

Legislative Council—No 18A

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South Australia

Natural Resources Management (Water Resources and Other Matters) Amendment Bill 2007

A BILL FOR

An Act to amend the *Natural Resources Management Act 2004* and to make related amendments to the *Ground Water (Qualco-Sunlands) Control Act 2000*.

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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 (Water Resources and Other Matters) Amendment Act 2007*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or a provision of this Act.

3—Amendment provisions

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

Part 2—Amendment of *Natural Resources Management Act 2004* to facilitate interstate trade in water entitlements

4—Variation of section 100—Interpretation

15 Section 100(2)—delete subsection (2) and substitute:

- (2) For the purposes of this Division but not for any other purpose—
 - (a) a water licence that is endorsed with a water (holding) allocation will be taken in respect of that allocation to give the holder of the licence the right to take the quantity of water allocated; and
 - (b) a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme will be taken in respect of that allocation to give the holder of the right the right to take the quantity of water allocated.

5—Variation of section 101—Declaration of levies

- (1) Section 101(1)(a)—delete paragraph (a) and substitute:
 - (a) are the holders of—
 - (i) water licences granted in relation to a water resource within a specified NRM region; or
 - (ii) a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme; or
- (2) Section 101(10)—after "a water allocation and" insert:

insofar as is relevant

6—Variation of section 104—Liability for levy

(1) Section 104(1)—delete subsection (1) and substitute:

(1) A person who—

(a) holds a water licence at any time during a financial year in respect of which a levy for the right to take water has been declared is, subject to subsection (8), liable to pay to the Minister the full amount of the levy whether he or she holds the licence throughout the year or not; or

(b) who holds a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme at any time during a financial year in respect of which a levy for the right to take water has been declared is liable to pay the full amount of the levy whether he or she holds the right throughout the year or not.

(2) Section 104(4)(a)—after subparagraph (ii) insert:

(iia) if a right to an allocation of the water arises under the terms of an Interstate Water Entitlements Transfer Scheme and the right was not in existence at the commencement of the financial year to which the levy relates but arose after that commencement—at the time when the right to the allocation arose under the terms of that scheme; or

(3) Section 104(9)—after "the licence" insert:

or the terms of the Interstate Water Entitlements Transfer Scheme

7—Substitution of section 107

Section 107—delete the section and substitute:

107—Cancellation etc of entitlement for non-payment of levy

(1) If a person who holds a water licence, a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme or an imported water permit has failed to pay a levy, or an instalment of a levy, within 3 months after being served with a notice under section 105, the Minister may serve further notice on the person requiring payment within a period of not less than 1 month and stating that the licence, right or permit (as the case may be) may be cancelled, suspended or varied by the Minister if the amount is not paid within that time.

(2) The Minister may cancel, suspend or vary the water licence, right or imported water permit by 7 days written notice served on the holder of the licence or permit if the levy or instalment is not paid in accordance with the notice referred to in subsection (1).

8—Amendment of section 112—Recovery rights with respect to unpaid levy

Section 112—after its present contents, now to be designated as subsection (1), insert:

- 5 (2) In addition, any levy that is not paid in accordance with a notice under section 105, together with any interest under section 110, may be recovered by the Minister as a debt from any person who is liable to pay the levy.
- (3) No statute of limitations bars or affects any action or remedy for recovery by the Minister of an amount under subsection (2).
- 10 (4) Any action to recover any levy (and interest) as a debt does not prejudice any action to recover any levy (and interest) as a charge on land, and vice versa, but any amount sought to be recovered under 1 right must be adjusted to take into account any amount actually recovered under the other right.

9—Amendment of section 115—Declaration of penalty in relation to the unauthorised or unlawful taking or use of water

15 (1) Section 115(1)(a)—delete paragraph (a) and substitute:

- (a) a person who is—
- (i) a licensee who takes water in excess of the water allocation of a water licence; or
- 20 (ii) the holder of a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme who takes water in excess of the relevant water allocation; or

(2) Section 115(1)(c)—after "water licence" insert:

25 or a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme

10—Amendment of section 127—Water affecting activities

(1) Section 127(1)(a)(i)—after subparagraph (B) insert:

- 30 (C) under an IWETS authority issued by the Minister under section 146A in respect of a right to an allocation of water under the terms of an Interstate Water Entitlements Transfer Scheme; or

(2) Section 127(6)(b)—after "a permit" insert:

, or an IWETS authority under section 146A,

11—Insertion of section 146A

After section 146 insert:

146A—Special authority to take water in South Australia under interstate agreement

- 5 (1) The Minister may, in order to facilitate the interstate trading of allocations of water, so as to provide for authority to a person to take water in South Australia under the terms of an Interstate Water Entitlements Transfer Scheme, issue an authority (to be called an *IWETS authority*) under this section.
- 10 (2) An application for an authority under this section must be in a form approved by the Minister and must be accompanied by the prescribed fee.
- 15 (3) The Minister may refuse to grant an authority under this section on the grounds that apply under subsection (3) of section 146 as if the application for the authority were an application for a licence under that section.
- (4) The Minister may grant an authority under this section that is subject to—
- 20 (a) conditions prescribed from time to time by the regulations; and
- (b) such other conditions as are endorsed on the authority by the Minister.
- (5) An authority under this section—
- 25 (a) remains in force until the authority is terminated by or under this Act; and
- (b) may specify intervals at which the Minister may vary the conditions of the authority.
- (6) Without limiting the operation of subsection (4), a condition of an authority under this section that relates to a water resource within the Murray-Darling Basin may include—
- 30 (a) a requirement that the holder of the authority enter into a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister (which may include the payment of a sum or sums of money into an account specified by the Minister), to ensure that money is available to address the costs of any damage to the River Murray (being the costs of any such damage within the meaning of section 3(5) of the *River Murray Act 2003*) that may be attributable to the taking or use of water by virtue of the licence;
- 35 (b) a requirement that the holder of the authority—
- 40

- 5
- (i) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister; or
- (ii) participate in a specified environment improvement program (including a program that applies with respect to any part of the River Murray);
- 10
- (c) a requirement that the holder of the authority participate in any other form of scheme to protect, restore or otherwise benefit the River Murray specified by the Minister (including a scheme established by the Minister or any other person or body that has effect in relation to any part of the River Murray and including by payment of a sum or sums of money into an account established or used for the purposes of the scheme).
- 15
- (7) Without limiting the operation of subsection (6), a condition of a kind referred to in that subsection may be imposed with respect to any damage to the River Murray occurring before the commencement of this section.
- 20
- (8) A condition of a kind referred to in subsection (6) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.
- 25
- (9) Sections 147 to 164 (inclusive) will apply to an IWETS authority issued under this section as if it were a water licence issued under section 146, subject to such modifications as may be necessary for the purpose or as may be prescribed by regulations made for the purposes of this provision.
- 30
- (10) An IWETS authority is personal property vested in the holder of the licence and will pass to another person under Division 3 (as applied by subsection (9) or (subject to that Division)) in accordance with any other law for the passing of property.

35

Part 3—Amendment of *Natural Resources Management Act 2004* to address administrative matters and revise water entitlements

12—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *construct*—after "alter" insert:
 , reduce, enlarge

- (2) Section 3(1)—after the definition of *construct* insert:

consumptive pool means the water that will from time to time be taken to constitute the resource within a particular part of a prescribed water resource for the purposes of Chapter 7, as determined—

- (a) by or under a water allocation plan for that water resource; or
(b) in prescribed circumstances—by the Minister;

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

delivery capacity entitlement means a delivery capacity entitlement issued under Chapter 7 Part 3 Division 5;

- (4) Section 3(1), definition of *Interstate Water Entitlements Transfer Scheme*—delete the definition and substitute:

Interstate Water Entitlements Transfer Scheme or *IWETS* means—

- (a) a scheme for the transfer of entitlements between 2 or more States under the Agreement approved under the *Murray-Darling Basin Act 1993*; or
(b) an agreement between South Australia and 1 or more other States or a Territory entered into under Chapter 7 Part 3 Division 6;

- (5) Section 3(1)—after the definition of *SA Water* insert:

Schedule 3A entitlement means—

- (a) a water licence; or
(b) a water access entitlement (or part of a water access entitlement); or
(c) a water allocation (or part of a water allocation); or
(d) a delivery capacity entitlement;

security interest means a mortgage or charge over, or other arrangement of a kind prescribed by the regulations in respect of, a water management authorisation that secures the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement;

- (6) Section 3(1)—after the definition of *sell* insert:

site use approval means a site use approval issued under Chapter 7 Part 3 Division 4;

- (7) Section 3(1)—after the definition of *vehicle* insert:

water access entitlement—see section 146(2);

- (8) Section 3(1), definition of *water allocation*, (a)—delete paragraph (a) and substitute:

- (a) in respect of a water licence, means an allocation of water under the terms of the licence in accordance with Chapter 7 Part 3 Division 2 and includes, if the context so requires, a component or part of such an allocation, or the water available in connection with the entitlement;

- 5 (ab) in respect of an Interstate Water Entitlements Transfer Scheme,
means an allocation of water under the terms of that scheme and the
provisions of Chapter 7 Part 3 Division 2 and includes, if the context
so requires, a component or part of such an allocation, or the water
available in connection with the entitlement;
- (9) Section 3(1), definition of ***water (holding) allocation***—delete the definition
- (10) Section 3(1), definition of ***water licence***—delete the definition and substitute:
water licence means a licence granted by the Minister under section 146;
water management authorisation means—
- 10 (a) a water licence; or
(b) a water allocation; or
(c) a site use approval; or
(d) a water resource works approval; or
(e) a delivery capacity entitlement;
- 15 ***The Water Register***—see section 226(1a) and (1b);
- (11) Section 3(1)—after the definition of ***water resource*** insert:
water resource works approval means a water resource works approval
issued under Chapter 7 Part 3 Division 3;
- (12) Section 3(1), definition of ***water (taking) allocation***—delete the definition
- 20 (13) Section 3(1)—after the definition of ***wetland*** insert:
works means—
- (a) dams or reservoirs;
(b) wells or channels;
(c) pumps, pumping stations, pipes and tanks;
25 (d) drains, machinery or other plant or equipment;
(e) other forms of structures or apparatus;
(f) other items brought within the ambit of this definition by the
regulations,
whether on, above or under land, but does not include any items excluded
30 from the ambit of this definition by the regulations.
- (14) Section 3(5) and (6)—delete subsections (5) and (6) and substitute:
- (5) A reference in this Act to varying a water management authorisation
(in any of its forms) includes a reference to varying the conditions
attached to the particular water management authorisation.
- 35 (6) The conditions of an authorisation or permit under this Act may be
varied by the addition, substitution or deletion of 1 or more
conditions.

13—Amendment of section 5—Territorial and extra-territorial operation of Act

Section 5—after subsection (3) insert:

- 5 (4) This Act may also apply so as to give effect within the State or
 outside the State to any intergovernmental agreement relevant to the
 operation of this Act to which the State is a party.

14—Amendment of section 38—Annual reports

Section 38(2)(b)—after "regional NRM board" insert:

10 (together with any relevant accounts and financial information that relate to
 any NRM groups within its region)

15—Amendment of section 53—General powers

Section 53(2)(b)—delete "properly" and substitute:

property

16—Substitution of section 56

15 Section 56—delete the section and substitute:

56—Accounts

- 20 (1) The regional NRM board or boards that have responsibility for an
 NRM group must ensure that proper accounts are kept of the NRM
 group's financial affairs.
- (2) The accounts required under subsection (1) will form part of the
 accounts of a regional NRM board and those accounts, and any
 related financial information, will be incorporated into the accounts
 and financial statements of that board for financial reporting and
 auditing purposes.

17—Amendment of section 57—Annual reports

25 Section 57(2)—delete subsection (2) and substitute:

- (2) The report must include any information required by or under the
 regulations.

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

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

- (ab) determine, or provide a mechanism for determining, from time to
 time, a consumptive pool, or consumptive pools, for the water
 resource; and

 (2) Section 76(4)(b)—delete paragraph (b) and substitute:

- 35 (b) set out principles associated with the determination of water access
 entitlements and for the taking and use of water so that—

- (i) an equitable balance is achieved between environmental,
 social and economic needs for the water; and

- (ii) the rate of the taking and use of the water is sustainable; and
- (3) Section 76(4)(f) and (g)—delete paragraphs (f) and (g)
- (4) Section 76—after subsection (4) insert:
- 5 (4a) A water allocation plan may provide for the constitution of 2 or more consumptive pools with respect to a particular part of a water resource and, in relation to each consumptive pool, assign a particular purpose to that consumptive pool.
- (4b) The basis on which a water access entitlement is to be determined may be expressed—
- 10 (a) as a specified share of the water that constitutes the relevant consumptive pool from time to time, expressed—
- (i) as a number of units of a total number of units; or
- (ii) as a percentage,
- (as made available over a specified period); or
- 15 (b) as a specified maximum volume over a specified period; or
- (c) if relevant in view of the nature of the particular water resource, as a specified proportion of water held in the relevant water resource, or a specified proportion of any inflow of water; or
- 20 (d) on any basis prescribed by the regulations; or
- (e) on any other basis that the regional NRM board considers should apply under the water allocation plan.
- (4c) The periods specified for the purposes of a water access entitlement under subsection (4b) may be recurrent periods (such as financial
- 25 years).
- (4d) A water allocation plan may—
- (a) set out appropriate policies and principles to assist in regulating the transfer of, or other dealings with, water management authorisations or water access entitlements (which policies may include provisions that provide for the
- 30 varying of any water management authorisation or water access entitlements or prevent specified classes of transfers or dealings in specified circumstances); and
- (b) specify the classes of applications which will be subject to the operation of sections 162 or 164D.
- 35 (4e) A water allocation plan may provide for the variation of site use approvals or water resource works approvals of classes specified by the plan in circumstances specified by the plan.
- (5) Section 76(8)—delete "by the licence" and substitute:
- 40 in relation to the licence

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

Section 80(8)—after "If a plan" insert:

prepared under Division 1

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

5 (1) Section 81(7)(a)(i)—delete "the prescribed" and substitute:

a specified

(2) Section 81(7)(a)(ii)—delete "the prescribed" and substitute:

a specified

(3) Section 81(7)(b)—delete "the prescribed" and substitute:

10 the specified

21—Amendment of section 89—Amendment of plans without formal procedures

(1) Section 89(2)—after paragraph (c) insert:

or

15 (d) to achieve greater consistency with the terms or requirements of the
Border Groundwater Agreement under the *Groundwater (Border
Agreement) Act 1985*; or

(e) to achieve greater consistency with the terms or requirements of the
20 Lake Eyre Basin Intergovernmental Agreement under the *Lake Eyre
Basin (Intergovernmental Agreement) Act 2001*; or

(f) to achieve consistency with any other relevant intergovernmental
agreement,

(2) Section 89(2)—delete "water allocations" and substitute:

water access entitlements

25 (3) Section 89(2)—after "affected by the plan" insert:

or the basis for the determination of a consumptive pool

22—Amendment of section 92—Contributions by constituent councils

(1) Section 92(2)—delete "Subject to subsection (3)" and substitute:

Subject to this section

30 (2) Section 92—after subsection (7) insert:

(7a) If a piece of rateable land that is relevant to the operation of this
section is divided—

(a) by the boundaries of 2 or more NRM regions; or

(b) by the boundaries of 2 or more councils,

then the whole of the land will be taken to be assigned to a particular NRM region or a particular council area (as the case requires) in accordance with a scheme set out in the regulations (and the other provisions of this Chapter will then apply accordingly so that only 1 regional NRM levy is imposed in relation to the whole of the land in accordance with the assignment and so that the whole of the levy so imposed will be payable with respect to the regional NRM board for the region to which the assignment relates).

23—Amendment of section 100—Interpretation

Section 100(2), (3) and (4)—delete subsections (2), (3) and (4) and substitute:

- (2) For the purposes of this Division, water will be regarded as being allocated under the terms of a water access entitlement even if the right to the allocation is held by a person who is not the holder of the water licence.

24—Amendment of section 101—Declaration of levies

(1) Section 101(1)(a)—delete paragraph (a) and substitute:

- (a) are the holders of any water management authorisation granted in relation to a water resource within a specified NRM region; or

(2) Section 101(4)—delete "expanded" and substitute:

expended

(3) Section 101(5) and (6)—delete subsections (5) and (6) and substitute:

(5) Without limiting the operation of any other subsection—

(a) levies under subsection (1)(a) may—

- (i) in respect of a levy with respect to a water licence or water allocation—be declared with respect to 1 or both of the following:

(A) the right to an allocation of water under the terms of a water access entitlement or IWETS;

(B) the allocation of water under the terms of a water access entitlement or IWETS;

- (ii) in respect of a levy with respect to a water resource works approval—be declared with respect to 1 or both of the following:

(A) the potential use of the relevant works for the purposes of taking water;

(B) the use of the relevant works for the purposes of taking water;

- (iii) in respect of a levy with respect to a site use approval—be declared with respect to 1 or both of the following:

(A) the right to use water;

(B) the use of water; and

(b) levies under subsection (1)(c) may be declared with respect to 1 or both of the following:

(i) the right to take water;

(ii) the water taken.

(5a) Levies may be declared, applied or imposed even if water is yet to be made available under the terms of a water access entitlement or IWETS.

(6) A levy may comprise of 1 or more components based on 1 or more of the following factors (in any combination):

(a) a fixed charge;

(b) the quantity of water allocated;

(c) the quantity of water received or taken;

(d) the quantity of water passing through any works;

(e) the size, type or capacity of any works;

(f) the quantity of water used;

(g) the share of the water that makes up the relevant water resource;

(h) the area of land where water may be used, or the area of land where water is used;

(i) the effect that taking or using water has, or may have, on the environment, or some other effect or impact that, in the opinion of the Minister, is relevant and that is capable of being determined, measured or applied.

(6a) A quantity of water may be determined according to a unit, percentage, volume or proportion of water.

(4) Section 101(7)—delete "(e)" and substitute:

(i)

(5) Section 101(10)—delete subsection (10)

(6) Section 101(15)—delete subsection (15) and substitute:

(15) A notice under subsection (1) with respect to a watercourse, lake or well, or surface water taken from a particular area of the State, may be published in the Gazette within 1 month after the watercourse, lake or well became a prescribed watercourse, lake or well or the area became a surface water prescribed area.

25—Repeal of section 102

Section 102—delete the section

26—Amendment of section 103—Special purpose water levy

- (1) Section 103(1)(b)—delete paragraph (b) and substitute:
- (b) it is not fair or reasonable that all persons who have water management authorisations in relation to the water resource should contribute, or contribute to the same extent, to the amount needed for that purpose; and
- (2) Section 103(3)—delete subsection (3) and substitute:
- (3) A person cannot be specified in a notice under subsection (1) unless, at some time during the period of 1 month immediately preceding publication of the notice, he or she held a water management authorisation that relates to the water resource.
- (3) Section 103(4)—delete "their entitlement to take water has subsequently ceased" and substitute:
- any entitlement to which a relevant water management authorisation relates has subsequently ceased or otherwise come to an end
- (4) Section 103(7)—delete "water licence" and substitute:
- water management authorisation
- (5) Section 103(8)—delete "water licence" and substitute:
- water management authorisation

27—Amendment of section 104—Liability for levy

- (1) Section 104(1) and (2)—delete subsections (1) and (2) and substitute:
- (1) For the purposes of this section—
- (a) a Category A levy is a levy within the ambit of section 101(5)(a)(i)(A), (ii)(A) or (iii)(A); and
- (b) a Category B levy is a levy within the ambit of section 101(5)(a)(i)(B), (ii)(B) or (iii)(B).
- (2) Subject to this section, a person who holds a water management authorisation at any time during a financial year in respect of which a levy has been declared is liable to pay to the Minister the full amount of the levy whether he or she holds the water management authorisation throughout the year or not.
- (2) Section 104(4)—delete subsection (4) and substitute:
- (4) If a levy applies in relation to water that is intended to be used, or is used, for irrigating land or in the course of carrying on a business on land, the following persons are jointly and severally liable to the Minister for payment of the levy in addition to the person primarily liable under subsection (2) or (3):
- (a) in the case of a Category A levy—the owner of the land (if the owner is not the person primarily liable under subsection (2))—

(i) if the levy was declared during the financial year to which the levy relates—at the time the levy was declared;

5 (ii) if a relevant water management authorisation was not in existence in relation to that land at the commencement of the financial year to which the levy relates but was granted after the commencement of that year—at the time when the water management authorisation was granted;

10 (iii) if the levy is payable with respect to or on account of an increase in a water allocation—at the time of the increase;

(iv) in any other case—at the commencement of the financial year to which the levy relates; and

15 (b) in the case of a Category B levy—the owner of the land (if the owner is not the person primarily liable under subsection (2)) when the relevant water was taken (including under another water management authorisation); and

20 (c) in the case of a levy with respect to an authorisation under section 128—the owner of the land (if the owner is not the person primarily liable under subsection (3)) when the water was taken; and

(d) all persons who own or occupy the land at any time—

25 (i) after the person primarily liable under subsection (2) or (3) or the person liable under paragraph (a), (b) or (c); and

(ii) before the levy is paid.

(3) Section 104(5)—delete "(1),"

(4) Section 104(6) to (9) (inclusive)—delete subsections (6) to (9) and substitute:

30 (6) If 2 or more persons are liable under subsection (2) or (3) with respect to water taken (including under another water management authorisation) during different parts of an accounting period and the water is used to irrigate the same land or is used in the course of carrying on business on the same land, the following provisions apply:

35 (a) the last of those persons to have access to the water during the accounting period will be liable under subsection (2) or (3) to the Minister for the amount of the levy with respect to water taken during the whole of that period; and

40 (b) that person is entitled to contribution from the other person or persons with respect to water taken during another part or parts of the accounting period, calculated on the basis of respective amounts of water taken.

(7) A person is liable under this section for a levy with respect to a water management authorisation whether the water management authorisation was granted before or after the commencement of the *Natural Resources Management (Water Resources and other Matters) Amendment Act 2007*.

(8) A levy is payable even though taking water under the terms of a water management authorisation (including another relevant water management authorisation) has been prohibited or restricted under this Act or under a relevant water management authorisation.

(5) Section 104(11)—delete "Subject to section 102(2), a" and substitute:

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

(1) Section 106(1)(c)(iii)—delete "other"

(2) Section 106(11)—delete subsection (11)

29—Substitution of section 107

Section 107—delete the section and substitute:

107—Cancellation etc of entitlement for non-payment of levy

(1) If a person who holds a water management authorisation or an imported water permit has failed to pay a levy, or an instalment of a levy, within 3 months after being served with a notice under section 105, the Minister may serve further notice on the holder of the water management authorisation or permit requiring payment within a period of not less than 1 month and stating that the water management authorisation or permit (as the case may be) may be cancelled, suspended or varied by the Minister if the amount is not paid within that time.

(2) The Minister may cancel, suspend or vary the water management authorisation or imported water permit by 7 days written notice served on the holder of the water management authorisation or permit if the levy or instalment is not paid in accordance with the notice referred to in subsection (1).

30—Substitution of section 112

Section 112—delete the section and substitute:

112—Recovery rights with respect to unpaid levy

(1) In the case of an OC-NRM levy, the levy will be a first charge on rateable land in accordance with a scheme established by the regulations.

(2) In the case of an NRM water levy, other than a levy imposed in relation to a water licence or water allocation, the levy will be a first charge on—

(a) in the case of a levy imposed in relation to a site use approval or delivery capacity entitlement—any land where any water that relates to the relevant water management authorisation is used;

(b) in the case of a water resource works approval—the land where the relevant works are located, or to which they are connected (taking into account any principles prescribed by the regulations),

in accordance with a scheme established by the regulations.

(3) In addition, any levy that is not paid in accordance with a notice under section 105, together with any interest under section 110, may be recovered by the Minister as a debt from any person who is liable to pay the levy.

(4) No statute of limitations bars or affects any action or remedy for recovery by the Minister of an amount under subsection (3).

(5) Any action to recover any levy (and interest) as a debt does not prejudice any action to recover any levy (and interest) as a charge on land in a case where subsection (2) applies, and vice versa, but any amount sought to be recovered under 1 right must be adjusted to take into account any amount actually recovered under the other right.

31—Amendment of section 114—Refund of levies

Section 114(10)(a)—delete "water licence" and substitute:
water management authorisation

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

(1) Section 115(1)—delete paragraphs (a), (b) and (c) and substitute:

(a) a person who is the holder of a water allocation who takes water in excess of the amount available under the allocation; or

(b) a person who is the holder of a water resource works approval who takes water contrary to the provisions that apply in relation to that water resource works approval; or

(c) a person who is the holder of a site use approval who uses water contrary to the provisions that apply in relation to the site use approval; or

(ca) a person who is the holder of a delivery capacity entitlement who takes water contrary to the provisions that apply in relation to that delivery capacity entitlement; or

(cb) a person who takes water and is not authorised under section 128 or as part of a water allocation to take that water, and so acts in contravention of this Act; or

(2) Section 115(2)(a)—after "taken" insert:

or used

(3) Section 115(3)—delete "subsection (1)(a)" and substitute:

subsection (1)(a), (b), (c) or (ca)

(4) Section 115(3a)—after "paragraph (a)" insert:

, (b), (c) or (ca)

(5) Section 115(3a)—after "taking" insert:

or use

(6) Section 115(4)—delete "subsection (1)(b) or (c)" and substitute:

subsection (1)(cb)

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

(1) Section 124(3)(a)—delete paragraph (a) and substitute:

(a) —

(i) an authorisation under section 128; or

(ii) a water allocation that relates to the relevant water resource,

is required to take water from a prescribed watercourse, lake or well or to take water from a surface water prescribed area; and

(2) Section 124(7)—delete "unless the water is taken pursuant to a water licence or an authorisation under section 128" and substitute:

unless the water is taken pursuant to an authorisation under section 128 or a water allocation that relates to the relevant water resource

34—Amendment of section 126—Determination of relevant authority

Section 126(1)—delete "water licence" and substitute:

water management authorisation

35—Amendment of section 127—Water affecting activities

(1) Section 127(1)(a)(i)—delete subparagraph (i) and substitute:

(i) —

(A) authorised to do so under section 128; or

(B) taking the water as part of a water allocation that relates to the relevant water resource; or

(2) Section 127(1)(b)—delete "water licence" and substitute:

water management authorisation

(3) Section 127(3)—delete "water licence" and substitute:

water management authorisation

(4) Section 127(3)(d)—delete "or enlargement" and substitute:

, modification, enlargement or removal

5 (5) Section 127(3)(d)—after "divert" insert:

, or collects or diverts

(6) Section 127(5)(a)—delete "or enlargement" and substitute:

, modification, enlargement or removal

(7) Section 127(5)(a)—after "divert" insert:

10 , or collects or diverts,

(8) Section 127—after subsection (5) insert:

(5a) Without limiting a preceding subsection, in the case of a prescribed
watercourse, lake or well or a surface water prescribed area—

15 (a) a person must not construct, maintain or operate any works
for the purposes of taking water or surface water (as the case
may be) from the relevant water resource unless authorised
to do so by a water resource works approval; and

20 (b) a person must not use water or surface water (as the case
may be) taken from the relevant water resource unless
authorised to do so by a site use approval; and

(c) if the relevant water allocation plan so requires—a person
must not take water or surface water (as the case may be)
unless authorised to do so by a delivery capacity entitlement.

(5b) Subsection (5a) does not apply—

25 (a) in the case of subsection (5a)(a)—to any works prescribed
by regulation under this paragraph;

(b) in the case of subsection (5a)(b)—to any circumstance or
situation, or after any point, prescribed by regulation under
this paragraph;

30 (c) in the case of subsection (5a)(c)—to any circumstance or
situation prescribed by regulation under this paragraph.

(9) Section 127(6)(a)—delete "or (3)" and substitute:

(3) or (5a)

(10) Section 127(6)—after paragraph (a) insert:

35 (ab) contravenes or fails to comply with a term or provision of a water
management authorisation; or

(11) Section 127(6)(b)—delete paragraph (b) and substitute:

- (b) contravenes or fails to comply with a condition to which a management authorisation, an authorisation under section 128 or a permit is subject,

5 (12) Section 127(6), Expiation fee item—delete "licence" and substitute:
water management authorisation

36—Amendment of section 129—Activities not requiring a permit

Section 129(1)(a)—delete "water licence" and substitute:

water management authorisation

10 37—Amendment of section 130—Notice to rectify unauthorised activity

(1) Section 130(1)(b)—delete "water licence" and substitute:

water management authorisation

(2) Section 130(3), definition of *relevant authority*, (a)—delete "water licence" and substitute:

15 licence, authority

(3) Section 130(3), definition of *relevant authority*, (b)—delete "licence" wherever occurring and substitute, in each case:

water management authorisation

38—Repeal of section 140

20 Section 140—delete the section

39—Substitution of Chapter 7 Part 3

Chapter 7 Part 3—delete Part 3 and substitute:

Part 3—Licensing and associated rights and entitlements

25 Division 1—Water licences

146—Nature of water licences

(1) The Minister may grant a licence (a *water licence*) in respect of a prescribed watercourse, lake or well or in respect of the surface water in a surface water prescribed area or part of a surface water prescribed area.

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(2) A water licence provides an entitlement to the holder of the licence to gain access to a share of water available in the consumptive pool or consumptive pools to which the licence relates, as specified by the licence and after taking into account any factors specified by the relevant water allocation plan or prescribed by the regulations (and this entitlement will be called a *water access entitlement*).

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- (3) A water access entitlement is subject to—
- (a) a determination of the Minister under subsection (4); and
 - (b) any other provision of this Act that operates with respect to the licence or the water access entitlement; and
 - (c) the conditions attached to the licence.
- (4) The Minister will from time to time, by notice in the Gazette, determine the volume of water that is to be made available from a consumptive pool for allocation under this Act during a period specified by the Minister.
- (5) The Minister may, by further notice in the Gazette, vary a determination under subsection (4).
- (6) If the regulations so require in prescribed circumstances, the Minister must, before acting under subsection (4) or (5)—
- (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the matter.
- (7) A determination of the Minister under subsection (4) (including on account of a variation under subsection (5)) must, in relation to a water resource within the Murray-Darling Basin, take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement (insofar as they may be relevant).
- (8) A water licence is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.

147—Water licences—applications and matters to be considered

- (1) An application for a water licence must be in a form approved by the Minister and must—
- (a) specify the water resource in relation to which the licence is being sought; and
 - (b) be accompanied by the fee prescribed by the regulations; and
 - (c) be accompanied by such other information or material as the Minister may require.
- (2) The Minister may, if the Minister thinks fit, issue licences with respect to a particular water resource, or a particular part of a water resource, on the basis of applications submitted to the Minister under procedures determined by the Minister as being appropriate in the relevant circumstances (including procedures that require applications to be submitted as tenders or furnished as part of an auction process).

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- (3) The Minister may refuse to grant a water licence—
 - (a) if in the opinion of the Minister—
 - (i) it would be contrary to the provisions of the relevant water allocation plan to grant a water access entitlement under the terms of the licence that is being sought; or
 - (ii) a water access entitlement under the terms of the licence that is being sought would relate to water that is so contaminated that its use would create a risk to the health of people or animals; or
 - (b) if the application has not been successful under the terms of any procedure established under subsection (2); or
 - (c) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or
 - (d) to a person who has acted in contravention of this Act; or
 - (e) on any ground prescribed by the regulations; or
 - (f) on any other reasonable ground.
 - (4) If an application for a water licence is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
 - (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the licence be subject to conditions specified by the Minister).
 - (5) The Minister's decision on an application for a water licence that relates to a water resource within the Murray-Darling Basin must take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement (insofar as they may be relevant).
 - (6) In addition, the Minister's decision on the grant of a water licence must—
 - (a) be made in the public interest; and
 - (b) be consistent with requirements (if any) prescribed by the regulations.
 - (7) The Minister may, if the licence is being issued under procedures that require the payment of a fee or purchase price with respect to the licence, require the relevant payment before granting a water licence.

- (8) In this section—
relevant water allocation plan means the water allocation plan that relates to the water resource in relation to which the licence is sought and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

148—Issuing of water licences

A water licence—

- (a) must specify, in such manner as the Minister thinks fit, the water resource to which it relates; and
- (b) must specify the basis on which the water access entitlement is to apply; and
- (c) is subject to the conditions—
- (i) prescribed from time to time by the regulations; or
 - (ii) endorsed on the licence by the Minister; and
- (d) takes effect from the time of registration in The Water Register; and
- (e) remains in force until the licence—
- (i) is terminated by or under this Act; or
 - (ii) if relevant, expires under the terms of the licence.

149—Variation of water licences

- (1) A water licence may be varied by the Minister—
- (a) at any time on the application of, or with the consent of, the licensee; or
- (b) if the licence provides for intervals at which the conditions of the licence may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the use of water from the resource—
- (i) in accordance with the relevant water allocation plan and this Act; or
 - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
- (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the licence relates and the variation is necessary, in the opinion of the Minister, to prevent the licence from being inconsistent (as to the basis on which the water access entitlement is determined) or seriously at variance (as to the licence conditions) with the plan; or

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- (d) at any time if the variation is to impose or vary a condition of a licence that relates to a water resource within the Murray-Darling Basin and the Minister is of the opinion that the variation is appropriate or desirable to prevent, reduce or address damage to the River Murray; or
 - (e) if the Minister is authorised to do so by another provision of this Act; or
 - (f) if the Minister is authorised to do so by the regulations.
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- (2) An application under subsection (1)(a) must—
- (a) be made in a form approved by the Minister; and
 - (b) if a person is recorded on The Water Register as having an interest in the water licence (other than as a licensee), be made with the written consent of that person; and
 - (c) be accompanied by the fee prescribed by the regulations.
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- (3) The Minister's decision on the variation of a water licence—
- (a) must—
 - (i) as to the water access entitlement—be consistent with the relevant water allocation plan; and
 - (ii) as to the conditions attached to the licence—not be seriously at variance with the relevant water allocation plan,
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- and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the licence was granted; and
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- (b) must be made in the public interest; and
 - (c) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and
 - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
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- (4) A licensee may appeal to the ERD Court against—
- (a) a decision to refuse to grant an application to vary his or her licence under subsection (1)(a); or
 - (b) the variation of his or her licence under subsection (1)(b), (c) or (d).
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- (5) However, if the licence relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.
 - (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a water licence under this section.
 - (7) The Minister must, after making a variation, give notice of the variation to a person with a prescribed interest in the licence in accordance with the regulations.

150—Transfer of water licences

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- (1) Subject to this Act and the relevant water allocation plan, the holder of a water licence may—
 - (a) transfer the licence to another person; or
 - (b) transfer a water access entitlement, or part of a water access entitlement, under the licence to another person.
 - 15 (2) In the case of a transfer under subsection (1)(b), the transfer must be—
 - (a) to the holder of another licence (including a licence created to receive the transfer), or to the Minister; or
 - 20 (b) to any other person or the Minister under an Interstate Water Entitlements Transfer Scheme.
 - (3) A transfer may be absolute or for a limited period.
 - (4) A transfer requires the approval of the Minister.
 - (5) An application to the Minister for his or her approval must—
 - 25 (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
 - (6) The Minister may refuse to grant approval for a transfer under this section to a person on the same grounds as those on which the Minister would refuse to grant an application by that person for a licence.
 - 30 (7) The Minister may refuse to grant approval for a transfer under this section—
 - (a) if the licensee is in breach of a condition of the licence; or
 - (b) unless or until any NRM water levy that has been imposed in relation to the licence has been paid.

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- (8) In addition, the Minister's decision to grant or refuse approval for the transfer of a licence—
 - (a) must be consistent with the relevant water allocation plan (and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the licence was granted); and
 - (b) must be made in the public interest; and
 - (c) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and
 - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a transfer must be refused).
 - (9) Subsection (8)(a) operates subject to the terms or requirements of an Interstate Water Entitlements Transfer Scheme.
 - (10) If an application for a transfer relates to a licence that relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
 - (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (13) or impose conditions specified by the Minister as part of his or her direction).
 - (11) If an application for a transfer relates to a licence held by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *Waterworks Act 1932*.
 - (12) If a person is recorded on The Water Register as having an interest in a water licence (other than as a licensee), the Minister must not grant approval for a transfer under this section without the written consent of that person.

- (13) The Minister may, when granting an application for a transfer under this section—
- (a) vary the water access entitlement under the licence (including as to the basis on which the water access entitlement is determined);
 - (b) vary any condition of the licence—
 - (i) to ensure consistency with the relevant water allocation plan; or
 - (ii) in the case of a licence that relates to a water resource within the Murray-Darling Basin—to comply with any direction under subsection (10) or otherwise to take action to prevent, reduce or address damage to the River Murray;
 - (c) if relevant, take any other action required or permitted under an Interstate Water Entitlements Transfer Scheme.
- (14) As an example but without limiting subsection (13), if, following a transfer, the water will not be taken from the same part of the water resource as before, the Minister may exercise his or her powers under subsection (13)—
- (a) to ensure that the demand for water from the part of the water resource from which the water will be taken in future does not prejudice other licensees by exceeding the availability of water in that part of the water resource; or
 - (b) to reflect the loss to the water resource of part of the water represented by the transfer by reason of evaporation or any other cause as the water flows to the part of the resource from which it will be taken in future.
- (15) A transfer is subject to the operation of Schedule 3A, clause 7.
- (16) A water licence or part of a water access entitlement that has been transferred for a limited period reverts automatically to the transferor when the period expires (and the Minister may then take such action as the Minister thinks fit, including to cancel any licence that is no longer required).
- (17) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water licence or part of a water access entitlement is not chargeable with duty under that Act.

151—Surrender of water licences

- (1) Subject to subsection (2), a licensee may surrender his or her water licence at any time.
- (2) If a person is recorded on The Water Register as having an interest in the water licence (other than as a licensee), a water licence cannot be surrendered without the written consent of that person.

Division 2—Allocation of water

152—Source of allocation

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- (1) A water allocation may be obtained—
- (a) on account of a water access entitlement under a water licence; or
- (b) under an Interstate Water Entitlements Transfer Scheme.
- (2) In a case where subsection (1)(a) applies, the water allocation may be obtained—
- 10 (a) by the holder of the relevant water licence, on the basis that the water allocation is being granted by the Minister under the terms of the water licence; or
- (b) by a person, whether or not the person is the holder of a water licence, on the basis of a transfer of a water allocation that has been provided by the Minister under the terms of a water licence.
- 15 (3) In a case where subsection (1)(b) applies, the Minister will issue a water allocation that is to take effect for the purposes of this Act.
- (4) A water allocation will relate to a specified water resource (or part of a water resource)—
- 20 (a) endorsed on the relevant instrument under the terms of the water licence to which the allocation is attributable (as determined under the water access entitlement); or
- (b) determined under the terms of the relevant Interstate Water Entitlements Transfer Scheme.
- 25 (5) A water allocation is subject to—
- (a) any other provision of this Act that operates with respect to the water allocation; and
- (b) the conditions attached to the water allocation.
- 30 (6) A water allocation is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.
- (7) A water allocation will relate to a specified period (not exceeding 12 months) and if water is not taken under the terms of the allocation during that period then that particular allocation will expire in any event at the end of that period.
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153—Issuing of water allocation

- (1) A water allocation granted or issued by the Minister—
- (a) must be consistent with the relevant water access entitlement or IWETS (as the case requires) in relation to the volume of water granted; and
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(b) must be consistent with the provisions of the relevant water allocation plan; and

(c) is subject to the conditions—

(i) prescribed from time to time by the regulations; or

(ii) endorsed on a relevant water licence, or on the water allocation itself by the Minister.

(2) Without limiting any other provision, a water allocation may—

(a) comprise 1 or more components that expire on a future date;

(b) restrict the purpose for which any component or volume of water may be used.

(3) In this section—

relevant water allocation plan means the water allocation plan that relates to the water resource in relation to which the water allocation applies and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

154—Water allocations—matters to be considered

(1) The Minister may determine not to grant or issue a water allocation—

(a) if in the opinion of the Minister—

(i) it would be contrary to the provisions of the relevant water allocation plan to grant or issue the water allocation; or

(ii) the water allocation would relate to water that is so contaminated that its use would create a risk to the health of people or animals; or

(b) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or

(c) to a person who has acted in contravention of this Act; or

(d) on any ground prescribed by the regulations; or

(e) on any other reasonable ground.

(2) If a water allocation is within a class prescribed by the regulations for the purposes of this provision, the Minister must, before granting or issuing the water allocation—

(a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and

(b) comply with the Minister's directions (if any) in relation to the matter (including a direction that the water allocation not be granted or issued or, if it is granted or issued, then the water allocation be subject to conditions specified by the Minister).

(3) The Minister's decision on the grant or issue of a water allocation that relates to a water resource within the Murray-Darling Basin must take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement (insofar as they may be relevant).

(4) In this section—
relevant water allocation plan means the water allocation plan that relates to the water resource in relation to which the water allocation applies and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

155—Reduction of water allocations

(1) The Minister may reduce the water allocations that apply in relation to a particular water resource if in the opinion of the Minister it is necessary or desirable to do so—

(a) to prevent a reduction, or further reduction, in the quality of the water in the resource or in a water resource that is affected by the taking of water from the firstmentioned resource; or

(b) to prevent damage, or further damage, to an ecosystem that depends on that water or on the water from a resource that is affected by the taking of water from the firstmentioned resource; or

(c) because there is insufficient water to meet the existing demand or expected future demand for water from that resource or from a water resource that is affected by the taking of water from the firstmentioned resource; or

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

(2) Subject to regulations made under subsection (3), the Minister must, in acting under this section, reduce the allocation of all water allocations that apply in relation to a particular water resource proportionately.

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

- 5
- (4) The reduction of a water allocation under this section comes into operation at the expiration of 14 days after notice of the reduction is served by the Minister in accordance with the regulations.
- (5) Before making a recommendation to the Governor for the purposes of subsection (3), the Minister must—
- 10
- (a) consult the relevant regional NRM board; and
- (b) cause to be published in the Gazette, in a newspaper circulating generally throughout the State and in a local newspaper a notice outlining the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least 3 months) specified in the notice (and then have regard to all submissions made in accordance with the notice); and
- 15
- (c) have regard to the views of the regional NRM board and all submissions made in accordance with the notice.
- (6) The Minister may, in taking action under this section, make corresponding variations to water access entitlements and delivery capacity entitlements that relate to relevant water allocations reduced under this section.
- 20
- (7) Nothing in this section limits or affects the operation of section 156.

156—Variation of water allocations

- (1) A water allocation may be varied by the Minister—
- 25
- (a) at any time on the application of, or with the consent of, the holder of the water allocation; or
- (b) if the water allocation provides for intervals at which the conditions of the water allocation may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the use of water from the resource—
- 30
- (i) in accordance with the relevant water allocation plan and this Act; or
- (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
- 35
- (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the water allocation relates and the variation is necessary, in the opinion of the Minister, to prevent the water allocation from being inconsistent (as to the basis on which the water allocation is determined) or seriously at variance (as to the conditions of the water allocation) with the plan; or
- 40

- 5
- (d) at any time if the variation is to impose or vary a condition of a water allocation that relates to a water resource within the Murray-Darling Basin and the Minister is of the opinion that the variation is appropriate or desirable to prevent, reduce or address damage to the River Murray; or
 - (e) if the Minister is authorised to do so by another provision of this Act; or
 - (f) under a scheme established under section 164O; or
 - (g) if the Minister is authorised to do so by the regulations.
- 10
- (2) An application under subsection (1)(a) must—
- (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
- (3) The Minister's decision on the variation of a water allocation—
- (a) must—

15

 - (i) be consistent with the relevant water allocation plan; and
 - (ii) if the variation relates to conditions attached to the water allocation—not be seriously at variance with the relevant water allocation plan,

20

and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the water allocation was granted; and

25
 - (b) must be made in the public interest; and
 - (c) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as may be relevant); and
 - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- 35
- (4) The holder of a water allocation may appeal to the ERD Court against—
- (a) a decision to refuse to grant an application to vary the water allocation under subsection (1)(a); or
 - (b) the variation of the water allocation under subsection (1)(b), (c) or (d).
- 40

- 5
- (5) However, if the water allocation relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.
 - (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a water allocation under this section.
 - (7) Nothing in this section limits or affects the operation of section 155.

157—Transfer of water allocations

- 10
- (1) Subject to this Act and the relevant water allocation plan, the holder of a water allocation may transfer the water allocation to another person.
 - (2) A transfer requires the approval of the Minister.
 - (3) An application to the Minister for his or her approval must—
 - (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
 - 15 (4) The Minister may refuse to grant approval for the transfer of a water allocation—
 - (a) if the holder of the water allocation is in breach of a condition of the water allocation; or
 - (b) unless or until any NRM water levy that has been imposed in relation to the relevant water licence has been paid.
 - 20 (5) In addition, the Minister's decision to grant or refuse approval for the transfer of a water allocation—
 - 25 (a) must be consistent with the relevant water allocation plan, (and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the water allocation was granted); and
 - 30 (b) must be made in the public interest; and
 - (c) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they made be relevant); and
 - 35 (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a transfer must be refused).
 - 40

- 5 (6) If an application for the transfer of a water allocation relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
- 10 (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
- (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (8) or impose conditions specified by the Minister as part of his or her direction).
- 15 (7) If an application for the transfer of a water allocation is made by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *Waterworks Act 1932*.
- (8) The Minister may, when granting an application for the transfer of a water allocation—
- 20 (a) vary the basis on which the water allocation is determined;
- (b) reduce the water allocation;
- (c) vary any condition of the water allocation—
- 25 (i) to ensure consistency with the relevant water allocation plan; or
- (ii) in the case of a water allocation that relates to a water resource within the Murray-Darling Basin—to comply with any direction under subsection (6) or otherwise to take action to prevent, reduce or address damage to the River Murray.
- 30 (9) As an example but without limiting subsection (8), if, following the transfer of a water allocation, the water will not be taken from the same part of the water resource as before, the Minister may exercise his or her powers under subsection (8)—
- 35 (a) to ensure that the demand for water from the part of the water resource from which the water will be taken in future does not prejudice other holders of water allocations by exceeding the availability of water in that part of the water resource; or
- 40 (b) to reflect the loss to the water resource of part of the water represented by the transferred water allocation by reason of evaporation or any other cause as the water flows to the part of the resource from which it will be taken in future.
- (10) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water allocation is not chargeable with duty under that Act.

158—Surrender of water allocations

The holder of a water allocation may surrender the water allocation at any time.

Division 3—Water resource works approvals

159—Water resource works approvals—applications and matters to be considered

- (1) An application for a water resource works approval must be in a form approved by the Minister and must—
- (a) specify—
 - (i) the water resource in relation to which the approval is being sought; and
 - (ii) the nature and extent of the works for which the approval is being sought; and
 - (iii) the place where the works will be located; and
 - (b) be accompanied by the fee prescribed by the regulations; and
 - (c) be accompanied by such other information or material as the Minister may require.
- (2) The Minister may, after receiving an application, request the applicant to provide such additional information or material as the Minister thinks fit in order to assess the application.
- (3) The Minister may refuse to grant an approval—
- (a) if in the opinion of the Minister—
 - (i) it would be contrary to the provisions of the relevant water allocation plan to grant the approval; or
 - (ii) the proposed works are inappropriate after taking into account any matter prescribed by the regulations, or such other matters as the Minister thinks fit; or
 - (b) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or
 - (c) to a person who has acted in contravention of this Act; or
 - (d) on any ground prescribed by the regulations; or
 - (e) on any other reasonable ground.

- 5
- (4) If an application for an approval is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the approval be subject to conditions specified by the Minister).
- 10
- (5) The Minister's decision on an application for a water resource works approval that relates to a water resource within the Murray-Darling Basin must take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that
- 15
- Agreement (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of an approval must—
- (a) take into account any relevant environmental, social or economic impacts associated with the construction or use of the relevant works; and
 - (b) be consistent with requirements (if any) prescribed by the regulations.
- 20

160—Issuing of approvals

- 25
- (1) A water resource works approval—
- (a) must specify, in such manner as the Minister thinks fit—
 - (i) the site where the works are authorised to be located; and
 - (ii) the nature and extent of the works that are authorised; and
 - (b) is subject to conditions—
 - (i) prescribed from time to time by the regulations; or
 - (ii) specified from time to time by the relevant water allocation plan; or
 - (iii) endorsed on the approval by the Minister.
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- (2) Without limiting the operation of subsection (1)(b), a condition of a water resource works approval that relates to a water resource within the Murray-Darling Basin may include—
- (a) a requirement that a person who has the benefit of the approval enter into a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister (which may include the payment of a sum or sums of money into an account specified by the Minister), to ensure that money is available to address the costs of any damage to the River Murray (being the costs of any such damage within the meaning of section 3(5) of the *River Murray Act 2003*) that may be attributable to the taking or use of water from the resource;
 - (b) a requirement that a person who has the benefit of the approval—
 - (i) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister; or
 - (ii) participate in a specified environment improvement program (including a program that applies with respect to any part of the River Murray);
 - (c) a requirement that a person who has the benefit of the approval participate in any other form of scheme to protect, restore or otherwise benefit the River Murray specified by the Minister (including a scheme established by the Minister or any other person or body that has effect in relation to any part of the River Murray and including by payment of a sum or sums of money into an account established or used for the purposes of the scheme).
- (3) A condition of a kind referred to in subsection (2) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.

161—Variation of approvals

- 40
- (1) A water resource works approval may be varied by the Minister—
- (a) at any time on the application of, or with the consent of, the holder of the approval; or
 - (b) if the approval provides for intervals at which the conditions of the approval may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the taking of water from the resource—

- 5
- (i) in accordance with the relevant water allocation plan and this Act; or
- (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
- 10
- (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the approval relates and the variation is necessary, in the opinion of the Minister, to prevent the approval from being seriously at variance with the plan; or
- 15
- (d) at any time if the variation is to impose or vary a condition of an approval that relates to a water resource within the Murray-Darling Basin and the Minister is of the opinion that the variation is appropriate or desirable to prevent, reduce or address damage to the River Murray; or
- (e) if the Minister is authorised to do so by the regulations.
- (2) An application under subsection (1)(a) must—
- (a) be made in a form approved by the Minister; and
- (b) be accompanied by the fee prescribed by the regulations.
- 20
- (3) The Minister's decision on the variation of an approval—
- (a) must not be seriously at variance with the relevant water allocation plan; and
- (b) must be made in the public interest; and
- 25
- (c) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and
- 30
- (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- 35
- (4) The holder of a water resource works approval may appeal to the ERD Court against—
- (a) a decision to refuse to grant an application to vary the approval under subsection (1)(a); or
- (b) the variation of his or her licence under subsection (1)(b), (c) or (d).
- 40
- (5) However, if the approval relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.

- 5
- (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a water resource works approval under this section.
- (7) However, the Minister must, after making a variation, give notice of the variation to a person with a prescribed interest in the relevant land in accordance with the regulations.
- 10
- (8) Without limiting a preceding subsection, a water resource works approval may be varied by operation of the provisions of the relevant water allocation plan (and that variation will take effect by force of this subsection).

162—Notice provisions

If an application for a water resource works approval or the variation of a water resource works approval falls within a class specified by the relevant water allocation plan for the purposes of this section—

- 15
- (a) notice of the application must be given by the Minister, in accordance with the regulations, to those persons specified in the plan and to those persons (if any) prescribed by the regulations, and to the public generally; and
- 20
- (b) if notice of an application has been given under this section, any person who desires to do so may, in accordance with the regulations, make representations in writing to the Minister in relation to the granting or refusal of the application; and
- 25
- (c) the Minister must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations; and
- 30
- (d) the response referred to in paragraph (c) must be made within the number of days prescribed by the regulations after the relevant material is forwarded to the applicant; and
- (e) the Minister must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the Minister, a reasonable opportunity to appear personally or by representative before the Minister to be heard in support of the representation; and
- 35
- (f) if a person appears before the Minister under paragraph (e), the Minister must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter; and
- 40
- (g) if representations have been made under this subsection, the Minister must, within the period prescribed by the regulations—

- 5
- (i) give to each person who made a representation notice of the Minister's decision on the application and of the date of the decision and of the person's appeal rights under this Act; and
- (ii) give notice to the ERD Court—
- 10
- (A) of the Minister's decision on the application and of the date of the decision; and
- (B) of the names and addresses of persons who made representations to the Minister under this section; and
- 15
- (h) a person who is entitled to be given notice of the decision under paragraph (g) may, within 15 business days after the date on which the notice was given to him or her, appeal to the ERD Court against the decision; and
- 20
- (i) if an appeal is lodged by a person who is entitled to be given notice of the decision under paragraph (g), the applicant for the water resource works approval or variation (as the case may be) must be notified by the ERD Court of the appeal and will be a party to the appeal; and
- (j) a decision of the Minister in respect of which representations have been made under this section does not operate—
- 25
- (i) until the time within which any person who made any such representation may appeal against a decision to grant the application has expired; or
- (ii) where an appeal is commenced—
- 30
- (A) until the appeal is dismissed, struck out or withdrawn; or
- (B) until the questions raised by the appeal have been finally determined (other than any question as to costs).

163—Cancellation if works not constructed or used

- 35
- (1) The Minister may, in accordance with a scheme prescribed by the regulations, cancel a water resource works approval if works within the ambit of the approval are not, over a period prescribed by the regulations—
- (a) constructed, or substantially completed; or
- (b) used, or used to any significant degree.
- 40
- (2) The holder of a water resource works approval may appeal to the ERD Court against a decision under subsection (1).

- (3) However, if the approval relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (2) if the regulations so provide.

164—Nature of approval

A water resource works approval applies to the site to which the approval relates and is attached to the land constituting that site.

Division 4—Site use approval

164A—Site use approval—applications and matters to be considered

- (1) An application for a site use approval must be in a form approved by the Minister and must—
- (a) specify—
 - (i) the purpose or purposes for which the water is proposed to be used; and
 - (ii) the place at which the water is proposed to be used; and
 - (iii) prescribed information about the proposed extent, manner and rate of use of the water; and
 - (b) be accompanied by the fee prescribed by the regulations; and
 - (c) be accompanied by such other information or material as the Minister may require.
- (2) The Minister may, after receiving an application, request the applicant to provide such additional information or material as the Minister thinks fit in order to assess the application.
- (3) The Minister may refuse to grant an approval—
- (a) if in the opinion of the Minister—
 - (i) it would be contrary to the provisions of the relevant water allocation plan to grant the approval; or
 - (ii) the use of the water under the terms of the application would have an unreasonable impact on a water resource or other form of natural resource; or
 - (b) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or
 - (c) to a person who has acted in contravention of this Act; or
 - (d) on any ground prescribed by the regulations; or
 - (e) on any other reasonable ground.

- 5
- (4) If an application for an approval is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the approval be subject to conditions specified by the Minister).
- 10
- (5) The Minister's decision on an application for a site use approval that relates to a water resource within the Murray-Darling Basin must take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement
- 15
- (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of an approval must be consistent with requirements (if any) prescribed by the regulations.

164B—Issuing of approvals

- 20
- (1) A site use approval—
- (a) must specify, in such manner as the Minister thinks fit—
 - (i) the place where the use is allowed; and
 - (ii) the manner and use of water authorised by the approval; and
 - (b) is subject to conditions—
 - (i) prescribed from time to time by the regulations; or
 - (ii) specified from time to time by the relevant water allocation plan; or
 - (iii) endorsed on the approval by the Minister.
- 25
- (2) Without limiting the operation of subsection (1)(c), a condition of a site use approval that relates to a water resource within the Murray-Darling Basin may include—
- (a) a requirement that a person who has the benefit of the approval enter into or maintain a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister (which may include the payment of a sum or sums of money into an account specified by the Minister), to ensure that money is available to address the costs of any damage to the River Murray (being the costs of any such damage within the meaning of section 3(5) of the *River Murray Act 2003*) that may be attributable to the taking or use of water from the resource;
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- 5
- (b) a requirement that a person who has the benefit of the approval—
- (i) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister; or
- (ii) participate in a specified environment improvement program (including a program that applies with respect to any part of the River Murray);
- 10
- (c) a requirement that a person who has the benefit of the approval participate in any other form of scheme to protect, restore or otherwise benefit the River Murray specified by the Minister (including a scheme established by the Minister or any other person or body that has effect in relation to any part of the River Murray and including by payment of a sum or sums of money into an account established or used for the purposes of the scheme).
- 15
- (3) A condition of a kind referred to in subsection (2) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.
- 20

164C—Variation of approvals

- (1) A site use approval may be varied by the Minister—
- 25
- (a) at any time on the application of, or with the consent of, the holder of the approval; or
- (b) if the approval provides for intervals at which the conditions of the approval may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the taking of water from the resource—
- 30
- (i) in accordance with the relevant water allocation plan and this Act; or
- (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
- 35
- (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the approval relates and the variation is necessary, in the opinion of the Minister, to prevent the approval from being seriously at variance with the plan; or
- 40
- (d) at any time if the variation is to impose or vary a condition of an approval that relates to a water resource within the Murray-Darling Basin and the Minister is of the opinion that the variation is appropriate or desirable to prevent, reduce or address damage to the River Murray; or
- 45

- (e) if the Minister is authorised to do so by the regulations.
- (2) An application under subsection (1)(a) must—
- (a) be made in a form approved by the Minister; and
- (b) be accompanied by the fee prescribed by the regulations.
- 5 (3) The Minister's decision on the variation of an approval—
- (a) must not be seriously at variance with the relevant water allocation plan; and
- (b) must be made in the public interest; and
- 10 (c) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and
- (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- 15 (4) The holder of a site use approval may appeal to the ERD Court against—
- 20 (a) a decision to refuse to grant an application to vary the approval under subsection (1)(a); or
- (b) the variation of his or her licence under subsection (1)(b), (c) or (d).
- 25 (5) However, if the approval relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.
- (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a site use approval under this section.
- 30 (7) However, the Minister must, after making a variation, give notice of the variation to a person with a prescribed interest in the relevant land in accordance with the regulations.
- (8) Without limiting a preceding subsection, a site use approval may be varied by operation of the provisions of the relevant water allocation plan (and that variation will take effect by force of this subsection).
- 35

164D—Notice provisions

If an application for a site use approval or the variation of a site use approval falls within a class specified by the relevant water allocation plan for the purposes of this section—

- 5
- (a) notice of the application must be given by the Minister, in accordance with the regulations, to those persons specified in the plan and to those persons (if any) prescribed by the regulations, and to the public generally; and
- 10
- (b) if notice of an application has been given under this section, any person who desires to do so may, in accordance with the regulations, make representations in writing to the Minister in relation to the granting or refusal of the application; and
- 15
- (c) the Minister must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations; and
- (d) the response referred to in paragraph (c) must be made within the number of days prescribed by the regulations after the relevant material is forwarded to the applicant; and
- 20
- (e) the Minister must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the Minister, a reasonable opportunity to appear personally or by representative before the Minister to be heard in support of the representation; and
- 25
- (f) if a person appears before the Minister under paragraph (e), the Minister must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative in order to respond to any relevant matter; and
- 30
- (g) if representations have been made under this subsection, the Minister must, within the period prescribed by the regulations—
- 35
- (i) give to each person who made a representation notice of the Minister's decision on the application and of the date of the decision and of the person's appeal rights under this Act; and
- (ii) give notice to the ERD Court—
- 40
- (A) of the Minister's decision on the application and of the date of the decision; and
- (B) of the names and addresses of persons who made representations to the Minister under this section; and

- 5
- (h) a person who is entitled to be given notice of the decision under paragraph (g) may, within 15 business days after the date on which the notice was given to him or her, appeal to the ERD Court against the decision; and
- (i) if an appeal is lodged by a person who is entitled to be given notice of the decision under paragraph (g), the applicant for the site use approval or variation (as the case may be) must be notified by the ERD Court of the appeal and will be a party to the appeal; and
- 10
- (j) a decision of the Minister in respect of which representations have been made under this section does not operate—
- (i) until the time within which any person who made any such representation may appeal against a decision to grant the application has expired; or
- 15
- (ii) where an appeal is commenced—
- (A) until the appeal is dismissed, struck out or withdrawn; or
- (B) until the questions raised by the appeal have been finally determined (other than any question as to costs).
- 20

164E—Cancellation

- (1) The Minister may, in accordance with a scheme prescribed by the regulations, cancel a site use approval in prescribed circumstances.
- 25
- (2) The holder of a site use approval may appeal to the ERD Court against a decision under subsection (1).
- (3) However, if the approval relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (2) if the regulations so provide.

164F—Nature of approval

A site use approval applies to the site to which the approval relates and is attached to the land constituting that site.

Division 5—Delivery capacity entitlements

164G—Delivery capacity entitlements—applications and matters to be considered

- 35
- (1) An application for a delivery capacity entitlement must be in a form approved by the Minister and must—
- (a) specify—
- 40
- (i) the water resource in relation to which the delivery capacity entitlement is being sought; and

(ii) the place or area where water is proposed to be taken; and

(iii) prescribed information about the times and rates at which it is proposed to take water; and

5 (iv) prescribed information about the extent to which priority is being sought over other delivery capacity entitlements issued in relation to the same water resource (or a specified part of the water resource); and

10 (b) be accompanied by the fee prescribed by the regulations; and

(c) be accompanied by such other information or material as the Minister thinks fit in order to assess the application.

15 (2) The Minister may, after receiving an application, request the applicant to provide such additional information or material as the Minister thinks fit in order to assess the application.

20 (3) The Minister may, if the Minister thinks fit, issue delivery capacity entitlements with respect to a particular water resource, or a particular part of a water resource, on the basis of applications submitted to the Minister under procedures determined by the Minister as being appropriate in the relevant circumstances (including procedures that require applications to be submitted as tenders or furnished as part of an auction process).

25 (4) The Minister may refuse to grant a delivery capacity entitlement—

(a) if in the opinion of the Minister it would be contrary to the provisions of the relevant water allocation plan to grant a delivery capacity entitlement under the terms being sought; or

30 (b) if the application has not been successful under the terms of any procedure established under subsection (3); or

(c) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or

35 (d) to a person who has acted in contravention of this Act; or

(e) on any ground prescribed by the regulations; or

(f) on any other reasonable ground.

40 (5) The Minister's decision on an application for a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin must take into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any relevant resolution of the Ministerial Council under that Agreement (insofar as they may be relevant).

(6) In addition, the Minister's decision on the grant of a delivery capacity entitlement must—

- (a) be made in the public interest; and
- (b) be consistent with requirements (if any) prescribed by the regulations.

(7) The Minister may, if the delivery capacity entitlement is being issued under procedures that require the payment of a fee or purchase price with respect to the delivery capacity entitlement, require the relevant payment before granting a delivery capacity entitlement.

(8) In this section—

relevant water allocation plan means the water allocation plan that relates to the water resource in relation to which the delivery capacity entitlement is sought and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

164H—Issuing of delivery capacity entitlements

(1) A delivery capacity entitlement—

- (a) must specify, in such manner as the Minister thinks fit, the terms of the entitlement; and
- (b) is subject to conditions—
 - (i) prescribed from time to time by the regulations; or
 - (ii) specified from time to time by the relevant water allocation plan; or
 - (iii) endorsed on the approval by the Minister; and
- (c) may be granted on the basis that it cannot be transferred except in conjunction with the transfer of a specified water licence, water access entitlement or water allocation; and
- (d) remains in force until the delivery capacity entitlement—
 - (i) is terminated by or under this Act; or
 - (ii) if relevant, expires under the terms of the delivery capacity entitlement.

(2) Subject to any provision made under subsection (1)(c), a delivery capacity entitlement is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.

164I—Delivery capacity entitlements to relate to point of extraction

A delivery capacity entitlement—

- (a) may be applied to any aspect of the taking of water from the relevant water resource at a point of extraction; but

- (b) must not be applied to any part of an irrigation system that distributes water after extraction from the relevant water resource (other than indirectly through the operation of paragraph (a)).

5 **164J—Variation of delivery capacity entitlements**

- (1) A delivery capacity entitlement may be varied by the Minister—

(a) at any time on the application of, or with the consent of, the holder of the delivery capacity entitlement; or

10 (b) if the delivery capacity entitlement provides for intervals at which the conditions of the delivery capacity entitlement may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the use of water from the resource—

15 (i) in accordance with the relevant water allocation plan and this Act; or

(ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or

20 (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the delivery capacity entitlement relates and the variation is necessary, in the opinion of the Minister, to prevent the delivery capacity entitlement from being inconsistent with the plan; or

25 (d) at any time if the variation is to impose or vary a condition of a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin and the Minister is of the opinion that the variation is appropriate or desirable to prevent, reduce or address damage to the River Murray; or

30 (e) if the Minister is authorised to do so by another provision of this Act; or

(f) if the Minister is authorised to do so by the regulations.

- (2) An application under subsection (1)(a) must—

(a) be made in a form approved by the Minister; and

35 (b) be accompanied by the fee prescribed by the regulations.

(3) The Minister's decision on the variation of a delivery capacity entitlement—

5 (a) must be consistent with the relevant water allocation plan and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the delivery capacity entitlement was granted; and

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

15 (c) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and

20 (d) must be consistent with requirements (if any) prescribe by regulation under this paragraph (which regulation may prescribe circumstance where an application for a variation must be refused).

(4) The holder of a delivery capacity entitlement may appeal to the ERD Court against—

25 (a) a decision to refuse to grant an application to vary his or her delivery capacity entitlement under subsection (1)(a); or

 (b) the variation of his or her delivery capacity entitlement under subsection (1)(b), (c) or (d).

(5) However, if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.

30 (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a delivery capacity entitlement under this section.

164K—Transfer of delivery capacity entitlements

35 (1) Subject to this Act, the relevant water allocation plan and the terms of the delivery capacity entitlement, the holder of a delivery capacity entitlement may transfer the delivery capacity entitlement to another person.

(2) A transfer may be absolute or for a limited period.

(3) A transfer requires the approval of the Minister.

40 (4) An application to the Minister for his or her approval must—

 (a) be made in a form approved by the Minister; and

 (b) be accompanied by the fee prescribed by the regulations.

- 5
- (5) The Minister may refuse to grant approval for the transfer of a delivery capacity entitlement to a person on the same grounds as those on which the Minister would refuse to grant an application by that person for a delivery capacity entitlement.
- 10
- (6) The Minister may refuse to grant approval for the transfer of a delivery capacity entitlement—
- (a) if the holder of the delivery capacity entitlement is in breach of a condition of the delivery capacity entitlement; or
 - (b) unless or until any NRM water levy that has been imposed in relation to the delivery capacity entitlement has been paid.
- 15
- (7) In addition, the Minister's decision to grant or refuse approval for the transfer of a delivery capacity entitlement—
- (a) must be consistent with the relevant water allocation plan (and for the purposes of this paragraph the relevant water allocation plan includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the water resource in relation to which the delivery capacity entitlement was granted); and
 - 20 (b) must be made in the public interest; and
 - (c) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms and requirements of the Agreement approved under the *Murray-Darling Basin Act 1993*, and any resolution of the Ministerial Council under that Agreement (insofar as they may be relevant); and
 - 25 (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a transfer must be refused).
- 30
- (8) Subsection (7)(a) operates subject to the terms or requirements of an Interstate Water Entitlements Transfer Scheme.
- 35
- (9) If an application for the transfer of a delivery capacity entitlement relates to a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
- 40 (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and

- 5 (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (12) or impose conditions specified by the Minister as part of his or her direction).
- 10 (10) If an application for the transfer of a delivery capacity entitlement relates to a delivery capacity entitlement held by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *Waterworks Act 1932*.
- 15 (11) The Minister may, before granting an application for the transfer of a delivery capacity entitlement, direct that an assessment of the effect of granting the application be made (at the expense of the applicant) by an expert appointed or approved by the Minister.
- (12) The Minister may, when granting an application for the transfer of a delivery capacity entitlement—
- 20 (a) vary the terms of the delivery capacity entitlement;
- (b) vary any condition of the delivery capacity entitlement—
- (i) to ensure consistency with the relevant water allocation plan; or
- (ii) in the case of a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin—to comply with any direction under subsection (9) or otherwise to take action to prevent, reduce or address damage to the River Murray;
- 25 (c) if relevant, take any other action required or permitted under an Interstate Water Entitlements Transfer Scheme.
- 30 (13) A delivery capacity entitlement that has been transferred for a limited period reverts automatically to the transferor when the period expires.
- 35 (14) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a delivery capacity entitlement is not chargeable with duty under that Act.

164L—Surrender of delivery capacity entitlements

The holder of a delivery capacity entitlement may surrender his or her delivery capacity entitlement at any time.

Division 6—Interstate agreements

164M—Interstate agreements

- (1) The Minister may (on behalf of the State of South Australia) enter into an agreement with a Minister of any other State or a Territory—
- 5 (a) for the conversion of water entitlements or equivalent rights in 1 State or Territory into water entitlements or equivalent rights in another State or Territory;
- (b) for the recognition of water entitlements or equivalent rights in 1 State or Territory in another State or Territory;
- 10 (c) for the assignment of water allocations from 1 State or Territory to another State or Territory.

- (2) In this section—

water entitlement means—

- 15 (a) a water licence (and an associated water access entitlement);
- (b) a water allocation;
- (c) a delivery capacity entitlement.

Division 7—Related matters

164N—Allocation on declaration of prescribed water resource

- 20 (1) On declaration of a watercourse, lake or well as a prescribed watercourse, lake or well or declaration of a part of the State as a surface water prescribed area, an existing user of water from the water resource concerned—
- 25 (a) may, subject to a restriction or prohibition under section 132, continue to use water without a water management authorisation until the end of the prescribed period or, if he or she applies for any necessary water management authorisation (depending on the circumstances of the particular case) within 6 months after the publication in the Gazette of the regulation declaring the resource to be
- 30 a prescribed resource, until all relevant applications have been granted or refused;
- (b) is, subject to subsection (3), entitled to be granted, without the payment of any purchase price, the necessary water management authorisations, subject to any determination by
- 35 the Minister under subsection (2) after consultation with the existing user.
- (2) The water access entitlement that applies under subsection (1)(b) will be the share of a consumptive pool that will, in the opinion of the Minister, meet the future requirements of the existing user—
- 40 (a) based on his or her reasonable requirements during the establishment period; or

- 5
- (b) for water for a development, project or other undertaking to which he or she was legally committed or in respect of which he or she had committed significant financial or other resources during the establishment period; or
- (c) under both paragraphs (a) and (b).
- (3) If at the expiration of the prescribed period, the aggregate of water access entitlements assigned to existing users under subsections (1) and (2) exceeds, in the opinion of the Minister, the capacity of the resource, the Minister may—
- 10
- (a) reduce each water access entitlement proportionately; or
- (b) reduce each water access entitlement pursuant to a scheme set out in the regulations.
- (4) Before determining the capacity of the resource the Minister must prepare a report assessing the need for water of ecosystems that
- 15
- depend on the resource for water.
- (5) The Minister must make the report publicly available.
- (6) An existing user may appeal to the ERD Court against a determination or decision of the Minister under subsection (1) or (2).
- (7) Subject to a restriction or prohibition under section 132, a person
- 20
- who is not an existing user may take water from the water resource without a water management authorisation until the end of the prescribed period.
- (8) If the quantity of water available for allocation exceeds the entitlements of existing users, the Minister may allocate the excess in
- 25
- accordance with this Act and the relevant water allocation plan.
- (9) An entitlement under subsection (1)(b) may be transferred to another person with the approval of the Minister but subject to any requirement or limitation prescribed by the regulations.
- (10) In this section—
- 30
- establishment period*** in relation to the declaration of a water resource means the period prescribed for the purposes of this definition by the regulation declaring the resource to be a prescribed resource being a period that ends at the commencement of the prescribed period;
- 35
- existing user*** means, subject to subsection (11), a person—
- (a) who took water from the resource at any time during the establishment period; or
- (b) who did not take any water during that period but who needs
- 40
- water for a development, project or undertaking to which he or she was legally committed or in respect of which he or she had, in the opinion of the Minister, committed significant financial or other resources during the establishment period;

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

- (11) A person ceases to be an existing user if the person does not make the necessary applications under subsection (1) within 6 months after publication in the Gazette of the regulation declaring the resource to be a prescribed resource.

1640—Schemes to promote the transfer or surrender of certain entitlements

- (1) The Minister may, by notice in the Gazette, establish a scheme—
- (a) to promote the transfer or surrender of water allocations, or water allocations of a specified class, that relate to an area within the Murray-Darling Basin;
 - (b) to promote the surrender of water licences, or water licences of a specified class, that relate to a specified area within the Murray-Darling Basin.
- (2) A scheme under subsection (1) will be a scheme—
- (a) under which any holder of a water allocation of a specified class must, in accordance with the terms of the scheme, make an offer—
 - (i) to transfer the whole or a specified part of the water allocation to the Minister or to a person of a specified class—
 - (A) for a price specified by the holder of the water allocation; or
 - (B) for a price determined under the terms of the scheme, being a price that equals or exceeds a reserve price specified by the holder of the water allocation; or
 - (ii) to surrender the whole or a specified part of the water allocation to the Minister, for a price specified by the holder of the water allocation;
 - (b) under which the holder of a water licence of a specified class must, in accordance with the terms of the scheme, make an offer to surrender the licence for a price specified by the holder of the licence;
 - (c) under which the Minister will, in accordance with the terms of the scheme—

- 5
- (i) make an offer to any holder of a water allocation of a specified class to pay a price specified by the Minister for the surrender of the whole or a specified part of the water allocation;
- (ii) make an offer to the holder of a water licence of a specified class to pay a price specified by the Minister for the surrender of the licence.
- 10 (3) Neither the Minister nor the holder of a water allocation or a water licence is required to accept an offer under a scheme established under this section.
- (4) Subject to subsection (5), the Minister must not reject any acceptance of an offer within the terms of a scheme under subsection (2)(c).
- (5) The Minister may reject such an acceptance if—
- 15 (a) the Minister has, in establishing the particular scheme, set a maximum amount of water allocation with respect to which the Minister is willing to make a payment and that maximum had been achieved before the receipt by the Minister of the relevant acceptance; or
- 20 (b) the Minister has, in establishing the particular scheme, set a limit on the amount of money that the Minister is willing to expend under the scheme and that limit has been achieved before the receipt by the Minister of the relevant acceptance; or
- 25 (c) the NRM Register includes a notation that a person has an interest in the relevant water allocation or water licence and the acceptance has been made without the written consent of that person; or
- (d) the Minister receives the relevant acceptance after the Minister has brought the scheme to an end; or
- 30 (e) any other prescribed circumstance applies.
- (6) The Minister may in the Minister's absolute discretion, by notice in the Gazette, bring a scheme to an end at any time.
- (7) When a scheme is brought to an end, any unaccepted offers automatically lapse.
- 35 (8) The Governor may, by regulation, make provision for related or ancillary matters connected with the operation of this section.

164P—Consequences of breach of water management authorisations

- 40 (1) If the holder of a water management authorisation, or a person acting on behalf of the holder of a water management authorisation—
- (a) takes water in excess of any entitlement under the water management authorisation, or contrary to a provision of the water management authorisation; or

- (b) contravenes or fails to comply with a condition of the water management authorisation; or
- (c) uses water taken pursuant to the water management authorisation for an illegal purpose,

5 the Minister may cancel, suspend or vary the water management authorisation by 7 days written notice served on the holder of the water management authorisation.

- 10 (2) If the holder of a water management authorisation, or a person acting on behalf of the holder of a water management authorisation, contravenes or fails to comply with a notice under section 132, the Minister may cancel, suspend or vary the water management authorisation by 7 days written notice served on the holder of the water management authorisation.

- 15 (3) If—

- (a) the holder of a water management authorisation, or a person acting on behalf of a water management authorisation—

- 20 (i) has contravened an environment protection order under the *Environment Protection Act 1993* or a protection order under the *River Murray Act 2003*; or

- (ii) has failed to comply with a clean-up order under the *Environment Protection Act 1993* or a reparation order under the *River Murray Act 2003*; and

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

30 the Minister may cancel, suspend or vary the water management authorisation by 7 days written notice served on the holder of a water management authorisation.

- (4) A holder, or former holder, of a water management authorisation may appeal to the ERD Court against a decision of the Minister under this section.

- 35 (5) The Minister must, after taking action to cancel, suspend or vary a water management authorisation under this section, give notice of the action to a person with a prescribed interest in the water management authorisation in accordance with the regulations.

164Q—Effect of cancellation of water management authorisations

- 40 (1) Any entitlement under a water management authorisation that has been cancelled under this Act is forfeited to the Minister.

- (2) If—
- (a) a water licence, water access entitlement, water allocation or delivery capacity entitlement (*an entitlement*) is forfeited under subsection (1); and
 - 5 (b) the entitlement has sufficient value to cover the costs associated with its sale; and
 - (c) the entitlement can be transferred consistently with the relevant water allocation plan and the provisions of the entitlement,
- 10 the Minister must endeavour to sell the entitlement—
- (d) by public auction or tender; or
 - (e) by some other process considered by the Minister to be reasonable in the circumstances (including by private sale).
- (3) The proposal to sell the entitlement must be advertised on at least 2
15 separate occasions in a newspaper circulating in the area in which the water resource is situated.
- (4) If 1 process fails, the Minister may proceed to another.
- (5) The Minister should, in taking action to sell the entitlement, take
20 reasonable steps to achieve the best price that can reasonably be obtained.
- (6) Any money received by the Minister on the sale of the entitlement under this section must be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs incurred in proceedings under this section;
 - 25 (b) secondly—in discharging any liability (if any) for an unpaid levy or instalment of a levy under Chapter 5, and any interest in respect of an unpaid levy or instalment, in relation to the entitlement;
 - (c) thirdly—in discharging any other liability of the former holder of the entitlement under this Act to the Minister or to
30 any other authority under this Act;
 - (d) fourthly—in discharging any liabilities of the former holder of the entitlement of which the Minister knows that are secured by a charge over the entitlement;
 - 35 (e) fifthly—in payment to the former holder of the entitlement.
- (7) If the former holder of the entitlement cannot be found after making reasonable enquiries as to his or her whereabouts, an amount payable to the former holder of the entitlement must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- 40 (8) The purchaser of an entitlement under this section takes the entitlement free of all charges.

164R—Law governing decisions under this Part

- (1) If a decision is being made under this Part with respect to—
- (a) an application for a water management authorisation; or
 - (b) a water allocation (including in relation to a water allocation under an IWETS); or
 - (c) the variation of a water management authorisation; or
 - (d) the transfer of a water management authorisation (including with respect to an interest in a water management authorisation),

the law to be applied in deciding the matter, and the provisions of the regional NRM plan that are relevant to the consideration or determination of the matter (including in any subsequent review or appeal proceedings (whether brought under this Act or not)), is the law in force, and the provisions of the regional NRM plan as in force, at the time that the matter falls to be decided, considered or determined (including when that time is the time of any decision on a review or appeal).

- (2) To avoid doubt, a reference in subsection (1) to the regional NRM plan includes a reference to a water allocation plan that is taken to form part of that regional NRM plan under Chapter 4 Part 2 Division 2.
- (3) However, if the Minister does not determine an application for a water management authorisation within the prescribed period, the provisions of the relevant regional NRM plan that are relevant to the determination of the matter will be the provisions as in force at the end of that prescribed period.
- (4) Subject to subsection (5), the *prescribed period* is 3 months from the date of the relevant application together with, if section 162 or 164D applies in the circumstances of the particular case, a period prescribed by the regulations.
- (5) If the Minister requests an applicant for a water management authorisation—

- (a) to provide such additional documents or information; or
- (b) to carry out any form of assessment or test; or
- (c) to take any other action,

as the Minister may reasonably require in order to allow the Minister to assess the application, then any period between the date of the request and the date of compliance is not to be included in the calculation of the prescribed period.

- (6) The Minister should deal with an application for—
- (a) a water management authorisation; or
 - (b) the variation of a water management authorisation; or

(c) the transfer of a water management authorisation, as expeditiously as possible and in any event within the prescribed period under subsections (4) and (5).

5 (7) If the Minister does not decide an application within the prescribed period, the applicant may, after giving 14 days notice in writing to the Minister, apply to the ERD Court for an order requiring the Minister to make a decision on the application within a time fixed by the ERD Court.

10 (8) If the ERD Court makes an order under subsection (7), the ERD Court should also order the Minister to pay the applicant's costs of the proceedings unless the ERD Court is satisfied—

(a) that the delay is not attributable to an act or omission of the Minister; or

15 (b) that the delay is attributable to a decision of the Minister not to deal with the application within a reasonable time because—

(i) it appeared to the Minister that there had been a failure to comply with a requirement imposed by or under this Act; or

20 (ii) the Minister believed, on other reasonable grounds, that it was not appropriate to decide the matter in the particular circumstances; or

(c) that an order for costs should not be made for some other reason.

25 **40—Amendment of section 167—Allocation of reserved water**

(1) Section 167(1)(b)—delete paragraph (b) and substitute:

(b) the allocation will be for a limited term of not more than 15 years and may be based on a water access entitlement specified by the Minister;

30 (2) Section 167(1)(e)—delete paragraph (e)

(3) Section 167(1)(f)—delete "licensee" wherever occurring and substitute, in each case:
person

41—Amendment of section 173—Water recovery and other rights subject to board's functions and powers

35 Section 173(a)—delete "water licence" and substitute:

water management authorisation

42—Amendment of section 174—Preliminary

Section 174(7)—delete "subsection (6)(a)" and substitute:

subsection (6)

43—Amendment of section 178—Sale of contaminated items

- (1) Section 178(1), penalty provision—delete "animal or" wherever occurring
- (2) Section 178(2)—delete "section 179" and substitute:
section 177

5 **44—Amendment of section 179—Offence to release animals or plants**

- Section 179(3)—after "subsection (1)" insert:
or subsection (2)

45—Amendment of section 202—Right of appeal

- 10 (1) Section 202(1)(b)(ii) to (iv)—delete subparagraphs (ii) to (iv) (inclusive) and
substitute:
 - 15 (ii) an applicant for a water management authorisation, a well driller's
licence or a permit under Chapter 7 may appeal to the Court against a
refusal to grant or issue the authorisation, licence or permit or the
imposition of conditions in relation to the authorisation, licence or
permit (other than in a case involving the allocation of reserved
water within the meaning of Chapter 7 Part 4);
 - 20 (iii) an applicant for the transfer of a water management authorisation
may appeal to the Court against a refusal to grant the application or a
decision to vary the conditions of the transferred water management
authorisation or, in the case of a water allocation, to reduce the water
allocation;
- (2) Section 202(1)(b)(v)—after "the holder of a" insert:
water management authorisation,
- (3) Section 202(1)(b)(v)—after "cancellation of the" insert:
25 authorisation or
- (4) Section 202(1)(b)—after subparagraph (vi) insert:
 - (vii) a person with a prescribed interest in a water management
authorisation of a prescribed class may appeal to the Court against a
decision to vary the water management authorisation;
- 30 (5) Section 202(2)—delete "water licence" and substitute:
water management authorisation
- (6) Section 202(3)(a)—delete paragraph (a) and substitute:
 - 35 (a) in the case of an appeal against an order or reparation authorisation
under Chapter 9 or variation of such an order or authorisation—
within 21 days after the order or authorisation or variation is served;
or

46—Amendment of section 211—Compensation

- (1) Section 211(1)—delete "water licence" and substitute:
water management authorisation

- (2) Section 211(2)—delete "a water licence" and substitute:
or in respect of a water management authorisation
- (3) Section 211(2)—delete "to the licence or approved the transfer of the licence or a water allocation to the licence" and substitute:
- 5 under this Act or approved the transfer of any water management authorisation or any interest in any water management authorisation

47—Amendment of section 226—NRM Register

- (1) Section 226(1)(a)—delete paragraph (a) and substitute:
- 10 (a) water management authorisations granted or issued under this Act;
and
- (2) Section 226—after subsection (1) insert:
- (1a) The register may be divided into such parts as the Minister thinks fit but the Minister must at least establish 1 part that specifically relates to Schedule 3A entitlements under Chapter 7.
- 15 (1b) The part established under subsection (1a) that specifically relates to Schedule 3A entitlements under Chapter 7—
- (a) will be known as *The Water Register*; and
- (b) will be subject to the operation of Schedule 3A.
- (3) Section 226(2)—delete "subsection (3)" and substitute:
- 20 this section
- (4) Section 226—after subsection (3) insert:
- (3a) The Minister may also establish or authorise arrangements that restrict or prohibit access to the register (or a part of the register) to protect information that, in the opinion of the Minister, is commercially sensitive or should be protected for some other reasonable cause.
- 25
- (5) Section 226(5)—delete subsection (5) and substitute:
- (5) Information on the register may be made available on conditions determined or approved by the Minister.
- 30 (6) Without limiting a preceding subsection, any part of the register may be kept in the form of a computer record.

48—Insertion of Schedule 3A

After Schedule 3 insert:

Schedule 3A—The Water Register

Part 1—Preliminary

1—Interpretation

In this Schedule—

register means The Water Register.

2—Applications

An application under this Schedule—

- (a) must be in a form approved by the Minister; and
- (b) must be accompanied by any relevant fee prescribed by the regulations.

3—Minister's power to require information

The Minister may, for the purposes of this Schedule, require a person to provide any information specified by the Minister before performing or exercising a function or power under this Schedule.

4—Form of record and management of register

- (1) The Minister may record any information under this Schedule in such manner, and to such extent, as the Minister thinks fit.
- (2) The Minister may, in addition to recording any information required under this Schedule—
 - (a) record such other information in the register as the Minister thinks fit;
 - (b) hold instruments as part of the register.
- (3) The Minister may from time to time, as the Minister thinks fit, make any amendment or alteration to the register to correct or address any error or omission, to record more up-to-date or accurate information, or to take such other action that may appear appropriate in the management of the register.

5—Authentication of searches

The Minister may authenticate—

- (a) any information on the register; or
 - (b) any search of the register,
- in such manner as the Minister thinks fit.

Part 2—Registration of entitlements issued under Chapter 7

6—Registration of entitlements

5 The Minister must ensure that the following information is recorded
on the register with respect to a Schedule 3A entitlement granted or
issued under this Act—

- 10 (a) the name and contact details of the holder or holders of the
Schedule 3A entitlement;
- (b) the water resource to which the Schedule 3A entitlement
relates, including any zone or other relevant information as
to its location;
- 15 (c) the date on which the Schedule 3A entitlement was issued
and, if relevant, the date on which the Schedule 3A
entitlement will expire under the terms of the Schedule 3A
entitlement;
- (d) any of the following in relation to the Schedule 3A
entitlement (insofar as may be relevant):
 - 20 (i) the date of any variation;
 - (ii) the date of any transfer;
 - (iii) the date of any surrender or cancellation;
- (e) as to any security interest that relates to a water licence or
water access entitlement that is lodged for registration under
this Schedule—
 - 25 (i) the date and time of registration;
 - (ii) the name of the person who has the benefit of the
security interest;
 - (iii) the nature of the interest (determined according to
criteria adopted by the Minister);
 - 30 (iv) the date and time of any registration of any
variation, transfer, surrender or cancellation of the
security interest;
- (f) prescribed information as to any caveat registered under
Part 4;
- (g) any other information prescribed by the regulations.

7—Special arrangement as to transfers

- 35 (1) In this clause—

complying application means an application that complies with the
requirements of this Act and the Minister for the purposes of the
registration of a transfer of a Schedule 3A entitlement;

prescribed period means, in relation to the transfer of a Schedule 3A entitlement, the period commencing on the day on which the Minister grants approval to the transfer and expiring on the day fixed or determined by or under the regulations.

- 5 (2) A transfer of a Schedule 3A entitlement will not have any force or effect unless—
- (a) the Minister gives effect to the transfer in accordance with a procedure recognised by the regulations for the purposes of this paragraph; or
 - 10 (b) a complying application for the registration of the transfer is lodged with the Minister within the prescribed period.
- (3) If a transfer of a prescribed kind is not lodged within the prescribed period that applies under subclause (2), the Minister's approval under Chapter 7 in relation to the transfer will, by force of this clause, lapse and have no further effect.
- 15 (4) This clause does not apply to the reversion of an interest in a prescribed entitlement at the end of a transfer made for a limited period.

Part 3—Registration of security interests

8—Creation of security interests

- 20 (1) A security interest recognised for the purposes of this Part may only relate to—
- (a) a water licence; or
 - 25 (b) a water access entitlement, or part of a water access entitlement.
- (2) A security interest recognised for the purposes of this Part must be created by the execution of an instrument evidencing the existence of the security interest over or in respect of the relevant licence or entitlement.
- 30 (3) An instrument under subclause (2)—
- (a) must be in a form approved by the Minister; and
 - (b) will not have any force or effect for the purposes of this Act unless or until it is registered on the register.
- 35 (4) In addition, the Minister must not register a security interest under this clause if to do so—
- (a) is prevented by anything already recorded on the register; or
 - (b) is prevented by the regulations.
- (5) When a security interest is registered under this clause, the security interest—
- 40 (a) has the effect prescribed by the regulations; but

- (b) does not operate as a transfer of the licence or entitlement to which it relates.

9—Priority of interests

- 5 (1) Subject to this clause, the priority of security interests registered under this Part will be determined according to dates and times of registration (so that a security interest registered at an earlier time will have priority over a security interest registered at a later time).
- 10 (2) The priority between registered security interests may be varied by application by all interested parties made in accordance with the regulations.
- (3) Subject to this clause, a registered security interest has priority over an unregistered security interest.
- (4) A priority established by a preceding subclause—
- 15 (a) has effect subject to any caveat of a prescribed kind; and
- (b) has effect despite different dates for the execution of instruments or the provision of any consents (if relevant); and
- (c) has effect subject to any exclusions or exceptions prescribed by the regulations.
- 20 (5) This clause is declared to be a Corporations law displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act.

10—Variation of registered security interests

- 25 (1) The parties to a security interest registered under this Part may apply to vary the security interest.
- (2) If the security interest is subject to another security interest that has been subsequently recorded on the register, the agreement in writing to the variation must be obtained from the holder of the subsequent security interest.
- 30 (3) Subject to subclause (2), an application under subclause (1) must be accompanied by a copy of the instrument that evidences or gives effect to the variation.
- (4) Subject to subclause (5), the Minister must, on receipt of an application in accordance with the requirements of subclauses (2) and (3), register the variation.
- 35 (5) The Minister must not register a variation under subclause (4) if to do so is prevented by the regulations.
- (6) The instrument furnished under subclause (3) will be held as part of
- 40 the register.

11—Transfers

- 5
- (1) A person holding a prescribed interest with respect to a security interest registered under this Part may apply to the Minister for a transfer of the prescribed interest to another person.
 - (2) An application under subclause (1) must be accompanied by an instrument that evidences or gives effect to the transfer.
 - (3) The Minister must, on receipt of an application in accordance with the requirements of subclause (2), register the relevant transfer.

12—Discharge of registered interests

- 10
- (1) The Minister will, on application by a person holding a registered prescribed interest in a security interest under this Part, discharge the registration of the security interest.
 - (2) The Minister may also discharge the registration of a prescribed interest in the circumstances prescribed by the regulations.

13—Enforcement of security interests

- 15
- (1) The regulations may prescribe a scheme for the enforcement of any security interest registered under this Part.
 - (2) Without limiting the generality of subclause (1), a scheme prescribed under this clause may—
 - 20 (a) allow the exercise of a power of sale in prescribed circumstances;
 - (b) provide for the application of purchase money obtained by the exercise of a power of sale;
 - 25 (c) provide for the transfer, vesting or discharge of any interest in a water licence or water access entitlement (or part of a water access entitlement);
 - (d) provide for the transfer or vesting of a water licence or water access entitlement (or part of a water access entitlement).

Part 4—Caveats

14—Caveats

30 The regulations may prescribe a scheme for the registration, operation and discharge of caveats for the purposes of the register.

Part 5—Miscellaneous

15—Devolution

- 35
- (1) A person to whom an interest in a water licence or water allocation has devolved by operation of law may apply to the Minister to be recorded in the register as the holder of the relevant interest.

- (2) On the death of a person recorded on the register with another person as joint owners of an interest in a water licence or water allocation, the survivor may apply to the Minister for a record of the transmission to the survivor to be made in the register.

16—Recording monetary consideration

The Minister may require the monetary consideration for any transfer of a Schedule 3A entitlement to be stated in connection with an application to register the transfer under this Schedule.

17—Correction of instruments

- (1) The Minister may, in the Minister's discretion, register an instrument under this Schedule despite any error in or omission from the instrument, or in any other instrument or document that may be provided in connection with the instrument.
- (2) The Minister may, in the Minister's discretion, correct an error in or omission from an instrument in connection with the administration or operation of this Act.

18—Cancellation of registration

The Minister may cancel a registration or recording in the register—

- (a) in a case involving fraud; or
(b) in any other prescribed circumstance.

19—Address for service of notices

The regulations may establish a scheme for the recording of names and addresses for the purposes of serving notices in connection with the operation or administration of the register.

20—ERD Court

The regulations may confer jurisdiction on the ERD Court with respect to any matter associated with the operation of this Schedule, or with any instrument registered or recorded (or sought to be registered or recorded) under this Schedule.

49—Amendment of Schedule 4—Repeals and transitional provisions

- (1) Schedule 4, clause 45(7), (8) and (9)—delete subclauses (7), (8) and (9) and substitute:
- (7) The Chief Officer must ensure that proper accounts are kept of a prescribed body's financial affairs.
- (8) The accounts required under subclause (7) will, according to a determination of the Chief Officer, form part of the accounts of a regional NRM board specified by the Chief Officer and those accounts, and any related financial information, will be incorporated into the accounts and financial statements of that board for financial reporting and auditing purposes.

(2) Schedule 4, clause 56(1)—delete "this Act" and substitute:
a relevant Act

(3) Schedule 4, clause 56(2)—delete "this Act" and substitute:
the relevant Act

5 (4) Schedule 4, clause 56(4)—delete subclause (4) and substitute:

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule or Schedule 1 of the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*, or regulations made under this Schedule, apply to any amendment or repeal effected by a relevant Act.

(5) In this clause—

relevant Act means—

(a) this Act; or

15 (b) the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of *Ground Water (Qualco-Sunlands) Control Act 2000*

1—Amendment of section 3—Interpretation

20 (1) Section 3(1), definition of *irrigated land*, (b)—after "water licence" insert:
or water allocation

(2) Section 3(1), definition of *irrigated property*, (a)—after "water licence" insert:
or water allocation

25 (3) Section 3(6)(b)—after "water licence" insert:
or water allocation

(4) Section 3(6)—after "water licence" insert:
or water allocation

2—Amendment of section 40—Waterlogging and salinity management allocation

30 Section 40(4)—after "water licence" insert:

or a water allocation under the *Natural Resources Management Act 2004*

3—Substitution of section 67

Section 67—delete the section and substitute:

67—Problem of disposal of water not to be considered on application for water licence etc

- 5 (1) Despite the provisions of the *Natural Resources Management Act 2004* or the relevant water allocation plan under that Act, the problem of the disposal of water used for irrigation must not be considered by the Minister under that Act when considering—
- 10 (a) an application for a water licence or a water allocation, or for an increase in a water allocation, under that Act; or
- (b) an application for the transfer of a water licence, a water access entitlement (or part of a water access entitlement) or a water allocation (or part of a water allocation); or
- (c) the use of water under a water allocation,
- 15 if—
- (d) the relevant water management authorisations under that Act authorise, or will authorise, the use of the water for irrigation on irrigated land to which a waterlogging and salinity risk management allocation is attached but not on
- 20 any other land; and
- (e) (unless the regulations provide otherwise) the land on which the water can be used under the relevant water management authorisations under that Act does not include the category of land having the highest degree of risk; and
- 25 (f) the Minister is satisfied that the waterlogging and salinity risk management allocation attached to the land authorises, or will authorise, the use on the land of all the water allocated.
- 30 (2) Where a person has made an application referred to in subsection (1) under the *Natural Resources Management Act 2004*, an assessment under that Act of the effect of allocating additional water must not include an assessment of the problem of disposing of the water used.

Part 2—Transitional provisions

4—Interpretation

35 In this Part—

licence means a water licence granted under the principal Act;

principal Act means the *Natural Resources Management Act 2004*;

relevant day means the day on which this Part comes into operation.

5—Water licences

(1) A licence in force under section 146 of the principal Act immediately before the relevant day will continue as a licence under the principal Act as amended by this Act.

(2) The following provisions apply in connection with the operation of subclause (1):

5 (a) until the Minister otherwise determines, a licence under subclause (1) (as in force under the principal Act as amended by this Act)—

(i) need not make express provision for a water access entitlement in the manner contemplated by section 146(2) (as enacted by this Act); and

10 (ii) will be subject to the conditions that applied immediately before the relevant day, unless or until varied by determination of the Minister (either under the principal Act or under this clause); and

15 (iii) will be taken to provide the holder of the licence with a water allocation in the manner contemplated by section 152 (as enacted by this Act), subject to such action as the Minister may take, by determination, to convert a water (holding) allocation to a water (taking) and subject to such provisions or modifications as may be prescribed under clause 56 of Schedule 4 of the principal Act; and

(b) until the Minister otherwise determines, the holder of a licence under subclause (1) (as in force under the principal Act as amended by this Act)—

20 (i) may proceed to construct, maintain or operate any works for the purposes of taking water or surface water (as the case may be) under the terms of the licence without the authority of a water resource works approval; and

25 (ii) may use water or surface water (as the case may be) under the terms of the licence without the authority of a site use approval.

(3) A determination of the Minister under this clause—

(a) may be of general or limited application; and

(b) may make different provision according to the matters or circumstances which it is expressed to apply; and

30 (c) may be made from time to time; and

(d) may provide for other matters of an ancillary or incidental nature.

6—The Water Register

35 (1) The Minister may, by notice in the Gazette, convert an interest constituting a mortgage or charge over a water entitlement registered under section 226 of the principal Act before the commencement of this clause to a security interest registered on The Water Register under Schedule 3A of the principal Act (as enacted by this Act).

(2) A notice under subclause (1) may be expressed to apply to specified classes of interests.

(3) In this clause—

40 **water entitlement** means a water licence or a water allocation (or part of a water allocation).