

South Australia

**Natural Resources Management (Review)
Amendment Bill 2010**

A BILL FOR

An Act to amend the *Natural Resources Management Act 2004*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Natural Resources Management (Review) Amendment Act 2010*.

5 2—Commencement

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

3—Amendment provisions

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

10 Part 2—Amendment of *Natural Resources Management Act 2004*

4—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of *Department* insert:

designated drainage infrastructure means—

- 15 (a) any water management works under the care, control and management of a relevant authority under the *South Eastern Water Conservation and Drainage Act 1992*; or
- (b) any Project works under the *Upper South East Dryland Salinity and Flood Management Act 2002*; or
- 20 (c) any other drainage infrastructure designated by the regulations as being within the ambit of this definition;
- (2) Section 3(1), definition of *domestic purpose*, paragraph (a)—delete paragraph (a) and substitute:
- 25 (a) taking water for the purpose of watering or irrigating land, other than land used solely in connection with a dwelling; or
- (ab) without limiting paragraph (a)—taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or

- (3) Section 3(1)—after the definition of *domestic wastewater* insert:

drainage infrastructure means infrastructure established for the purposes of draining water (however occurring) from any land and includes any related or additional infrastructure established for managing or dealing with the water after it has been drained from the land;

- (4) Section 3(1), definition of *infrastructure*, (c)—after "channels" insert:

, drains

- (5) Section 3(1), definition of *intensive farming*—delete the definition and substitute:

intensive farming means—

- (a) a method of keeping animals in the course of carrying on the business of primary production in which the animals are usually confined to a small space or area and usually fed by hand or by a mechanical means; or
- (b) any other form of farming designated as intensive farming by an NRM plan applying to or in relation to the area where the farming is being carried out,

but does not include any method or activity excluded from the ambit of this definition by the NRM plan applying to or in relation to the area where the farming is being carried out;

- (6) Section 3(1), definition of *private land*, (a)—delete "*Crown Lands Act 1929*" and substitute:

Crown Land Management Act 2009

- (7) Section 3(1), definition of *residential premises*—delete the definition

- (8) Section 3(1), definition of *surface water*—after paragraph (c) insert:

- (d) water of a kind referred to in paragraph (a) that is contained in any designated drainage infrastructure;
- (e) water in a watercourse if the watercourse, or a particular part of a watercourse, is declared by proclamation under subsection (13) to constitute surface water for the purposes of this Act;

- (9) Section 3(1), definition of *surface water prescribed area*—after "stormwater infrastructure" insert:

or designated drainage infrastructure

- (10) Section 3(1), definition of *to take*—after paragraph (ba) insert:

- (bb) to stop, impede or direct the flow of water in any designated drainage infrastructure for the purpose of collecting the water, or to extract any water from designated drainage infrastructure;

- (11) Section 3(1), definition of *water resource*—after "(to the extent that it is not within a preceding item)" insert:

, water within designated drainage infrastructure (to the extent that it is not within a preceding item)

(12) Section 3—after subsection (12) insert:

(13) The Governor may—

- 5
- (a) by proclamation, declare a watercourse, or a part of a watercourse, to constitute surface water for the purposes of this Act;
 - (b) by subsequent proclamation or proclamations, vary or revoke a proclamation under paragraph (a).

(14) A proclamation under subsection (13) will have effect according to its terms.

10 **5—Amendment of section 11—Powers of delegation**

Section 11(4)(b)—delete paragraph (b)

6—Amendment of section 13—Composition of NRM Council

(1) Section 13—after subsection (4) insert:

(4a) Subsection (4) does not apply if—

- 15
- (a) the Minister is seeking to fill a casual vacancy in the membership of the NRM Council; and
 - (b) the unexpired period of office of the member whose position has become vacant (the "former member") is less than 2 years; and
 - 20 (c) the Minister's intention is that the term of office of the person appointed to the vacant position will be equal to the unexpired term of the former member at the time that the vacant position is filled.

(2) Section 13(5)(a)(v)—delete "administration" and substitute:

25 management

7—Amendment of section 14—Conditions of membership

(1) Section 14(1)—delete "3" and substitute:

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(2) Section 14(1)—delete "6" and substitute:

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8—Amendment of section 20—Annual report

Section 20(2)—delete subsection (2) and substitute:

- (2) The report must include any report or information provided to the NRM Council under this Act for inclusion in its annual report.

35 **9—Amendment of section 22—Establishment of regions**

Section 22(4)—delete "notice" and substitute:

proclamation

10—Amendment of section 25—Composition of boards

(1) Section 25—after subsection (3) insert:

(3a) Subsections (2) and (3) do not apply if—

- 5
- (a) the Minister is seeking to fill a casual vacancy in the membership of a regional NRM board; and
 - (b) the unexpired term of office of the member whose position has become vacant (the "former member") is less than 2 years; and
 - 10 (c) the Minister's intention is that the term of office of the person appointed to the vacant position will be equal to the unexpired term of the former member at the time that the vacant position is filled.

(2) Section 25(4)(a)(vi)—delete "administration" and substitute:

management

11—Amendment of section 26—Conditions of membership

(1) Section 26(1)—delete "3" and substitute:

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(2) Section 26(1)—delete "6" and substitute:

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20 (3) Section 26(3)(f)—delete "the Minister" and substitute:

the Governor

12—Amendment of section 38—Annual reports

(1) Section 38(1)—delete subsection (1) and substitute:

25 (1) A regional NRM board must, on or before 30 November in every year, provide to the Minister a report—

- 30
- (a) on its activities for the financial year ending on the preceding 30 June (and the regional NRM board need not provide a report under the *Public Sector Act 2009*); and
 - (b) on the activities of any NRM group within its region (and any NRM group need not provide a report under the *Public Sector Act 2009*).

(2) Section 38—after subsection (2) insert:

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- (3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.
 - (4) The Chief Executive of the Department must ensure that a copy of any report within the ambit of subsection (3) is published on the Department's website within 5 business days after being laid before both Houses of Parliament under that subsection.

13—Amendment of section 49—Conditions of membership

- (1) Section 49(1)—delete "3" and substitute:

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- (2) Section 49(1)—delete "9" and substitute:

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14—Repeal of section 57

Section 57—delete the section

15—Amendment of section 65—Power of delegation

Section 65(1)—after "under this" insert:

or any other

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16—Substitution of section 72

Section 72—delete the section and substitute:

72—Self-incrimination

- (1) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) If compliance by a natural person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the 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 a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement,

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

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17—Amendment of section 75—Regional NRM plans

- (1) Section 75(1)—after "its operations" insert:

and in order to promote the objects of this Act within its region

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- (2) Section 75(3)—after paragraph (b) insert:

- (ba) set strategic directions for all natural resource management activities that are to be undertaken under this Act in relation to its region; and

(3) Section 75(3)(b)(iii)—after "flood mitigation" insert:

, and plans to manage significant issues associated with the drainage of land (insofar as these issues are not being managed or addressed in other ways)

(4) Section 75(3)(i)—after "Chapter 5" insert:

and subsection (3a) applies for the purposes of this paragraph

(5) Section 75(3)—after paragraph (j) insert:

(ja) if the plan proposes a water levy be declared under Chapter 5 Part 1 Division 2—set out the board's proposals or recommendations with respect to the basis on which the levy will be imposed under section 101; and

(6) Section 75(3)(k)—delete paragraph (k) and substitute:

(k) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a permit under Chapter 7 Part 2; and

(7) Section 75—after subsection (3) insert:

(3a) This subsection applies for the purposes of paragraph (i) of subsection (3) if—

(a) a plan proposes—

(i) that funds should now comprise or include an amount to be raised or recovered by a levy under Chapter 5 Part 1 Division 1 or Division 2; and

(ii) such a levy has not been imposed in the financial year immediately preceding the financial year in which the levy is to be imposed; or

(b) a plan proposes—

(i) that a levy under Chapter 5 Part 1 Division 1 or Division 2 imposed in 1 financial year be again imposed in the next financial year; and

(ii) that the amount to be raised or recovered by the levy in the next financial year will be an amount that exceeds the amount raised for the last financial year adjusted to reflect increases (if any) in the CPI during the financial year immediately preceding that last financial year.

18—Amendment of section 76—Preparation of water allocation plans

(1) Section 76(4)—after paragraph (a) insert:

(aab) include—

(i) an assessment of the capacity of the water resource to meet environmental water requirements; and

- 5
- (ii) information about the water that is to be set aside for the environment including, insofar as is reasonably practicable, information about the quantity and quality, the time when that water is expected to be made available, and the type and extent of the ecosystems to which it is to be provided; and
 - (iii) a statement of the environmental outcomes expected to be delivered on account of the provision of environmental water under the plan; and

(2) Section 76(4)(h)(i)—delete subparagraph (i) and substitute:

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- (i) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a permit under Chapter 7 Part 2; and

(3) Section 76—after subsection (8) insert:

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- (9) For the purposes of this section, environmental water requirements are those water requirements that must be met in order to sustain the ecological values of ecosystems that depend on the water resource, including their processes and biodiversity, at a low level of risk.

19—Repeal of section 78

Section 78—delete the section

20—Amendment of section 79—Preparation of plans and consultation

(1) Section 79(1)—delete subsection (1) and substitute:

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- (1) A regional NRM board proposing to create a plan must prepare a draft plan for the purposes of this Division.
 - (1a) A regional NRM board must, at the time that it commences the preparation of a draft plan, give public notice of its decision to proceed to prepare a draft in accordance with the regulations.

(2) Section 79(6)(a)—after subparagraph (ix) insert:

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- (ixa) any body that represents the interests of Aboriginal people identified by the Minister for the purposes of this subparagraph (either in relation to a particular plan or more generally); and

(3) Section 79—after subsection (18) insert:

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- (19) The board may, as part of the processes associated with subsections (16), (17) and (18), amend the draft plan as the board thinks fit.

21—Amendment of section 80—Submission of plan to Minister

Section 80(1)—after "section 79(18)" insert:

(and, if relevant, under section 79(19))

22—Amendment of section 81—Review and amendment of plans

(1) Section 81(4)—delete "5" and substitute:

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- (2) Section 81(7)(a)(i)—delete "a copy" and substitute:

a summary

- (3) Section 81(10)(b)(ii)—delete subparagraph (ii) and substitute:

(ii) that the amount to be raised or recovered by the levy in the next financial year will be an amount that exceeds the amount raised for the last financial year adjusted to reflect increases (if any) in the CPI during the financial year immediately preceding that last financial year,

- (4) Section 81(10)—after "the procedures set out in section 80(8) to (16) must be followed when the plan is amended" insert:

(and if the amendment is otherwise within the ambit of subsection (8) then no other procedures, other than the procedures set out in subsection (7) and the procedures referred to in this subsection, need be followed)

23—Amendment of section 97—Outside council areas

- (1) Section 97(4)—delete "will be" and substitute:

may be

- (2) Section 97—after subsection (11) insert:

(11a) In connection with the operation of a preceding subsection:

- (a) if 2 or more pieces of rateable land are owned by the same owner and occupied by the same occupier, only 1 levy may be imposed against the whole of that land; and
- (b) if 2 or more pieces of rateable land constitute a single farm enterprise, only 1 levy may be imposed against the whole of the land.

(11b) Subsection (11a)(b) only applies if the Minister is satisfied, on application to the Minister and by provision of such information or evidence as the Minister may reasonably require, that the relevant land is within the ambit of the provision.

(11c) If the grounds on which land within the ambit of subsection (11a)(b) cease to exist, the person who has the benefit of the provision must immediately inform the Minister of that fact.

Maximum penalty: \$5 000.

- (3) Section 97—after subsection (16) insert:

(17) In this section, a reference to a single farm enterprise is a reference to 2 or more pieces of rateable land—

(a) which—

- (i) are farm land; and
- (ii) are farmed as a single enterprise; and
- (iii) are occupied by the same person or persons,

whether or not the pieces of land are contiguous; or

(b) which—

(i) as to all the pieces except 1, are farm land farmed as a single enterprise occupied by the same person or persons; and

(ii) as to 1 piece contiguous with at least 1 of the other pieces, is the principal place of residence of that person or 1 of those persons.

(18) In this section—

farm land means land used wholly or mainly for the business of primary production.

24—Amendment of section 100—Interpretation

Section 100(1), definition of *levy*—delete the definition and substitute:

levy includes an instalment of a levy.

25—Amendment of section 106—Determination of quantity of water taken

Section 106(1)—after paragraph (e) insert:

(f) water taken for the purposes of the construction or repair of a public road must be disregarded;

(g) if water taken for the purposes of the construction or repair of a public road is not measured by meter, or the water is taken for other purposes as well, the Minister must make an assessment of the quantity of water taken for those purposes on such basis as the Minister thinks fit.

26—Amendment of section 115—Declaration of penalty in relation to unauthorised or unlawful taking of water

Section 115(4)—after "subsection (1)(cb)" insert:

or (d)

27—Amendment of section 121—Interpretation

Section 121, definition of *degradation*—after "an adverse effect" insert:

on the productive capacity of land, or

28—Amendment of section 124—Right to take water subject to certain requirements

(1) Section 124(3)—delete "and (6)" and substitute:

, (6), (6a) and (6b)

(2) Section 124—after subsection (6a) insert:

(6b) Subsection (3) does not apply—

(a) to the taking of water from designated drainage infrastructure in circumstances prescribed by regulations; or

- (b) to the taking of water from designated drainage infrastructure, or a part of designated drainage infrastructure, brought within the ambit of this paragraph by regulation.

5 **29—Amendment of section 125—Declaration of prescribed water resources**

Section 125(4a)—after "(or a part of stormwater infrastructure)" insert:

or by reference to particular designated drainage infrastructure (or a part of designated drainage infrastructure)

10 **30—Amendment of section 127—Water affecting activities**

(1) Section 127—after subsection (4) insert:

(4a) The relevant authority may—

- (a) require that separate applications be made;
- (b) issue separate water management authorisations or permits, with respect to each distinct activity or item of infrastructure within the ambit of subsection (3) in any particular case.

15 (2) Section 127(6)(a), penalty provision—delete paragraph (a) and substitute:

- (a) if the offence is constituted by a contravention of subsection (1) or (5a)—
 - (i) where the offender is a body corporate—\$2 200 000;
 - (ii) where the offender is a natural person—\$700 000;

20 (3) Section 127(6), Expiation fee provision—delete this provision and substitute:

Expiation fee: If the offence is constituted by a breach of a prescribed condition of a water management authorisation or permit—\$750.

(4) Section 127(9)—delete subsection (9)

25 **31—Amendment of section 128—Certain uses of water authorised**

Section 128(3)—after "infrastructure of a particular class" insert:

or as to particular designated drainage infrastructure (or a part of designated drainage infrastructure) or designated drainage infrastructure of a particular class

30 **32—Amendment of section 135—Permits**

Section 135(4)—delete subsection (4) and substitute:

- (4) A relevant authority must—
 - (a) take into account the provisions of the relevant regional NRM plan when considering an application for a permit; and
 - (b) ensure that the permit, if granted, and any conditions of the permit, are not inconsistent with the provisions of the relevant regional NRM plan.

33—Amendment of section 145—Requirement for remedial or other work

Section 145(2)—after "backfilled" insert:

, capped

34—Amendment of section 150—Transfer of water licences

5 (1) Section 150(13)—after paragraph (c) insert:

(d) require a reduction in the size of a dam, or require other work to be undertaken with respect to a dam, wall or structure, to match the effect of the transfer.

(2) Section 150—after subsection (14) insert:

10 (14a) A person who holds a water licence that is subject to the operation of subsection (13)(d) must comply with that requirement within a period specified by the Minister.

Maximum penalty:

(a) where the offender is a body corporate—\$50 000;

15 (b) where the offender is a natural person—\$25 000.

35—Amendment of section 152—Source of allocation

(1) Section 152(1)—after paragraph (a) insert:

(ab) as a carry-over under subsection (7)(a) or (b); or

(2) Section 152—after subsection (2) insert:

20 (2a) In a case where subsection (1)(ab) applies, the water allocation that is carried over will be subject to such adjustments (including a reduction) as the Minister may determine for the purposes of this section.

(3) Section 152(7)—delete subsection (7) and substitute:

25 (7) A water allocation will initially relate to a specified period (not exceeding 12 months) and if water is not taken under the terms of the allocation during that period the allocation may be carried over if—

(a) to do so is authorised by the relevant water allocation plan;
or

30 (b) a carry-over is allowed by the Minister (either by determination of the Minister in a particular case or cases or under a policy established by the Minister for the purposes of this section by notice in the Gazette),

35 but otherwise the water allocation will expire at the end of the period.

36—Amendment of section 161—Variation of approvals

- (1) Section 161(1)—after paragraph (d) insert:
- (da) at any time if the variation is necessary, in the opinion of the Minister, to provide consistency with action taken with respect to the variation or transfer of a water licence that is relevant to the water resource works approval; or
- (2) Section 161(4)(b)—delete "licence" and substitute:
- water resource works approval

37—Amendment of section 164N

Section 164N—after subsection (11) insert—

- (12) If a person who is an existing user under a preceding subsection divests himself or herself of land (or an interest in land) in relation to which the rights of an existing user arises under those subsections—
- (a) the person who acquires the land (or the interest in land), or any successor to that person, will be regarded as the existing user in substitution for the earlier existing user (and to obtain the benefit of any action or commitment taken or made by an earlier existing user); and
- (b) those subsections will apply subject to any modifications necessary to take into account the operation of this subsection, and such other modifications as may be prescribed by the regulations.

38—Amendment of section 167—Allocation of reserved water

Section 167(1)(d)—delete "subsections (2) and (4) of section 151" and substitute:

subsections (2) and (7) of section 147

39—Amendment of section 169—Water conservation measures

- (1) Section 169(2)—delete subsection (2) and substitute:
- (2) The Minister may, by notice in the Gazette, introduce 1 or more water conservation measures.
- (2) Section 169(3)—delete "Regulations" and substitute:
- A notice
- (3) Section 169(3)(b)—delete "the Governor" and substitute:
- the Minister
- (4) Section 169(4)—delete "A regulation" and substitute:
- A notice
- (5) Section 169(5)—delete "a regulation is made" and substitute:
- a notice is published

(6) Section 169(5)(a)—delete "regulation" and substitute:
water conservation measures

(7) Section 169(5)(b)—delete "regulation" and substitute:
measures

5 (8) Section 169(6)—delete "A regulation" and substitute:
A notice

(9) Section 169(6)—delete "in accordance with the regulations"

(10) Section 169(7)—delete "A regulation" and substitute:
A notice

10 (11) Section 169(7)(e)—delete "the regulation" and substitute:
the notice

(12) Section 169—after subsection (7) insert:

(7a) The Minister may, by subsequent notice in the Gazette, vary or
revoke a notice under subsection (2).

15 (13) Section 169(8)—delete "a regulation" and substitute:
the provisions of a notice

40—Amendment of section 175—Movement of animals or plants

(1) Section 175(2)—after "control area for a class of" insert:
animals or

20 (2) Section 175(2)(a)—delete "a plant" and substitute:
an animal or plant

(3) Section 175(2)(b)—delete "a plant" and substitute:
an animal or plant

41—Amendment of section 176—Possession of animals or plants

25 Section 176(1)—delete subsection (1) and substitute:

(1) Subject to this Act, a person must not keep, or have in his or her
possession or control, an animal of a class to which this subsection
applies.

Maximum penalty:

30 (a) if the offence relates to a Category 1 animal—\$50 000 or
imprisonment for 1 year;

(b) if the offence relates to a Category 2 animal—\$20 000 or
imprisonment for 6 months;

(c) if the offence relates to a Category 3 animal—\$10 000.

35 Expiation fee: If the offence relates to a Category 3 animal—\$500.

- (1a) Subject to this Act, a person must not keep, or have in his or her possession or control, an animal of a class to which this subsection applies within a control area for that class of animals.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$50 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal—\$20 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal—\$10 000.

Expiation fee: If the offence relates to a Category 3 animal—\$500.

42—Amendment of section 177—Sale of animals or plants, or produce or goods carrying animals or plants

Section 177(2)—delete "carrying a plant" and substitute:
carrying an animal or plant

43—Amendment of section 179—Offence to release animals or plants

- (1) Section 179—before subsection (1) insert:

- (a1) A person must not release an animal of a class to which this subsection applies, or cause or permit an animal of that class to be released.

Maximum penalty: \$100 000 or imprisonment for 2 years.

- (2) Section 179(3)—after "an offence against" insert:

subsection (a1),

- (3) Section 179(4)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) warning the defendant that if the animal, or an animal of that class (as the case may be)—

(A) in the case of an animal under subsection (a1)—were to be released within any part of the State; and

(B) in the case of an animal under subsection (1)—were to be released into a control area,

then the defence would not apply;

- (4) Section 179(5)—after "contravention of" insert:

subsection (a1) or

- (5) Section 179(8)(b)—after "open environment" insert:

(including by sowing or planting any plant or plant material or by otherwise distributing seeds, spores, cuttings, divisions or other plant propagating material)

44—Amendment of section 181—Requirement to control certain animals or plants

(1) Section 181—before subsection (1) insert:

5 (a1) A person who has in his or her possession or control an animal of a class to which this subsection applies must comply with any instructions of an authorised officer with respect to the keeping or management of any animal of that class.

Maximum penalty:

10 (a) if the offence relates to a Category 1 animal—\$50 000 or imprisonment for 1 year;

(b) if the offence relates to a Category 2 animal—\$20 000 or imprisonment for 6 months;

(c) if the offence relates to a Category 3 animal—\$10 000.

Expiation fee: If the offence relates to a Category 3 animal—\$500.

15 (2) Section 181(3)—delete "subsection (1) or (2)" and substitute:

this section

45—Amendment of section 223—Evidentiary

Section 223(2)—after paragraph (ca) insert:

(cb) specified infrastructure—

20 (i) was, or was not, designated drainage infrastructure;

(ii) was, or was not, designated drainage infrastructure forming part of a surface water prescribed area; or

46—Repeal of section 234

Section 234—delete the section