provider must make available for inspection by the public the results of any monitoring program that the drinking water provider conducts on drinking water for the purposes of the drinking water provider's risk management plan.

Maximum penalty: \$10 000.

Expiation fee: \$210.

(2) The results must be made available within the period prescribed by the regulations.

(3) A drinking water provider must not publish any information in purported compliance with this section that the drinking water provider knows is false or misleading in a material detail without including with the information details of the defect in the information.

Maximum penalty: \$10 000.

## **Part 6—Approval of laboratories**

### **28—Approval of laboratories**

(1) The Chief Executive may approve laboratories for the purposes of this Act.

(2) A person providing or intending to provide services for the purposes of this Act at a laboratory may make application, in a manner and form determined by the Chief Executive, for an approval under this Part.

(3) An applicant for approval must furnish the Chief Executive with such information as the Chief Executive may require.

(4) The Chief Executive may, after considering an application for approval—

- (a) grant the application, with or without conditions; or
- (b) refuse the application.

(5) If the Chief Executive grants an application for approval, the Chief Executive must issue the applicant with a written approval that sets out any conditions to which the approval is subject.

(6) If the Chief Executive refuses an application for approval, the Chief Executive must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

### **29—Recognised laboratories**

(1) A laboratory that falls within a class (if any) prescribed by the regulations for the purposes of this section will be taken to be an approved laboratory under this Part without the need for any application.

- (2) An approval under subsection (1) will be subject to any conditions prescribed by the regulations.

### **30—Term of approval**

Except during any period of suspension, an approval granted under this Part remains in force for the period specified in the approval unless sooner cancelled.

### **31—Conditions**

- (1) The Chief Executive may, if the Chief Executive considers it appropriate to do so, by notice in writing to an approved laboratory, vary a condition of the approval.
- (2) A person who holds an approval may, on application to the Chief Executive in a manner and form determined by the Chief Executive, request a variation of a condition to which the approval is subject and the Chief Executive may, as the Chief Executive thinks fit—
  - (a) grant the variation; or
  - (b) refuse to grant the variation.
- (3) The condition of an approval may be varied by the addition, substitution or deletion of 1 or more conditions.
- (4) An approved laboratory must not contravene or fail to comply with a condition of approval.  
Maximum penalty: \$10 000.  
Expiation fee: \$210.
- (5) If an approved laboratory contravenes or fails to comply with a condition of approval, the Chief Executive may notify the person in charge of the laboratory that the Chief Executive considers that the approval should be suspended.
- (6) The person in charge of the laboratory may, within 14 days after receiving the notice, lodge with the Chief Executive a written objection (setting out the grounds of objection).
- (7) On the receipt of an objection under subsection (6), the Chief Executive must give the person in charge of the laboratory a reasonable opportunity to make submissions to the Chief Executive in relation to the matter and must then decide whether or not, in the circumstances of the case, it is appropriate to proceed with the suspension.
- (8) If the person in charge of the laboratory does not make an objection under subsection (6) or, on an objection, the Chief Executive decides to proceed despite the objection, the Chief Executive may, by written notice served on the person in charge of the laboratory, suspend the approval.
- (9) A suspension of approval may be of indefinite duration or for a period specified in the notice.
- (10) A suspension takes effect when notice of the suspension is served on the person in charge of the laboratory or at such later date (if any) specified in the notice.
- (11) The person in charge of a laboratory whose approval has been suspended may make application to the Chief Executive for the cancellation of the suspension.
- (12) This section extends to a laboratory under section 29.

### **32—List of approved laboratories to be maintained**

- (1) The Chief Executive is to prepare and maintain a list of approved laboratories.
- (2) The list is to be made publicly available and is to be revised from time to time as required.

## **Part 7—Administration and enforcement**

### **Division 1—Interpretation**

#### **33—Interpretation**

In this Part—

*enforcement agency* means—

- (a) the Minister; or
- (b) a council under the *Local Government Act 1999*; or
- (c) a body established by a council or councils under the *Local Government Act 1999* and brought within the ambit of this definition by the regulations.

### **Division 2—Authorised officers**

#### **34—Appointment of authorised officers**

- (1) An enforcement agency may appoint a person to be an authorised officer for the purposes of this Act, but only if the enforcement agency considers the person has appropriate qualifications or experience to exercise the functions of an authorised officer.
- (2) Each enforcement agency is to prepare and maintain a list of authorised officers appointed by it.

#### **35—Certificates of authority**

- (1) An enforcement agency is to provide each authorised officer appointed by it with a certificate of authority as an authorised officer.
- (2) The powers of an authorised officer may be limited by the authorised officer's certificate of authority.
- (3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her certificate of authority.
- (4) An authorised officer appointed under this Act must, on ceasing to be an authorised officer for any reason, surrender his or her certificate of authority to the enforcement agency that made the appointment.

Maximum penalty: \$5 000.

### 36—Powers of authorised officers

- (1) An authorised officer may, for any purpose connected with the administration or operation of this Act or with the performance, exercise or discharge of a function, power or duty under this Act—
  - (a) at any reasonable time, enter or inspect any premises or vehicle; and
  - (b) during the course of the inspection of any premises or vehicle—
    - (i) ask questions of any person found in the premises or vehicle; and
    - (ii) inspect any article or substance found in the premises or vehicle; and
    - (iii) take and remove samples of any substance or other thing found in the premises or vehicle; and
    - (iv) require any person to produce any plans, specifications, books, papers or documents; and
    - (v) examine, copy and take extracts from any plans, specifications, books, papers or documents; and
    - (vi) take photographs, films or video recordings; and
    - (vii) take measurements, make notes and carry out tests; and
    - (viii) seize and retain, or issue a seizure order in respect of, anything that may constitute evidence of the commission of an offence against this Act; and
  - (c) require any person to answer any question that may be relevant to the administration or enforcement of this Act.
- (2) In the exercise of powers under this Act, an authorised officer may be accompanied by such assistants as may be necessary or desirable in the circumstances.
- (3) An authorised officer may use force to enter any premises or vehicle—
  - (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.
- (4) A magistrate must not issue a warrant under subsection (3) unless satisfied—
  - (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.
- (5) If an authorised officer is inspecting premises or a vehicle under this section, the person in charge of the premises or vehicle must provide such assistance as the authorised officer reasonably requires to facilitate the inspection.
- (6) A person who—
  - (a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this section; or
  - (b) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or

- (c) being the person in charge of premises or a vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance,

is guilty of an offence.

Maximum penalty: \$25 000.

- (7) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (8) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—
  - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or
  - (b) in any other case—any answer given in compliance with the requirement,is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).

### **37—Seizure orders**

- (1) A seizure order issued by an authorised officer under this Division—
  - (a) must be in the form of a written notice served on the owner or person in control of the thing to which the order relates; and
  - (b) may be varied or revoked by further such written notice.
- (2) If a seizure order is issued under this Division, a person who removes or interferes with the thing to which the order relates without the approval of an enforcement agency before an order is made under subsection (3)(b) in respect of the thing or the seizure order is discharged under subsection (3)(c) is guilty of an offence.  
Maximum penalty: \$25 000.
- (3) If a thing has been seized or made subject to a seizure order under this Division, the following provisions apply:
  - (a) the thing must, if it has been seized, be held pending proceedings for an offence against this Act related to the thing seized, unless an enforcement agency—
    - (i) on application, authorises its release to the person from whom it was seized or any person who had a right to possession of it at the time of its seizure subject to such conditions as the enforcement agency thinks fit, including conditions as to the giving of security for satisfaction of an order under paragraph (b)(i)(B); or
    - (ii) orders that it be forfeited to the enforcement agency;

- (b) if proceedings for an offence against this Act related to the thing are instituted within the prescribed time of its seizure or the issuing of the seizure order and the person charged is found guilty of the offence, the court must consider the question of forfeiture and may—
- (i) if the thing seized has not been forfeited by order of an enforcement agency under paragraph (a)(ii)—
    - (A) order that it be forfeited to an enforcement agency; or
    - (B) if it has been released pursuant to paragraph (a)(i), order that it be forfeited to an enforcement agency or order that the person to whom it was released pay an amount equal to its market value at the time of its seizure, as the court thinks fit; or
    - (C) make no order for forfeiture; or
  - (ii) if the thing seized has been forfeited by order of an enforcement agency under paragraph (a)(ii)—
    - (A) confirm the order for forfeiture; or
    - (B) quash the order for forfeiture,

as the court considers appropriate in the circumstances;

- (c) if—
- (i) the thing has not been released pursuant to paragraph (a)(i); and
  - (ii) proceedings for an offence against this Act related to the thing—
    - (A) are not instituted within the prescribed time after its seizure or the issuing of the seizure order; or
    - (B) are so instituted and the person charged is not found guilty of the offence; or
    - (C) are so instituted and the person charged is found guilty of the offence but either no order for forfeiture is made under paragraph (b)(i) or an order is made under paragraph (b)(ii) quashing the order for forfeiture,

the person from whom the thing was seized or any person who had a right to possession of it at the time of its seizure is entitled to recover, by action in any court of competent jurisdiction—

- (iii) if the thing seized has not been forfeited by order under paragraph (a)(ii)—the thing itself, or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure; or
- (iv) if the thing seized has been forfeited by order under paragraph (a)(ii)—compensation of an amount equal to its market value at the time of its seizure or, if it has been sold, the amount realised by its sale,

and any seizure order is discharged;

- (d) if the thing seized is forfeited under this section, it may be disposed of by sale, destruction or otherwise as an enforcement agency directs.
- (4) In this section—
- prescribed time* means the period of 6 months, or such longer period as a magistrate may allow.

## Division 3—Notices and emergencies

### 38—Notices

- (1) An enforcement agency may issue a notice under this section for the purpose of—
  - (a) securing compliance with a requirement imposed by or under this Act; or
  - (b) averting, eliminating or minimising a risk, or a perceived risk, to the public in relation to drinking water.
- (2) A notice under this section—
  - (a) subject to subsection (3), must be in the form of a written notice served on the person to whom it is issued; and
  - (b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and
  - (c) must state the purpose for which the notice is issued and give notice of the requirement or the risk to which it relates; and
  - (d) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:
    - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from an enforcement agency;
    - (ii) a requirement that the person not carry on a specified activity except subject to specified conditions;
    - (iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;
    - (iv) a requirement that the person take action to prevent, eliminate, minimise or control any specified risk to the public, or to control any specified activity;
    - (v) a requirement that the person comply with any specified standard, guideline or code prepared or published by a body or authority referred to in the notice;
    - (vi) a requirement that the person undertake specified tests or monitoring;
    - (vii) a requirement that the person furnish to a body or authority referred to in the notice specified results or reports;

- (viii) a requirement that the person prepare, in accordance with specified requirements and to the satisfaction of the enforcement agency, a plan of action to secure compliance with a relevant requirement or to prevent, eliminate, minimise or control any specified risk to the public; and
  - (e) must state that the person may, within 14 days, appeal to the District Court against the notice.
- (3) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(d) as reasonably required in the circumstances.
  - (4) An emergency notice may be issued orally but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to appeal to the District Court against the notice.
  - (5) If an emergency notice is issued by an authorised officer, the notice will cease to have effect on the expiration of 72 hours from the time of issuing unless confirmed by a notice issued by an enforcement agency and served on the relevant person.
  - (6) An enforcement agency may, by written notice served on a person to whom a notice under this section has been issued by the enforcement agency, vary or revoke the notice.
  - (7) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.  
Maximum penalty: \$25 000.
  - (8) A person must not hinder or obstruct a person complying with a notice under this section.  
Maximum penalty: \$25 000.

### **39—Action or non-compliance with a notice**

- (1) If the requirements of a notice under this Division are not complied with, an enforcement agency may take any action required by the notice.
- (2) Action to be taken by an enforcement agency under subsection (1) may be taken on the enforcement agency's behalf by an authorised officer, or another person authorised by the enforcement agency for the purpose.
- (3) A person taking action under this section may enter any relevant land at any reasonable time.
- (4) The reasonable costs and expenses incurred by an enforcement agency in taking action under this section may be recovered by the enforcement agency from the person who failed to comply with the requirements of the notice as a debt in a court of competent jurisdiction.
- (5) If an amount is recoverable from a person by an enforcement agency under this section, the enforcement agency may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.



#### **40—Action in emergency situations**

- (1) If an authorised officer believes, on reasonable grounds—
  - (a) that a situation is creating, or likely to create, a risk to the public in relation to drinking water; and
  - (b) that immediate action is required,the authorised officer may, after giving such notice (if any) as may be reasonable in the circumstances, take action or cause action to be taken as necessary to avert, control or eliminate the risk.
- (2) In the exercise of powers under this section, an authorised officer has, in addition to any other powers of an authorised officer under this Act, power to—
  - (a) enter and take possession of any premises or vehicle (taking such action as is reasonably necessary for the purpose); and
  - (b) seize, retain, move or destroy or otherwise dispose of any substance or thing.
- (3) The action taken under subsection (2) may include the use of force to enter any premises or vehicle without a warrant if the authorised officer believes, on reasonable grounds, that the circumstances require such a step to be taken.
- (4) Action may be taken under this section whether or not a notice has been given to a person in relation to the risk under a preceding section.
- (5) The reasonable costs and expenses incurred by an authorised officer in taking action under this section may be recovered by an enforcement agency as a debt in a court of competent jurisdiction.

#### **41—Specific power to require information**

- (1) Without limiting any other provision of this Act, an enforcement agency may, by notice in writing under this section, require a person to furnish such information relating to the quality or supply of drinking water, or any other matter associated with the administration or operation of this Act, as the enforcement agency thinks fit.
- (2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.  
Maximum penalty: \$25 000.  
Expiation fee: \$750.
- (3) It is not an excuse for a person to refuse or fail to furnish information under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (4) However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then—
  - (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of, the document or the information (as distinct from the contents of the documents or the information); or
  - (b) in any other case—any answer given in compliance with the requirement,

is not admissible in evidence against the person for an offence or for the imposition of a penalty (other than proceedings in respect of the provision of information that is false or misleading).

## **42—Appeals**

- (1) A person who has been issued with a notice under this Division may appeal to the District Court against the notice.
- (2) An appeal must be instituted within 14 days after the notice is served on the person but the District Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend the period (whether or not it has already expired).
- (3) An enforcement agency is entitled to be a party to proceedings under this section.

## **Part 8—Miscellaneous**

### **43—Delegations**

- (1) A relevant authority may delegate a power or function vested or conferred under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly given by the relevant authority, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.
- (5) In this section—

*relevant authority* means—

  - (a) the Minister; or
  - (b) the Chief Executive; or
  - (c) an enforcement agency.

### **44—Service of notices or other documents**

- (1) Subject to this section, if this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document 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 fax; or
  - (e) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a notice, order or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.

#### **45—Disclosure of certain confidential information**

- (1) A person who has, in connection with the administration or execution of this Act, obtained information relating to manufacturing secrets or commercial secrets or working processes must not disclose that information unless the disclosure is made—
- (a) with the consent of the person from whom the information was obtained; or
  - (b) in connection with the administration or operation of this Act; or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
  - (d) in accordance with a requirement imposed by or under this Act or any other law; or
  - (e) to a person administering or enforcing a law of another jurisdiction that corresponds to this Act or any other law prescribed by the regulations; or
  - (f) to a person administering or enforcing the *Food Act 2001* or an Act of another jurisdiction that corresponds to that Act; or
  - (g) to a law enforcement authority; or
  - (h) with other lawful excuse.

Maximum penalty: \$50 000.

- (2) A person is not guilty of an offence under this section if the information was publicly available at the time the disclosure concerned was made.

#### **46—Protection from liability**

No liability attaches to the Crown, the Minister, the Chief Executive, an enforcement agency, an authorised officer or any other authority or person engaged in the administration of this Act for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

#### **47—False information**

A person must not, in connection with a requirement or direction under this Act, provide any information or produce any document that the person knows is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Maximum penalty: \$25 000.

#### **48—Offences by bodies corporate**

- (1) If a body corporate contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a member of the governing body of the body corporate or who is concerned in the management of the body corporate is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the body corporate has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate under this Act or the regulations.

#### **49—Offences**

- (1) Proceedings for an offence against this Act may only be commenced by—
  - (a) the Minister; or
  - (b) the Director of Public Prosecutions; or
  - (c) an authorised officer; or
  - (d) a member of the staff of the Department; or
  - (e) the chief executive officer of a council; or
  - (f) a police officer; or
  - (g) a person acting on the written authority of the Minister.
- (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 an authorisation under subsection (1)(g).

#### **50—Agreement and consultation with local government sector**

- (1) The Minister must take reasonable steps to consult with the LGA from time to time in relation to the administration and enforcement of this Act.
- (2) If the Minister and the LGA enter into an agreement with respect to the exercise of functions under this Act by councils, then the Minister must prepare a report on the matter and cause copies of the report to be laid before both Houses of Parliament.
- (3) A report under subsection (2) must be accompanied by a copy of any relevant written agreement between the Minister and the LGA.
- (4) The Minister must consult with the LGA before a regulation that confers any function on councils is made under this Act.
- (5) The annual report of the Minister under this Act must include a specific report on—
  - (a) the outcome of any consultation undertaken under subsection (1) or (4); and
  - (b) the operation of any agreement referred to in subsection (2).

### **51—Annual report by Minister**

- (1) The Minister must, on or before 30 September in each year, prepare a report on the operation of this Act for the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after completing a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

### **52—Annual reports by enforcement agencies**

- (1) An enforcement agency (other than the Minister) must, on or before 30 September in each year, furnish to the Minister a report on the activities of the enforcement agency under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

### **53—Regulations**

- (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 the generality of subsection (1), those regulations may—
  - (a) require the furnishing of reports, returns, documents or other forms of information relevant to the registration scheme under this Act to the Minister;
  - (b) require the furnishing of reports, returns, documents or other forms of information relevant to quality or supply of drinking water, or to any other process or other matter associated with the supply of drinking water, to the Chief Executive or other prescribed person or body;
  - (c) require the keeping of records, statistics and other forms of information—
    - (i) by any person or body that supplies drinking water; or
    - (ii) by any person or body that performs a function under or pursuant to this Act,(and the provision of reports based on that information);
  - (d) require that prescribed classes of systems or processes associated with the supply of drinking water must be managed, maintained or undertaken by persons with prescribed qualifications or experience, or who satisfy other competency requirements;
  - (e) prescribe standards and other requirements that must be observed or applied in relation to the quality or supply of drinking water;
  - (f) make provision with respect to the monitoring of drinking water quality, or any component or characteristic of drinking water, including with respect to the method, collection and analysis of samples;
  - (g) provide for the making of announcements or the provision of advice to the public in prescribed circumstances;
  - (h) prescribe guidelines to assist in the administration of this Act;
  - (i) make provision with respect to any auditing, inspections or testing under this Act;

- (j) prescribe fees and charges in connection with any matter arising under this Act, including fees or charges for or in connection with the exercise, performance or discharge of any power, function or duty of an enforcement agency or an authorised officer under this Act, which may be of varying amounts according to factors prescribed in the regulations or determined by the Minister from time to time and published in the Gazette;
  - (k) provide for the payment and recovery of prescribed fees and charges;
  - (l) prescribe penalties, not exceeding \$25 000, for a breach of any regulation;
  - (m) fix expiation fees, not exceeding \$750, for an alleged breach of any regulation.
- (3) The regulations may adopt, wholly or partially and with or without modification—
- (a) a standard, guideline or code relating to matters in respect of which regulations may be made under this Act; or
  - (b) an amendment to such a standard, guideline or code.
- (4) Any regulations adopting a standard, guideline or code, or an amendment to a standard, guideline or code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.
- (5) The regulations or a standard, guideline or 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 prescribed body or person, 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; and
  - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Chief Executive or a council.
- (6) If—
- (a) a standard, guideline or code is adopted by the regulations; or
  - (b) the regulations, or a standard, guideline or code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,
- then—
- (c) a copy of the standard, guideline, code 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 standard, guideline, code 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 standard, guideline, code or other document; and

- (e) the standard, guideline, code or other document has effect as if it were a regulation made under this Act.

## **Schedule 1—Consequential amendments and transitional provisions**

### **Part 1—Consequential amendments**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Food Act 2001***

#### **2—Substitution of section 11**

Section 11—delete the section and substitute:

##### **11—Application of Act to drinking water**

- (1) This Act does not apply to or in respect of drinking water unless the drinking water has been packaged in a bottle, cask or other container.
- (2) In this section—

*drinking water* means water that is intended for human consumption or for purposes connected with human consumption (such as the washing, preparation or cooking of food or the making of ice intended for human consumption, or for the preservation of unpackaged food), whether or not the water is used for other purposes.

### **Part 3—Transitional provisions**

#### **3—Transitional provisions—initial period of operation of Act**

- (1) In this clause—

*transitional registration date* means the day falling on the expiration of the period of 3 months from the day on which this clause comes into operation;

*transitional RMP date* means the day falling on the expiration of the period of 12 months from the day on which this clause comes into operation.
- (2) A person who supplies drinking water as a drinking water provider on the commencement of this Act is not required—
  - (a) to be registered under section 5 until the transitional registration date; or
  - (b) to comply with section 20(5); or
  - (c) to have a risk management plan under Part 3 until the transitional RMP date.
- (3) A person who supplies drinking water as a drinking water provider at any time after the commencement of this Act but before the transitional registration date is not required—
  - (a) to be registered under section 5 until the transitional registration date; or

- (b) to comply with section 20(5); or
  - (c) to have a risk management plan under Part 3 until the transitional RMP date.
- (4) A person who comes within the ambit of section 5(1) on or after the transitional registration date but before the transitional RMP date is not required to have a risk management plan under Part 3 until the transitional RMP date.

#### **4—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.



## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

| Year | No | Title                               | Assent    | Commencement                                |
|------|----|-------------------------------------|-----------|---------------------------------------------|
| 2011 | 16 | <i>Safe Drinking Water Act 2011</i> | 26.5.2011 | 1.3.2013 ( <i>Gazette 6.12.2012 p5432</i> ) |