

South Australia

Landscape South Australia Act 2019

An Act to promote sustainable and integrated management of the State's landscapes, to make provision for the protection of the State's natural resources, and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

Division 1—Preliminary

1—Short title

This Act may be cited as the *Landscape South Australia Act 2019*.

2—Commencement

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

3—Interpretation

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

animal means a live vertebrate or invertebrate animal and includes the eggs or semen of such an animal, but does not include any animal of a class excluded from the ambit of this definition by the regulations;

animal-proof fence means a fence that complies with the prescribed requirements for an animal-proof fence;

annual business plan means the annual business plan of a regional landscape board under section 51;

annual value means annual value as defined in the *Valuation of Land Act 1971*;

appointed member, of a regional landscape board, means a person appointed to the board by the Minister under section 15;

approved account means an account designated by the Minister as an approved account for the purposes of this Act, or a specified provision of this Act;

authorised officer means a person appointed as an authorised officer under Part 10;

biological diversity or **biodiversity** means the variety of life forms represented by plants, animals and other organisms and micro-organisms, the genes that they contain, and the ecosystems and ecosystem processes of which they form a part;

business day means any day except—

- (a) a Saturday, Sunday or public holiday; or
- (b) a day which falls between 25 December and 1 January in the following year;

capital value means capital value as defined in the *Valuation of Land Act 1971*;

channel includes—

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

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

commercial forest means a forest plantation where the forest vegetation is grown or maintained so that it can be harvested or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest vegetation);

constituent council means, in relation to a regional landscape board, or the region of a regional landscape board, a council whose area, or part of whose area, comprises or is included in the region of the regional landscape board;

construct includes erect, alter, reduce, enlarge, repair or excavate;

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 Part 8, as determined—

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

control means—

- (a) in relation to a particular class of animals, any of the following:
 - (i) destroy the animals and their warrens, burrows, nests or harbours (whether occupied or not);
 - (ii) reduce the extent to which land is inhabited or subject to infestation by the animals;
 - (iii) undertake any other prescribed action,as far as is reasonably achievable;
- (b) in relation to a particular class of plants, any of the following:
 - (i) destroy the plants;
 - (ii) reduce and inhibit the propagation of the plants;
 - (iii) prevent the spread of the plants;
 - (iv) undertake any other prescribed action,as far as is reasonably achievable;

council means a council within the meaning of the *Local Government Act 1999*;

council subsidiary means a subsidiary established under Schedule 2 of the *Local Government Act 1999*;

CPI means the Consumer Price Index (All groups index for Adelaide);

declared forestry area means a declared forestry area under section 165;

delivery capacity entitlement means a delivery capacity entitlement issued under Part 8 Division 3 Subdivision 5;

Department means the administrative unit designated from time to time by the Minister by notice in the Gazette as being the Department primarily responsible for assisting a Minister in the administration of this Act;

designated entity for Part 4 Division 2 or Division 3, or Part 8—see section 52;

dingo includes an animal that is a cross of a dingo;

dog fence means the primary dog fence established under the *Dog Fence Act 1946*;

domestic activity means an activity undertaken for a domestic purpose;

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

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

- (a) taking water for the purpose of watering or irrigating land, other than land used solely in connection with a dwelling; or
- (b) without limiting paragraph (a)—taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or
- (c) taking water to be used in carrying on a business (except for the personal use of persons employed in the business);

domestic wastewater means—

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

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

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

effluent means domestic wastewater or industrial wastewater;

elected member, of a regional landscape board, means a person elected to the board under section 15(1)(b);

eligible elector, in relation to an election of members of a regional landscape board, means a person who, according to the scheme prescribed by the regulations under section 17, is recognised as an eligible elector for the purposes of the election;

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

estuary means a partially enclosed coastal body of water that is permanently, periodically, intermittently or occasionally open to the sea within which there is a measurable variation in salinity due to the mixture of seawater with water derived from or under the land;

floodplain means any area of land adjacent to a watercourse, lake or estuary that is periodically inundated with water and includes any other area designated as a floodplain—

- (a) by a regional landscape plan, a water allocation plan or a water affecting activities control policy; or
- (b) by the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*;

forest vegetation means trees and other forms of forest vegetation including—

- (a) roots or other parts of the trees or other forest vegetation that lie beneath the soil; and
- (b) leaves, branches or other parts or products of trees or other forest vegetation;

forest water licence means a licence granted by the Minister under Part 8 Division 6;

general manager means the general manager of a regional landscape board and includes a person acting in the office of general manager;

general rate means a general rate under section 152 of the *Local Government Act 1999*;

general statutory duty means the duty under section 8;

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

infrastructure includes—

- (a) artificial lakes; and
- (b) dams or reservoirs; and
- (c) embankments, walls, channels or other works or earthworks; and
- (d) bridges and culverts; and
- (e) buildings or structures; and
- (f) roads; and
- (g) pipes, machinery or other plant or equipment; and
- (h) any device; and
- (i) any item or thing used in connection with—
 - (i) testing, monitoring, protecting, enhancing or re-establishing any natural resource, or any aspect of a natural resource; or
 - (ii) any other program or initiative associated with the management of a natural resource; and
- (j) other items brought within the ambit of this definition by the regulations;

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

Interstate Water Entitlements Transfer Scheme or **IWETS** means—

- (a) a scheme for the transfer of entitlements between 2 or more States under the Murray-Darling Basin Agreement; or
- (b) an agreement between South Australia and 1 or more other States or a Territory entered into under section 154;

keep in captivity—an animal is kept in captivity if it is held in a building or enclosure with security measures designed to ensure that the animal cannot escape (other than in circumstances that cannot be reasonably foreseen and guarded against);

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

- (a) part of a lake; and
- (b) a body of water designated as a lake—
 - (i) by a regional landscape plan, a water allocation plan or a water affecting activities control policy; or
 - (ii) by the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*;

land means, according to the context—

- (a) land as a physical entity, including land under water; or
- (b) any legal estate or interest in, or right in respect of, land,

and includes any building or structure fixed to land;

landscape or ***landscapes***—see subsection (2);

Landscape Administration Fund means the Landscape Administration Fund established under Part 6 Division 1;

landscape management region or ***region*** means a landscape management region established under Part 2 Division 2 Subdivision 1;

Landscape Priorities Fund means the Landscape Priorities Fund established under Part 6 Division 2;

landscapes affecting activities control policy means a landscapes affecting activities control policy prepared by a regional landscapes board under section 33;

LGA means the Local Government Association of South Australia;

licensed well driller means a person who holds a licence under Part 8 to drill wells;

management agreement means an agreement under Part 12;

management zone means an area identified in a water allocation plan as a management zone for the purpose of managing resource conditions and impacts associated with the take, extraction or use of water in, or in association with, that area;

Mining Act means any of the following:

- (a) the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum and Geothermal Energy Act 2000* or the *Petroleum (Submerged Lands) Act 1982*;
- (b) the *Cooper Basin (Ratification) Act 1975*, the *Roxby Downs (Indenture Ratification) Act 1982* or the *Stony Point (Liquids Project) Ratification Act 1981*;
- (c) any other Act relating to the production, recovery, management, conveyance or delivery of minerals brought within the ambit of this definition by the regulations;

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

Murray-Darling Basin has the same meaning as in the *Water Act 2007* of the Commonwealth;

Murray-Darling Basin Agreement means the Murray-Darling Basin Agreement, a copy of which is set out in Schedule 1 of the *Water Act 2007* of the Commonwealth, as in force from time to time;

native animal means a protected animal within the meaning of the *National Parks and Wildlife Act 1972* and any species included in Schedule 10 of that Act, but does not include a dingo or any other animal of a class excluded from the ambit of this definition by the regulations;

native vegetation has the same meaning as in the *Native Vegetation Act 1991*;

natural resources includes—

- (a) land and soil; and
- (b) water resources; and
- (c) geological features; and
- (d) native vegetation, native animals and other native organisms; and
- (e) ecosystems;

occupier of land means a person who has, or is entitled to, possession or control of the land (other than a mortgagee in possession unless the mortgagee has assumed active management of the land), or who is entitled to use the land as the holder of native title in the land;

OC levy means a levy declared under section 71;

owner of land means—

- (a) if the land is unalienated from the Crown—the Crown; or
- (b) if the land is alienated from the Crown by grant in fee simple—the owner (at law or in equity) of the estate in fee simple; or
- (c) if the land is held from the Crown by lease or licence—the lessee or licensee, or a person who has entered into an agreement to acquire the interest of the lessee or licensee; or
- (d) if the land is held from the Crown under an agreement to purchase—the person who has the right to purchase; or
- (e) a person who holds native title in the land; or
- (f) a person who has arrogated to themselves (lawfully or unlawfully) the rights of an owner of the land,

and includes an occupier of the land and any other person of a prescribed class included within the ambit of this definition by the regulations;

pastoral land means land of the Crown that is subject to a pastoral lease;

peak body means—

- (a) the LGA; and

(b) Primary Producers SA Incorporated; and

(c) Conservation Council of South Australia Incorporated;

plant means vegetation of any species and includes the seeds and any part of any such vegetation, or any other form of plant material, but does not include any vegetation or material excluded from the ambit of this definition by the regulations;

prescribed lake means a lake declared to be a prescribed lake under section 101;

prescribed watercourse means a watercourse declared to be a prescribed watercourse under section 101;

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

prescribed well means a well declared to be a prescribed well under section 101;

private land means land that is not—

- (a) dedicated land within the meaning of the *Crown Land Management Act 2009*; or
- (b) unalienated land of the Crown; or
- (c) vested in or under the care, control or management of an agency or instrumentality of the Crown; or
- (d) vested in or under the care, control or management of a council;

public authority means—

- (a) a Minister; or
- (b) an agency or instrumentality of the Crown; or
- (c) a council or council subsidiary;

rateable land means rateable land under the *Local Government Act 1999*;

record means—

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

regional landscape board means a body established under Part 2 Division 2;

regional landscape levy means a levy imposed by a council under section 69;

regional landscape plan means a regional landscape plan prepared by a regional landscape board under Part 4 Division 1;

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

River Murray has the same meaning as in the *River Murray Act 2003*;

River Murray Protection Area means a River Murray Protection Area under the *River Murray Act 2003*;

road reserve means land set aside for the purposes of a public road, whether or not it is being used for that purpose;

SA Water means the South Australian Water Corporation;

Schedule 4 entitlement means—

- (a) a water licence; or
- (b) a water access entitlement (or part of a water access entitlement); or
- (c) a forest water licence; or
- (d) a water allocation (or part of a water allocation); or
- (e) 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 or a forest water licence that secures the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement;

sell includes—

- (a) barter, offer or attempt to sell; and
- (b) receive for sale; and
- (c) have in possession for sale; and
- (d) cause or permit to be sold or offered for sale; and
- (e) send, forward or deliver for sale; and
- (f) dispose of by any method for valuable consideration; and
- (g) dispose of to an agent for sale on consignment; and
- (h) sell for the purposes of resale;

site use approval means a site use approval issued under Part 8 Division 3 Subdivision 4;

site value means site value as defined in the *Valuation of Land Act 1971*;

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

State includes any part of the sea—

- (a) that is within the limits of the State; or
- (b) that is from time to time included in the coastal waters of the State by virtue of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth;

State Landscape Strategy means the strategy prepared under Part 3;

stormwater infrastructure means infrastructure established for the purposes of stormwater management;

surface water means—

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

- (b) water of the kind referred to in paragraph (a) that has been collected in a dam or reservoir; or
- (c) water of the kind referred to in paragraph (a) that is contained in any stormwater infrastructure; or
- (d) in relation to a surface water prescribed area—water in a prescribed watercourse if the watercourse, or a particular part of a watercourse, is declared by a water allocation plan as forming part of the surface water prescribed area;

surface water prescribed area means a part of the State declared to be a surface water prescribed area under section 101 (including, if relevant, any stormwater infrastructure within that area);

to take water from a water resource includes—

- (a) to take water by pumping or syphoning the water; and
- (b) to stop, impede or divert the flow of water over land (whether in a watercourse or not) for the purpose of collecting the water; and
- (c) to stop, impede or direct the flow of water in any stormwater infrastructure for the purpose of collecting the water, or to extract any water from stormwater infrastructure; and
- (d) to divert the flow of water in a watercourse from the watercourse; and
- (e) to release water from a lake; and
- (f) to permit water to flow under natural pressure from a well; and
- (g) to permit stock to drink from a watercourse, a natural or artificial lake, a dam or reservoir; and
- (h) to cause, permit or suffer any activity referred to in a preceding paragraph;

underground water means—

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

vehicle includes any—

- (a) vessel or craft; and
- (b) plant or equipment designed to be moved or operated by a driver;

water access entitlement—see section 121(2);

water affecting activities control policy means a water affecting activities control policy prepared by a regional landscape board under section 102;

water allocation—

- (a) in respect of a water licence, means an allocation of water under the terms of the licence in accordance with Part 8 Division 3 Subdivision 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; and

- (b) in respect of an Interstate Water Entitlements Transfer Scheme, means an allocation of water under the terms of that scheme and the provisions of Part 8 Division 3 Subdivision 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; and
- (c) in respect of water taken pursuant to an authorisation under section 105 means the maximum quantity of water that can be taken and used pursuant to the authorisation; and
- (d) in respect of a forest water licence means the water allocation attached to the licence;

water allocation plan means a water allocation plan prepared under Part 4 Division 2;

watercourse means a river, creek or other natural watercourse (whether modified or not) in which water is contained or flows whether permanently or from time to time and includes—

- (a) a dam or reservoir that collects water flowing in a watercourse; and
- (b) a lake through which water flows; and
- (c) a channel (but not a channel declared by regulation to be excluded from the ambit of this definition) into which the water of a watercourse has been diverted; and
- (d) part of a watercourse; and
- (e) an estuary through which water flows; and
- (f) any other natural resource, or class of natural resource, designated as a watercourse for the purposes of this Act by a regional landscape plan, a water allocation plan or a water affecting activities control policy;

water levy means a levy declared under section 76;

water licence means a licence granted by the Minister under section 121;

water management authorisation means—

- (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;

The Water Register—see section 241;

water resource means a watercourse or lake, surface water, underground water, stormwater (to the extent that it is not within a preceding item) and effluent;

water resource works approval means a water resource works approval issued under Part 8 Division 3 Subdivision 3;

well means—

- (a) an opening in the ground excavated for the purpose of obtaining access to underground water; or

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

wetland means an area that comprises land that is permanently or periodically inundated with water (whether through a natural or artificial process) where the water may be static or flowing and may range from fresh water to saline water and where the inundation with water influences the biota or ecological processes (whether permanently or from time to time) and includes any other area designated as a wetland—

- (a) by a regional landscape plan, a water allocation plan or a water affecting activities control policy; or
- (b) by the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*,

but does not include—

- (c) a dam or reservoir that has been constructed by a person wholly or predominantly for the provision of water for primary production or human consumption; or
- (d) an area within an estuary or within any part of the sea; or
- (e) an area excluded from the ambit of this definition by the regulations;

works means—

- (a) dams or reservoirs;
- (b) wells or channels;
- (c) pumps, pumping stations, pipes or tanks;
- (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 from the ambit of this definition by the regulations.

- (2) For the purposes of this Act, a landscape or landscapes comprise—
 - (a) natural and physical features, including coasts and seas; and
 - (b) natural resources; and
 - (c) human values and uses related to interaction with the environment, including environmental, social, cultural and economic values;
- (3) For the purposes of this Act—
 - (a) a reference to land in the context of the physical entity includes all aspects of land, including the soil, organisms and other components and ecosystems that contribute to the physical state and environmental, social, cultural and economic value of land; and

- (b) a reference to a water resource includes all aspects of a water resource, including the water, organisms and other components and ecosystems that contribute to the physical state and environmental, social, cultural and economic value of a water resource.
- (4) For the purposes of this Act—
 - (a) a reference to a watercourse is a reference to either—
 - (i) the bed and banks of the watercourse (as they may exist from time to time); or
 - (ii) the water for the time being within the bed and banks of the watercourse (as they may exist from time to time),or both, depending on the context;
 - (b) a reference to a lake is a reference to either—
 - (i) the bed, banks and shores of the lake (as they may exist from time to time); or
 - (ii) the water for the time being held by the bed, banks and shores of the lake (as they may exist from time to time),or both, depending on the context.
- (5) For the purposes of this Act, a reference to an estuary may include, according to the context, a reference to—
 - (a) any ecosystem processes or biodiversity associated with an estuary; and
 - (b) estuarine habitats adjacent to an estuary.
- (6) 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.
- (7) The conditions of an authorisation or permit under this Act may be varied by the addition, substitution or deletion of 1 or more conditions.
- (8) For the purposes of this Act, native vegetation is cleared (or would be cleared) if the relevant activity constitutes (or would constitute) clearance of the native vegetation under the *Native Vegetation Act 1991*.
- (9) A regulation, regional landscape plan, water allocation plan or water affecting activities control policy, or the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*, may make a designation for the purposes of a definition under this section by the use of a map or maps prescribed by the regulation or included in the plan (as the case may be).
- (10) For the purposes of this Act, a person is an *associate* of another if—
 - (a) they are partners; or
 - (b) one is a spouse, domestic partner, parent or child of another; or
 - (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or

- (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity; or
 - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate or other entity; or
 - (f) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (g) a chain of relationships can be traced between them under any one or more of the preceding paragraphs.
- (11) For the purposes of subsection (10), a **beneficiary** of a trust includes an object of a discretionary trust.

4—Interaction with other Acts

- (1) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.
- (2) This Act is subject to the following Acts and agreements:
 - (a) the Murray-Darling Basin Agreement;
 - (b) the Border Groundwater Agreement (as amended from time to time) approved by the *Groundwater (Border Agreement) Act 1985*;
 - (c) the Lake Eyre Basin Intergovernmental Agreement (as amended from time to time) ratified and approved under the *Lake Eyre Basin (Intergovernmental Agreement) Act 2001*;
 - (d) the indenture (as amended from time to time) ratified and approved by the *Roxby Downs (Indenture Ratification) Act 1982*.
- (3) Section 8 and Part 7 do not apply in relation to any minerals or other substances or facilities administered under a Mining Act, or any activity conducted under a tenement granted under a Mining Act.

5—Territorial and extra-territorial operation of Act

- (1) Subject to this section, this Act applies to the whole of the State.
- (2) The Governor may, by regulation, exclude a part of the State from the operation of this Act, or specified provisions of this Act.
- (3) This Act extends to an activity or circumstance undertaken or existing outside the State that may affect the natural resources of the State.
- (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.

6—Act binds Crown

- (1) This Act binds the Crown in right of this State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

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

Division 2—Objects, principles and general statutory duties

7—Objects and principles

- (1) The objects of this Act include to support and enhance ecologically sustainable development by establishing an integrated scheme to promote the use and management of the natural resources that make up or contribute to our State's landscape in an integrated manner that—
- (a) recognises and protects the intrinsic values of landscapes and recognises the interconnection between different elements of landscapes, including in relation to various aspects of the State's natural resources; and
 - (b) supports the State's primary production and other industries and a sustainable State economy, supports resilient communities and natural and built environments, and supports the interests of Aboriginal peoples; and
 - (c) provides for the protection, enhancement, restoration and sustainable management of—
 - (i) land, soil and water resources; and
 - (ii) native fauna and flora,especially so that they are resilient in the face of change; and
 - (d) promotes, protects and conserves biodiversity, and insofar as is reasonably practicable, supports and encourages the restoration or rehabilitation of ecological systems and processes that have been lost or degraded, and promotes the health of ecosystems so that they are resilient in the face of change; and
 - (e) recognises that climate change is a significant factor in our environment (including a recognition of the need for mitigation and adaptation); and
 - (f) provides for the prevention or control of impacts caused by pest species of animals and plants that may have an adverse effect on the environment, primary production or the community; and
 - (g) promotes the collaborative management of native animals that adversely affect the natural or built environments, people or primary production or other industries; and
 - (h) provides educational initiatives and provides support mechanisms to strengthen the skills, knowledge and capacity of people to sustainably manage natural resources; and
 - (i) supports initiatives or action to facilitate the increased capacity of people to engage in processes under this Act, including through the provision of information relevant to the protection, enhancement or management of landscapes.

- (2) For the purposes of subsection (1), ecologically sustainable development comprises the use, reuse, conservation, development and enhancement of natural resources and landscapes in a way, and at a rate, that will enable people and communities to provide for their economic, social, cultural and physical well-being while—
- (a) sustaining the potential of landscapes, including natural resources, to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacities of natural resources and landscapes; and
 - (c) avoiding, remedying or mitigating any adverse effects of activities on natural resources and landscapes.
- (3) The following principles should be taken into account in connection with achieving ecologically sustainable development for the purposes of this Act:
- (a) recognition should be given to the spiritual, social, customary and economic significance of landscapes, and especially natural resources, to Aboriginal people;
 - (b) the responsibility to achieve ecologically sustainable development should be seen as a shared responsibility between local, State and the Commonwealth governments, the private sector, and the community more generally, and enduring and effective partnerships should be promoted and supported;
 - (c) the costs associated with managing natural resources and landscapes should be allocated or shared equitably and in a manner that encourages the responsible use of natural resources;
 - (d) environmental factors should be taken into account when valuing or assessing assets or services;
 - (e) decision-making should be informed by local knowledge and expertise, and traditional Aboriginal knowledge, together with the best available science, to achieve a functioning, resilient and productive landscape and avoiding, where practicable, serious or irreversible damage to the environment;
 - (f) consideration should be given to the conservation of biological diversity and ecological integrity;
 - (g) if there are threats of serious or irreversible damage to natural resources or landscapes, lack of full scientific knowledge should not be used as a reason for postponing measures to prevent environmental degradation or damage;
 - (h) decision-making should be informed by long term and short term environmental, social, cultural, economic, equity (including intergenerational equity so that our natural resources and landscapes are maintained or enhanced for the benefit of future generations) and practical considerations, recognising that trade-offs may be necessary;
 - (i) if the management of natural resources associated with the State's landscape requires the taking of remedial action, the first step should, insofar as is reasonably practicable and appropriate, be to encourage those responsible to take such action before resorting to more formal processes and procedures;
 - (j) risk management and regulatory approaches should be proportionate to the risk involved and the feasibility of managing the risk.

- (4) The Minister, the Court and all other persons or bodies involved in the administration of this Act, or performing, exercising or discharging a function, power or duty under this Act, must have regard to, and seek to further, the objects of this Act.

8—General statutory duties

- (1) A person must act reasonably in relation to the management of natural resources within the State.
- (2) In determining what is reasonable for the purposes of subsection (1), regard must be had, amongst other things, to the objects of this Act, and to—
- (a) the need to act responsibly in relation to the management of natural resources, including the protection of biodiversity, and the potential impact of a failure to comply with the relevant duty; and
 - (b) any environmental, social, cultural, economic or practical implications, including in relation to the state of matters regarding biodiversity and any relevant assessment of costs and benefits associated with a particular course of action, the financial implications of various measures or options, and the current state of technical and scientific knowledge; and
 - (c) any degrees of risk that may be involved; and
 - (d) the nature, extent and duration of any harm; and
 - (e) the extent to which a person is responsible for the management of the natural resources including in relation to the environment and its biodiversity; and
 - (f) the significance of the natural resources, including in relation to the environment and its biodiversity and to the economy of the State (if relevant); and
 - (g) the extent to which an act or activity may have a cumulative effect on any natural resources including the environment and its biodiversity; and
 - (h) any pre-existing circumstance, and the state or condition of the natural resources; and
 - (i) any local circumstances as described in subsection (8).
- (3) A person will be taken not to be in breach of subsection (1) if the person is acting—
- (a) in pursuance of a requirement under this or any other Act; or
 - (b) in a manner consistent with the relevant regional landscape plan, a water allocation plan, a landscapes affecting activities control policy, a water affecting activities control policy, or any other policy approved by the relevant regional landscape board for the purposes of this section; or
 - (c) in circumstances prescribed by the regulations.
- (4) Subject to subsections (5) and (6), a person who breaches subsection (1) is not, on account of the breach alone, liable to any civil or criminal action.
- (5) If a person breaches subsection (1)—
- (a) the person may be required to prepare and implement an action plan in the circumstances contemplated by Part 7; and

- (b) compliance with the subsection may be enforced by the issuing of a protection order under Part 10; and
 - (c) a reparation order or reparation authorisation may be issued under Part 10; and
 - (d) an order may be made by the ERD Court under Part 10 in respect of the non-compliance.
- (6) Subsection (4) does not limit or derogate from any other provision of this Act.
- (7) In addition, if a person can demonstrate that the person has acted in a manner consistent with any best practice methods or standards, or any guidelines, in the relevant industry or sphere of activity that are recognised as being acceptable for the purposes of subsection (1) by the relevant regional landscape board after taking into account any local circumstances as described in subsection (8), then, to the extent of the consistency, no action can be taken against the person in connection with the operation of this section.
- (8) For the purposes of subsections (2)(i) and (7), local circumstances are constituted by the local situation, conditions and surrounding circumstances, with regard being given to contributing factors such as climate, the condition of land, land and water use, and degrees of risk and impact.
- (9) To avoid doubt, a person cannot, in relation to the operation of this section, be held responsible for any condition or circumstance existing before 2 September 2004.

Note—

2 September 2004 is the day on which the *Natural Resources Management Act 2004* commenced.

Part 2—Administration

Division 1—The Minister

9—Functions of Minister

- (1) The functions of the Minister under this Act are—
- (a) to monitor, evaluate and audit the state and condition of the State's natural resources, coasts and seas; and
 - (b) to report on the state and condition of the State's natural resources, coasts and seas; and
 - (c) to prepare and maintain the State Landscape Strategy; and
 - (d) to develop, implement, apply or co-ordinate policies relating to natural resources management, and to promote sound management programs and practices for the use, development or protection of the natural resources of the State; and
 - (e) to conduct and support research into the preservation, protection, management, enhancement, restoration or rehabilitation of the State's natural resources; and

- (f) to compile, maintain and update data and other information in relation to the State's natural resources, coasts and seas; and
 - (g) to promote the integration or co-ordination of policies, programs, plans and projects insofar as they are relevant to the proper management, use or protection of the State's natural resources; and
 - (h) to promote public awareness of the importance of the State's natural resources and to encourage conservation of those resources; and
 - (i) as the Minister thinks fit, to take any other action that may promote the preservation, protection, management, enhancement, restoration or rehabilitation of the State's landscapes; and
 - (j) such other functions assigned to the Minister by or under this Act.
- (2) The regulations may—
 - (a) prescribe the kinds of information to which subsection (1)(f) applies; and
 - (b) require persons or bodies referred to in the regulations to provide the Minister with information of that kind that is in their possession; and
 - (c) specify the kind or kinds of information to which subsection (3) applies.
- (3) If a person has provided information of a kind to which this subsection applies under subsection (2)(b), the Minister—
 - (a) must seek the consent of the person who provided the information to make it publicly available and must make it publicly available if consent is given; and
 - (b) must not disclose that information to another person without the consent of the person who provided it.

10—Powers of delegation

- (1) The Minister may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act, or under any other Act that, in the opinion of the Minister, is relevant to the operation or administration of this Act.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) The Minister cannot delegate the function of making recommendations to the Governor.

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

Maximum penalty: \$20 000.

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

Division 2—Landscape regions and boards

Subdivision 1—Establishment of regions

11—Establishment of regions

- (1) The Governor may, by proclamation made on the recommendation of the Minister, divide the State into *landscape management regions*.
- (2) The Minister must, in formulating a recommendation for the purposes of subsection (1)—
- (a) give attention to the nature and form of the natural environment; and
 - (b) take into account relevant economic, social, cultural and local government boundaries or areas,
- (and may take into account such other matters as the Minister thinks fit).
- (3) The Governor may, by subsequent proclamation made on the recommendation of the Minister—
- (a) vary the boundaries of any landscape management region;
 - (b) abolish a landscape management region (on the basis that a new division is to occur).
- (4) If a proclamation is being made under subsection (3), the Governor may, by the same or a subsequent proclamation, make provision for any transitional or consequential matter, including for the transfer, apportionment or adjustment of property, assets, rights, liabilities or expenses as between any relevant regional landscape boards or the alteration or revision of any plan under this Act (and any such proclamation will have effect according to its terms and despite any other provision of this or any other Act, or any law, agreement or arrangement).
- (5) The Minister must, before a proclamation is made under subsection (3), give each peak body notice of the proposed proclamation under that subsection and give consideration to any submission made by any peak body within a period (being at least 21 days) specified in the notice.
- (6) This section applies subject to section 12.

12—Green Adelaide

- (1) A landscape management region known as *Green Adelaide* or the *Green Adelaide Region* must be established as one of the landscape management regions under section 11.

- (2) The area of Green Adelaide must be based (wholly or predominantly) on the urban areas of metropolitan Adelaide, as considered appropriate by the Governor on the recommendation of the Minister.
- (3) The Governor may, by proclamation made on the recommendation of the Minister, vary the boundaries of Green Adelaide from time to time.

Subdivision 2—Establishment of regional landscape boards

13—Establishment of boards

- (1) The Minister must, by notice in the Gazette, establish a regional landscape board for each landscape management region (other than for Green Adelaide).
- (2) A notice under subsection (1) must—
 - (a) identify the region in relation to which the regional landscape board is established; and
 - (b) assign a distinctive name to the regional landscape board; and
 - (c) set out functions of the regional landscape board (if any) that are additional to the functions prescribed by this Act.
- (3) The Minister may, by subsequent notice in the Gazette—
 - (a) vary a notice under this section (including by making a variation to the functions of the regional landscape board under subsection (2)(c));
 - (b) abolish a regional landscape board (on the basis that the relevant region is being abolished under Subdivision 1).
- (4) A notice relating to a regional landscape board under subsection (3) may provide for any transitional or consequential matter, including—
 - (a) by providing that the property, assets, rights or liabilities of the board will vest in or attach to—
 - (i) the Crown; or
 - (ii) a Minister; or
 - (iii) another body established under this Act; or
 - (iv) any other agency or instrumentality of the Crown; or
 - (v) with the agreement of the relevant person or body, a person or body specified in the notice; and
 - (b) by making provision with respect to any relevant regional landscape plan, water allocation plan, landscapes affecting activities control policy or water affecting activities control policy,

(and any such notice will have effect according to its terms and despite any other provision of this or any other Act, or any law, agreement or arrangement).
- (5) The Minister must, before publishing a notice under subsection (3), give each peak body notice of the Minister's intention to publish a notice under that subsection and give consideration to any submission made by any peak body within a period (being at least 21 days) specified in the notice.

- (6) In relation to Green Adelaide—
- (a) the regional landscape board is established by force of this subsection; and
 - (b) the name of the board is *Green Adelaide Board*; and
 - (c) the Minister may, by notice in the Gazette, set out functions of the Green Adelaide Board (if any) that are additional to the functions prescribed by this Act.

14—Corporate nature

- (1) A regional landscape board—
- (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) can sue and be sued in its corporate name; and
 - (d) is an instrumentality of the Crown and holds its property on behalf of the Crown; and
 - (e) has the functions and powers assigned or conferred by or under this or any other Act.
- (2) If a document appears to bear the common seal of a regional landscape board, it will be presumed, in the absence of proof to the contrary, that the common seal of the regional landscape board was duly fixed to the document.
- (3) A regional landscape board is subject to the direction and control of the Minister.

Subdivision 3—Membership of boards

15—Composition of boards

- (1) Subject to subsections (2) and (3) (and to the other provisions of this Act), a regional landscape board consists of—
- (a) 4 members appointed by the Minister; and
 - (b) 3 members elected by eligible electors.
- (2) The Green Adelaide Board consists of at least 6 and not more than 10 members appointed by the Minister.
- (3) A regional landscape board (other than Green Adelaide) may consist of at least 5 and not more than 9 members, all appointed by the Minister, if the Minister considers that a board wholly constituted by appointed members is preferable to a board constituted with some elected members due to special circumstances applying in the relevant region.
- (4) Of the members of a regional landscape board that are to be appointed by the Minister under subsection (1)(a), (2) or (3), at least 1 must be a member or officer of a council at the time of the member's appointment unless—
- (a) the board's region does not include any part of the area of a council; or
 - (b) the Minister cannot, after taking reasonable steps, find a member or officer of a council who—

- (i) in the opinion of the Minister, is suitable to be appointed as a member of the board; or
 - (ii) is willing and available to be a member of the board.
- (5) Before appointing a person or persons under subsection (1)(a), (2) or (3), the Minister must give each peak body notice of the fact that an appointment or appointments are to be made and give consideration to any submission made by any such body within a period (of at least 21 days) specified by the Minister.
- (6) At least 1 member of a regional landscape board must be a woman and at least 1 member must be a man.
- (7) The Minister must appoint a suitable member of a regional landscape board to be the presiding member of the board (and may from time to time revoke any such appointment and make a new appointment in the Minister's absolute discretion).
- (8) The Minister may appoint a suitable person to be the deputy of a member of a regional landscape board (and a person may be appointed as a deputy of more than 1 member).
- (9) A deputy may act as a member of a regional landscape board during any period of absence of the member in relation to whom the deputy has been appointed.
- (10) In the event of a vacancy in an office under subsection (1) (including on account of an insufficient number of members being elected to a regional landscape board under subsection (1)(b)), the Minister may appoint a suitable person to fill the vacancy.
- (11) A member who is filling a casual vacancy for an office that has been held by an elected member will be appointed for the balance of the term of that elected member.

16—Qualifications for membership

- (1) A regional landscape board must consist of persons who collectively have the knowledge, skills and experience necessary to enable the board to carry out its functions, including, so far as is reasonably practicable, knowledge, skills and experience across the following areas:
 - (a) community affairs at the regional level;
 - (b) primary production or pastoral land management;
 - (c) soil conservation and land management;
 - (d) conservation and biodiversity management;
 - (e) water resources management;
 - (f) business management;
 - (g) local government or local government administration;
 - (h) urban or regional planning;
 - (i) Aboriginal interest in the land and water, and Aboriginal heritage;
 - (j) pest animal and plant control;
 - (k) natural and social science;
 - (l) if relevant—coast, estuarine and marine management, fisheries or aquaculture.

- (2) In connection with subsection (1), a prospective member of a regional landscape board—
 - (a) must demonstrate that they have any skills, qualifications, knowledge or experience referred to in subsection (1) (and the Minister must put in place processes to ensure, so far as is reasonably practicable, that members of regional landscape boards have those skills, qualifications, knowledge or experience); and
 - (b) must satisfy any other requirements determined by the Minister in order to be eligible for appointment or election as a member of a regional landscape board under this Act.
- (3) The Minister should publish information about any determinations or processes applying under subsection (2)(b) (in such manner as the Minister thinks fit).

17—Board elections

- (1) Without limiting section 16, if a candidate nominated for election as a member of a regional landscape board in accordance with the regulations under subsection (2) does not have, in the opinion of the Minister, the necessary skills, qualifications, knowledge and experience, the Minister may determine that the person is ineligible to stand for election as a member of the board (and any such determination will have effect according to its terms).
- (2) The regulations may provide for a variety of matters relating to the nomination and election of members of regional landscape boards under section 15(1)(b), including by prescribing—
 - (a) provisions for determining who will be recognised as eligible electors for the purposes of an election; and
 - (b) subject to subsection (1), provisions for determining who is eligible to be nominated as a candidate for election as a member of a regional landscape board; and
 - (c) provisions for setting dates for—
 - (i) the close of nominations of candidates for the purposes of an election; and
 - (ii) the opening and closing of voting for the purposes of an election; and
 - (d) the procedures for the conduct of an election (which may include processes based on eligible electors only receiving voting papers or otherwise voting in an election if they have indicated an interest in participating in the election, and procedures for postal voting or electronic voting using the internet); and
 - (e) the method of voting and procedures for the counting of votes; and
 - (f) procedures for the declaration of successful candidates.
- (3) In connection with the operation of subsection (2)—
 - (a) to the extent that the region of a regional landscape board is within the area of a council—

- (i) a person who is enrolled on the voters roll for the area of that council under the *Local Government (Elections) Act 1999* on a date fixed or determined under the regulations will be an eligible elector for the purposes of a particular election; and
 - (ii) the eligibility of a person to be nominated as a candidate for election as a member of a regional landscape board will be based on eligibility to be a candidate for election as a member of the council under section 17(1)(a)(i) and (b), and (3)(a), (b) and (c) of the *Local Government (Elections) Act 1999* on a date fixed or determined under the regulations; and
- (b) to the extent that the region of a regional landscape board is outside the area of a council—
 - (i) the recognition of persons as eligible electors will be determined under a scheme based on qualification for enrollment under section 14 of the *Local Government (Elections) Act 1999* as if the relevant area were within the area of a council, with that section applying with any modifications prescribed by the regulations (including as to who will be taken to be the chief executive officer for the purposes of that section as applying under this Act); and
 - (ii) the eligibility of a person to be nominated as a candidate for election as a member of a regional landscape board will be determined under a scheme based on eligibility to be a candidate for election as a member of the council under section 17(1)(a)(i) and (b), and (3)(a), (b) and (c) of the *Local Government (Elections) Act 1999* as if the relevant area were within the area of a council, with that section applying with any modifications prescribed by the regulations.
- (4) In connection with the operation of subsection (3)—
 - (a) for the purposes of any election that relates to the area of a council, the council must provide, in accordance with the regulations, an up-to-date copy of the voters roll for the area of the council to the person who will be conducting the election by a date fixed or determined under the regulations; and
 - (b) for the purposes of any election that relates to an area outside the area of a council, the Electoral Commissioner must provide, in accordance with the regulations, an up-to-date extract from the voters roll for the House of Assembly that relates to the area to the person who will be conducting the election by a date fixed or determined under the regulations.
- (5) The relevant regional landscape board is liable to pay—
 - (a) for subsection (4)(a)—a fee, determined by the Minister after consultation with the LGA, to a council in connection with the council providing a copy of a voters roll; and
 - (b) for subsection (4)(b)—a fee, determined by the Minister after consultation with the Electoral Commissioner, to the Electoral Commission in connection with the Electoral Commissioner providing an extract of the voters roll for the House of Assembly.

- (6) Subsection (3)(a)(ii) and (b)(ii) operate subject to section 16 and to subsection (1) of this section.
- (7) If—
- (a) a council is constituted by an administrator or administrators (whether under the *Local Government Act 1999* or any other Act) at the time that the processes for the conduct of an election are commenced (being at a date determined by the Minister for the purposes of this subsection); and
 - (b) the Minister determines, by notice in the Gazette, that this subsection should apply for the purposes of the election (on the ground that it is not practicable or appropriate to use the council's voters roll for the purposes of the election),
- subsections (3), (4) and (5) will apply as if the council did not exist (and as if the area in relation to which the council is constituted were an area outside the area of a council).
- (8) A person elected to be a member of a regional landscape board will take office on a day determined by or under the regulations.
- (9) The Minister will appoint a person to conduct an election, or elections, for the purposes of this Part (and may from time to time revoke any such appointment and make a new appointment as the Minister thinks fit).

18—Conditions of membership

- (1) A member of a regional landscape board will hold office on conditions determined by the Minister.
- (2) The term of office of a member of a regional landscape board (other than the Green Adelaide Board) will be—
 - (a) in the case of an appointed member (other than in a case where section 15(11) applies)—a period not exceeding 4 years specified in the instrument of appointment; and
 - (b) in the case of an elected member—a period of 4 years from the date on which the member takes office, as determined by or under the regulations (unless the office becomes vacant under subsection (6)).
- (3) The term of office of a member of the Green Adelaide Board is a term not exceeding 3 years specified in the instrument of appointment.
- (4) A member of a regional landscape board is, at the expiration of a term of office, eligible for reappointment or re-election (as the case may be).
- (5) The Minister may remove a member of a regional landscape board from office—
 - (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for mental or physical incapacity to carry out duties of office satisfactorily; or
 - (c) for failing to discharge a responsibility under this Act, or for failing to work constructively in the performance of the member's functions or duties under this Act; or
 - (d) for dishonourable conduct; or

- (e) if serious irregularities have occurred in the conduct of the board's affairs or the board has failed to carry out its functions satisfactorily and the Minister considers that the board should be reconstituted for that reason.
- (6) The office of a member of a regional landscape board becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or
 - (d) is found guilty of an indictable offence; or
 - (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (f) is removed from office by the Minister under subsection (5).
- (7) This section does not limit the operation of section 43.

19—Allowances and expenses

A member of a regional landscape board is entitled to fees, allowances and expenses determined or approved by the Minister.

20—Validity of acts

An act or proceeding of a regional landscape board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

21—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of a regional landscape board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that—

- (a) the member has an interest in a matter that is shared in common with persons in the region for which the board is established generally, or in common with a substantial group of persons who have an interest in the administration of 1 or more aspects of this Act; or
- (b) the member has an interest in a matter as a member or officer of a constituent council or council subsidiary that has an interest in the matter.

Subdivision 4—Procedures at meetings

22—Procedures at meetings

- (1) The quorum for a meeting of a regional landscape board is determined by dividing the number of current members of the board by 2, ignoring any fraction, and adding 1.
- (2) If the presiding member is absent from a meeting, a member chosen by the members present at the meeting will preside at the meeting.
- (3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the regional landscape board.

- (4) Each member present at a meeting has 1 vote on any question arising for decision, and if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (5) A resolution of a regional landscape board—
 - (a) of which notice is given to all members of the board in accordance with procedures determined by the board; and
 - (b) in which a majority of members of the board express their concurrence in a manner determined by the board,will be taken to be a decision of the board made at a meeting of the board.
- (6) A regional landscape board must cause accurate minutes to be kept of its proceedings.
- (7) The regulations may make any other provision relating to the proceedings or procedures of a regional landscape board.
- (8) Subject to this Act and the regulations, a regional landscape board may determine its own procedures.

23—Meetings of boards to be held in public

- (1) Subject to this clause, a meeting of a regional landscape board must be conducted in a place open to the public.
- (2) A regional landscape board must give public notice of its intention to hold a meeting that will be open to the public in accordance with the requirements prescribed by the regulations.
- (3) The notice must state the time and place at which the meeting will be held.
- (4) The regulations may dispense with the requirement to give notice in prescribed circumstances.
- (5) A regional landscape board may order that the public be excluded from attendance at a meeting if the board considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider any prescribed information or matter in confidence.
- (6) A member of the public who, knowing that an order is in force under subsection (5), enters or remains in a room in which a meeting of the board is being held is guilty of an offence.
Maximum penalty: \$2 500.
- (7) If an order is made under subsection (5), a note must be made in the minutes of the making of the order and of the grounds on which it was made.

24—Agenda and minutes of meetings open to public to be made available

- (1) A regional landscape board must make available to members of the public copies of the agenda, and copies of the minutes, of each meeting, or the part of each meeting, that is open to members of the public by publishing them on a website determined by the board, or in such other manner prescribed by the regulations.
- (2) An agenda under subsection (1) must be made available at least 3 days before the meeting to which it relates is held except where the meeting is held in urgent circumstances.

Subdivision 5—Functions of boards (general)

25—Functions of boards (general)

- (1) The functions of a regional landscape board are—
- (a) to undertake, promote and integrate the management of natural resources within its region, with particular reference to land management, water resource management and pest animal and plant control, to build resilience in the face of change and to facilitate integrated landscape management and biodiversity conservation; and
 - (b) —
 - (i) to prepare a regional landscape plan and (where relevant) water allocation plans, landscapes affecting activities control policies and water affecting activities control policies, in accordance with this Act; and
 - (ii) to facilitate the implementation of those plans and policies; and
 - (iii) to monitor, evaluate and report on the extent of success of those plans and policies in achieving their objectives; and
 - (c) to promote public awareness and understanding of the importance of integrated and sustainable natural resources management within its region, to undertake or support educational initiatives with respect to natural resources management, and to provide mechanisms to increase the capacity of people to implement programs or to take other steps to improve the management of natural resources; and
 - (d) to provide advice with respect to the assessment of various activities or proposals referred to the board under this or any other Act; and
 - (e) to undertake an active role in ensuring, insofar as is reasonably practicable, that the board's regional landscape plan, water allocation plans and water affecting activities control policies, and the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016*, form a coherent set of policies and, in so doing, when an amendment to that Code that is relevant to the activities of the board is under consideration under that Act, to work with the entity or entities engaged in undertaking the amendment under that Act; and
 - (f) to undertake an active role in ensuring, insofar as is reasonably practical, that the board's regional landscape plan, landscape affecting activities control policies, water allocation plans and water affecting activities control policies, advance the objects of the *Native Vegetation Act 1991* and promote the conservation of wildlife as envisaged under the *National Parks and Wildlife Act 1972*; and
 - (g) at the request of the Minister, or on its own initiative, to provide advice on any matter relevant to the condition of landscapes within its region or on the management of those landscapes, or to provide any other advice or report that may be appropriate in the circumstances; and

- (h) to facilitate an understanding of, and to provide information to landowners on, land management, water management and pest animal and plant control, and other issues, relevant to landscape activities and, where necessary, to take action under this Act to ensure compliance with the provisions of this Act; and
 - (i) to assist in the management of any native animals that adversely affect the natural or built environments, people or primary production or other industries, or to facilitate action to mitigate or manage the impact of those native animals, by—
 - (i) supporting educational initiatives; or
 - (ii) identifying or promoting mechanisms to increase the capacity of people to implement programs to manage the native animals; or
 - (iii) supporting other steps or action to improve the management of native animals; or
 - (iv) providing information about the management of native animals in these circumstances; or
 - (v) taking any other action prescribed by the regulations.
 - (j) such other functions assigned to the board by the Minister or by or under this or any other Act.
- (2) To avoid doubt, a regional landscape board may act with respect to a particular matter despite the fact that the matter may not fall within the scope of its regional landscape plan.
- (3) In performing its functions, a regional landscape board should—
 - (a) set and adopt clear strategies; and
 - (b) create strong strategic and funding partnerships and pursue appropriate and cost-effective opportunities to deliver its work programs through partnerships or other arrangements with other entities, agencies or authorities; and
 - (c) work to support programs and projects involving State and local government agencies and authorities, academic and other leaders in relevant fields, non-government organisations and bodies, and the community.
- (4) A regional landscape board should also seek to work collaboratively with—
 - (a) the other regional landscape boards; and
 - (b) the constituent councils for the region, and other councils as may be relevant; and
 - (c) relevant sections and cross-sections of the community, including Aboriginal people; and
 - (d) persons who own and occupy land within the region of the board (insofar as may be relevant).
- (5) A regional landscape board will, with respect to the performance of its functions, report to the Minister.

- (6) Without limiting subsection (5), a regional landscape board must provide to the Minister (in a form specified by the Minister) such information relating to any aspect of the functions or operations of the board as the Minister may from time to time require.

Subdivision 6—Functions of Green Adelaide Board (additional provisions)

26—Green Adelaide Board (priority areas)

- (1) The functions of the Green Adelaide Board will involve leading innovation and achieving positive outcomes across the urban landscapes of the Green Adelaide Region with a particular focus on urban design and building resilience with respect to climate.
- (2) The Green Adelaide Board will adopt 7 key priorities relating to—
- (a) coastal management; and
 - (b) water resources and wetlands; and
 - (c) biodiversity sensitive and water sensitive urban design; and
 - (d) green streets and flourishing parklands; and
 - (e) fauna, flora and ecosystem health in the urban environment; and
 - (f) controlling pest animals and plants; and
 - (g) nature education.
- (3) The Green Adelaide Board will take a strategic leadership role in relation to these priorities and promote coordination and partnerships with other entities, agencies and authorities.
- (4) The Green Adelaide Board may (subject to any direction of the Minister)—
- (a) undertake a role in leading, promoting or supporting innovation and positive outcomes in relation to any of these priorities in any part of the State; and
 - (b) in connection with acting under paragraph (a), establish, support or facilitate programs in places outside the Green Adelaide Region.
- (5) This section does not limit any other function or activity of the Green Adelaide Board under this Act.

Subdivision 7—Funding and grants

27—Funding support

- (1) A regional landscape board should work to provide, or to facilitate or support the provision of, funding and grants to councils and other bodies, organisations, groups and persons—
- (a) to achieve outcomes that promote the objects of this Act and to assist the board to deliver its priorities under this Act; and
 - (b) without limiting paragraph (a)—to improve the state of natural resources after taking into account the board's regional landscape plan and its annual business plan.

- (2) A regional landscape board may provide financial or other assistance under this section on such conditions as the board thinks fit.
- (3) A regional landscape board must ensure that a report on any assistance provided under this section is included in its annual report.
- (4) The provision of financial assistance under this section does not extend to the making of a loan.

28—Grassroots Grants Programs

- (1) Without limiting any other provision, a regional landscape board must establish and maintain a *Grassroots Grants Program* for its region.
- (2) The purposes of a Grassroots Grants Program is to support individuals, and volunteer, community and other bodies, organisations and groups working at the local level on a not-for-profit basis, by making grants to undertake work or activities to achieve outcomes that promote the objects of this Act at the local level.
- (3) The amount to be made available on an annual basis by a regional landscape board for the purposes of its Grassroots Grants Program will be an amount determined by the Minister from time to time (being, if the Minister thinks fit, a percentage of contributions received by the board under Part 5).
- (4) The Minister may, for the purposes of this section, by information published in such manner as the Minister thinks fit—
 - (a) establish any requirements for making applications for grants; and
 - (b) establish criteria for the assessment and awarding of grants; and
 - (c) provide for any other related matter.
- (5) A regional landscape board may make a grant under this section on such conditions as the Minister may require or as the board thinks fit.
- (6) A regional landscape board must ensure that a report on the grants provided under this section is included in its annual report.

Subdivision 8—Powers of boards

29—General powers

- (1) A regional landscape board has the power to do anything necessary, expedient or incidental to—
 - (a) performing the functions of the board under this or any other Act; or
 - (b) assisting in the administration of this Act; or
 - (c) furthering the objects of this Act.
- (2) Without limiting the operation of subsection (1) (but subject to subsections (3) and (4)), a regional landscape board may—
 - (a) enter into any form of contract, agreement or arrangement; and
 - (b) acquire, hold, deal with and dispose of real and personal property or any interest in real or personal property; and

- (c) provide for the care, control, management, conservation or preservation of any natural resource; and
 - (d) seek expert, technical or other advice on any matter from any person on such terms and conditions as the board thinks fit; and
 - (e) carry out projects; and
 - (f) act in conjunction with any other authority or person.
- (3) A regional landscape board must not, without the approval of the Minister—
 - (a) undertake an activity with the object (or principal object) of securing a profit; or
 - (b) participate in any commercial or business activity.
- (4) The Minister may, by instrument in writing given to a regional landscape board, limit or regulate the powers of the board in any other respect.
- (5) Subject to any direction of the Minister, a regional landscape board may, as the board thinks fit, undertake activities outside its region.
- (6) Money received by a regional landscape board under this Act or in performing its functions or duties or exercising its powers under this Act is not payable into the Consolidated Account and may be applied by the board in accordance with the provisions of this Act without further appropriation by Parliament.
- (7) In this section—
project includes any form of work, scheme, undertaking or other activity.

30—Special powers to carry out works

- (1) Without limiting any other provision of this Act, a regional landscape board may—
 - (a) construct, maintain or remove any infrastructure; and
 - (b) excavate any land; and
 - (c) inspect, examine or survey any land and for that purpose—
 - (i) fix posts, stakes or other markers on the land; and
 - (ii) dig trenches or sink test holes in the land to determine the nature of the top soil and underlying strata; and
 - (iii) remove samples for analysis; and
 - (d) alter water table levels, stop or reduce the flow of water in a watercourse, divert water flowing in a watercourse to another watercourse or to a lake or control the flow of water in any other manner; and
 - (e) hold water in a watercourse or lake or by any other means; and
 - (f) divert water to an underground aquifer, dispose of water to a lake, underground aquifer or the sea, or deal with water in any other manner; and
 - (g) deepen, widen or change the course of a watercourse, deepen or widen a lake or take action to remove any obstruction to the flow of water; and
 - (h) undertake any other form of work (including work undertaken for the purposes of stormwater management or flood mitigation); and

- (i) undertake any testing, monitoring or evaluation; and
 - (j) undertake any other activity of a prescribed kind.
- (2) A regional landscape board must not exercise a power under subsection (1)(a), (b), (g) or (h) in relation to private land with the intention that any infrastructure, devices or works will be permanent unless—
 - (a) it is intended that the owner of the private land will undertake the care, control or management of any relevant infrastructure, devices or works and the regional landscape board is acting with the agreement of the owner; or
 - (b) the board has first acquired an easement or other appropriate interest over the relevant land.
- (3) Subsection (2) does not limit or affect the ability of a regional landscape board to acquire land by agreement for the purpose of constructing any infrastructure or performing any work.
- (4) Any work undertaken under this section must form part of a work program set out in the regional landscape board's annual business plan.
- (5) In this section—

lake includes an artificial lake, dam or reservoir.

31—Entry and occupation of land

- (1) For the purpose of carrying out an investigation or survey, or carrying out any work in an emergency, a regional landscape board, or a person authorised by a regional landscape board, may enter and occupy any land.
- (2) A regional landscape board or a person authorised by a regional landscape board that intends to enter, or to enter and occupy, land must give reasonable notice of that intention to the occupier of the land.
- (3) The period of the notice must be at least 2 business days except—
 - (a) where the occupier has given consent; or
 - (b) in an emergency, in which case the person proposing to enter must give such notice (if any) as the person considers is reasonable in the circumstances.
- (4) A regional landscape board or other person acting under this section may not enter residential premises except with the consent of the occupier.
- (5) A regional landscape board or other person entering or occupying land under this section—
 - (a) may occupy the land for so long as is reasonably required to exercise powers under subsection (1); and
 - (b) may do anything that is reasonably necessary to achieve the outcome or outcomes for which the entry was undertaken; and
 - (c) insofar as is reasonably practicable, must take steps to ensure that the land is maintained in such state, or restored to such state, as is reasonable in the circumstances; and
 - (d) must co-operate as far as practicable with any owner or occupier of the land.

- (6) A person must not, without reasonable excuse, obstruct or hinder a person exercising powers under this section.
Maximum penalty: \$10 000.
- (7) A person may use force to enter land (other than residential premises) under this section—
 - (a) on the authority of a warrant issued by a magistrate; or
 - (b) if the person believes, on reasonable grounds, that the circumstances require immediate entry on to the land.
- (8) A magistrate must not issue a warrant under subsection (7) unless satisfied, on information given on oath, that the warrant is reasonably required in the circumstances.
- (9) An application for a warrant under subsection (7)—
 - (a) may be made either personally or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

32—Special vesting of infrastructure

- (1) Subject to this section, the Governor may, by proclamation made on the recommendation of the Minister, vest in a regional landscape board the use of any infrastructure vested in or under the care, control or management of a public authority.
- (2) Subject to this section, the Governor may, by proclamation made on the recommendation of the Minister, vest in a regional landscape board the use of any land vested in or under the care, control or management of a public authority that is specified in the board's regional landscape plan as being land that should be under the care, control and management of the board.
- (3) Subject to subsection (4), if the use of infrastructure or land is vested in a regional landscape board under subsection (1) or (2), the care, control and management of the infrastructure or land is also vested in the board and the board is responsible for the maintenance and repair of the infrastructure or the maintenance of the land.
- (4) The use of infrastructure or land will be vested exclusively in a regional landscape board by a proclamation under subsection (1) or (2) unless the proclamation provides for the use to be shared by the board and a public authority in which case the proclamation must—
 - (a) specify the respective responsibilities of the board and the public authority for the care, control and management and the maintenance and repair of the infrastructure or land; and
 - (b) include any other conditions that are necessary or desirable, in the Governor's opinion, relating to the shared use of the infrastructure or land.
- (5) A regional landscape board is not liable to pay compensation to a public authority in respect of a proclamation under subsection (1) and (2).
- (6) Subject to this section, the Governor may, by subsequent proclamation made on the recommendation of the Minister, vary or revoke a proclamation under this section.

- (7) The Governor cannot make a proclamation under subsection (1), (2) or (6) in relation to infrastructure or land vested in or under the care, control or management of a council or council subsidiary without the consent in writing of the council or council subsidiary.

33—Landscapes affecting activities control policies

- (1) A prescribed authority may prepare a policy under this section (a *landscapes affecting activities control policy*) with respect to the conservation, management or protection of any landscapes through the implementation of policies and controls as set out in subsection (2).
- (2) A landscapes affecting activities control policy may—
- (a) outline practices relating to protecting land from unreasonable degradation, or an unreasonable risk of degradation; and
 - (b) make provision in connection with declarations made under Part 9 Division 1; and
 - (c) make provision in connection with the issuing of permits under section 197; and
 - (d) impose requirements with respect to the identification, reporting, protection, preservation or relocation of native animals and their habitats for the purposes of section 201; and
 - (e) include any other matter prescribed by the regulations.
- (3) A prescribed authority may amend a landscapes affecting activities control policy at any time (in accordance with the provisions of this Act).
- (4) Schedule 2 makes provision in relation to the review, preparation and amendment of a landscapes affecting activities control policy.
- (5) In this section—
prescribed authority means a regional landscape board and includes, in relation to Green Adelaide, the Chief Executive.

Subdivision 9—Staff

34—General manager

- (1) Each regional landscape board, other than Green Adelaide, is to have a general manager.
- (2) A general manager will be appointed by the Chief Executive of the Department on the recommendation of the relevant board.
- (3) A general manager will be a public sector employee but will not, while holding appointment under this section, be an employee in the Department.
- (4) A general manager will be appointed on terms and conditions determined by the Chief Executive after taking into account the recommendations of the relevant board (and may be removed from office as provided in those terms and conditions).
- (5) A general manager is responsible to the board for—
- (a) managing the board's business efficiently and effectively; and

- (b) supervising the staff engaged in the work of the board.
- (6) A general manager is designated as an employing authority for the purposes of the *Public Sector Act 2009* and is empowered to employ persons on behalf of the Crown under (and in accordance with) this Act.
- (7) A general manager will have a performance agreement that—
 - (a) is established by the relevant board after consultation between the presiding member of the board (on behalf of the board) and the general manager; and
 - (b) is subject to approval by the Chief Executive; and
 - (c) may be varied from time to time (in accordance with paragraphs (a) and (b) as if the variation were a new agreement).
- (8) In relation to the performance of a general manager—
 - (a) the presiding member of the board—
 - (i) will oversee the general manager's performance (on behalf of the board); and
 - (ii) will report to the Chief Executive as requested by the Chief Executive or as the presiding member thinks fit; and
 - (b) the Chief Executive will have responsibility for ensuring that the general manager complies with the terms and conditions of the general manager's appointment.
- (9) To avoid doubt, a person may be the general manager for more than 1 board.
- (10) The Chief Executive may, after consultation with the relevant board, appoint a person to act as the general manager of the board during a vacancy in the position of general manager or while the general manager is absent (if required).
- (11) A person appointed under subsection (10)—
 - (a) may be—
 - (i) a member of the staff of the board; or
 - (ii) a person appointed or engaged by the Chief Executive to undertake the role of general manager; and
 - (b) will hold office on terms and conditions determined by the Chief Executive after consultation with the board (and may be removed from office as provided in those terms and conditions); and
 - (c) in the case of an employee of the Department, may continue as such an employee during the term of appointment.

35—Staff

- (1) The following provisions of this section do not apply in relation to Green Adelaide:
 - (a) subsection (3)(a);
 - (b) subsections (4) to (10) (inclusive).
- (2) The staffing arrangements for a regional landscape board will be approved by the Minister after consultation with the board.

- (3) Any staff under subsection (2) will be—
- (a) if appointments have been made under subsection (4)—the persons holding those appointments; or
 - (b) Public Service employees assigned to work with the regional landscape board.
- (4) The general manager of a regional landscape board (as an employing authority) may employ a person to perform functions in connection with the operations or activities of the board.
- (5) The terms and conditions of employment of a person under subsection (4) will be determined by the general manager after obtaining the approval of the Commissioner for Public Sector Employment.
- (6) A person employed under subsection (4) will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).
- (7) The general manager may direct a person employed under subsection (4) to perform functions in connection with the operations of a public sector agency specified by the general manager (and the person must comply with that direction).
- (8) The general manager (as an employing authority) may delegate a power or function under this section.
- (9) A delegation under subsection (8)—
- (a) must be by instrument in writing; and
 - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
 - (c) may be absolute or conditional; and
 - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
 - (e) does not derogate from the ability of the general manager to act in any matter; and
 - (f) is revocable at will.
- (10) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (11) A regional landscape board must, at the direction of the Minister, make payments with respect to any matter arising in connection with the employment or work of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- (12) A regional landscape board does not have the power to employ any person.
- (13) In this section—
- public sector agency*** has the same meaning as in the *Public Sector Act 2009*.

Subdivision 10—Committees and other bodies

36—Committees and other bodies

- (1) A regional landscape board—
 - (a) must establish the committees or other bodies required by the Minister; and
 - (b) may establish such other committees or bodies as the board thinks fit, to advise or assist the board.
- (2) A committee or other body established under subsection (1) may, but need not, consist of or include members of the regional landscape board.
- (3) The procedures to be observed in relation to the conduct of the business of a committee or other body will be—
 - (a) as prescribed by regulation; or
 - (b) insofar as the procedure is not prescribed by regulation—as determined by the regional landscape board; or
 - (c) insofar as the procedure is not prescribed by regulation or determined by the regional landscape board—as determined by the committee or other body.
- (4) A regional landscape board may, with the approval of the Minister, pay fees or other forms of remuneration to the members of a committee or other body established by the board (at rates or according to other factors determined or approved by the Minister).

Subdivision 11—Power of delegation

37—Power of delegation

- (1) A regional landscape board may delegate a function or power of the board under this or any other Act—
 - (a) to a member of the board; or
 - (b) to a person holding office or acting under Subdivision 9 in the work of the board; or
 - (c) with the approval of the council—to a council or an officer of a council; or
 - (d) with the approval of the council subsidiary—to a council subsidiary or an officer of a council subsidiary; or
 - (e) to a committee or other body established under Subdivision 10; or
 - (f) with the approval of the Minister—to any other person or body.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the regional landscape board to act in any matter; and
 - (d) is revocable at will.

- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Subdivision 12—Accounts, audit and reports

38—Accounts and audit

- (1) A regional landscape board must cause proper accounts to be kept of its financial affairs and must cause financial statements to be prepared in respect of each financial year.
- (2) The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements required under subsection (1).

39—Annual reports

- (1) A regional landscape board must, on or before 30 November in every year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June (and the regional landscape board need not provide a report under the *Public Sector Act 2009*).
- (2) The report must—
- (a) include an assessment of the extent to which the regional landscape board has succeeded in implementing its regional landscape plan; and
 - (b) include the audited accounts and financial statements of the regional landscape board; and
 - (c) include a specific report on actual expenditure of amounts raised by levies for the relevant financial year against the regional landscape board's budget for that year; and
 - (d) include other information required by or under this Act or the regulations.
- (3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.
- (4) The relevant regional landscape board must ensure that copies of any report within the ambit of subsection (3) are made reasonably available to the public within 5 business days after being laid before both Houses of Parliament under that subsection.

40—Specific reports

The Minister may, by written notice to a regional landscape board, require the board to provide to the Minister, within a period stated in the notice or at stated intervals, any report or reports relating to any matter relevant to the operation of this Act, as the Minister thinks fit.

Subdivision 13—Related matters

41—Use of facilities

A regional landscape board may, by arrangement with the relevant body, make use of the services of the staff, equipment or facilities of—

- (a) an administrative unit in the Public Service; or

- (b) a public authority.

42—Assignment of responsibility for infrastructure to another person or body

- (1) A regional landscape board may assign any responsibility for the care, control or management of infrastructure—
 - (a) to an owner or occupier of land on which the infrastructure is situated if the relevant owner or occupier agrees to the assignment; or
 - (b) with the approval of the Minister, to a third party.
- (2) A regional landscape board must, before seeking the approval of the Minister under subsection (1)(b), give notice of the proposed assignment to any owner or occupier of the land and give consideration to any submission that the owner or occupier may make within a period (of at least 21 days) specified by the board, and then prepare a report on the matter (including details of any submission that has been made) for submission to the Minister.
- (3) An assignment under subsection (1) will be effected by agreement entered into in accordance with the regulations.
- (4) An agreement under subsection (3) may include arrangements for access to the land on which the infrastructure is situated.
- (5) The Registrar-General must, on an application by the relevant regional landscape board, note an agreement under subsection (3) against the instrument of title for the land where the infrastructure is situated or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land where the infrastructure is situated.
- (6) If a note has been entered under subsection (5), an arrangement for access to the relevant land is, despite the provisions of the *Real Property Act 1886*, binding on each owner of the land from time to time and on any occupier of the land.
- (7) The Registrar-General must, on the application of the relevant regional landscape board, enter a note of any rescission or amendment of an agreement under subsection (3) against the instrument of title, or against the land (but must otherwise ensure that the note is not removed once made).

43—Appointment of administrator

- (1) This section applies if the Minister considers—
 - (a) that a regional landscape board has refused or failed to perform, exercise or discharge a function, power or duty under this Act; or
 - (b) that there has been a serious irregularity in the conduct of the affairs of a regional landscape board; or
 - (c) that some or all of the members of a regional landscape board have failed to discharge any responsibility under this Act, or are failing to work constructively in the performance of their functions and duties under this Act; or
 - (d) that some other serious circumstance exists in relation to the governance or operations of a regional landscape board,and accordingly action should be taken by the Minister under this section.

- (2) The Minister must, before taking action under this section, give the members of the regional landscape board a reasonable opportunity to make submissions to the Minister about the matter or matters that have given rise to the proposed course of action.
- (3) The Minister may then, if the Minister thinks fit, by notice in the Gazette—
 - (a) declare that this section applies in relation to the regional landscape board; and
 - (b) appoint a suitable person to be administrator of the affairs of the board.
- (4) On making a declaration under subsection (3), all members of the regional landscape board cease to hold office.
- (5) An administrator will, until the Minister revokes the declaration, administer the affairs of the regional landscape board in the name of and on behalf of the regional landscape board (and for that purpose will have all the functions and powers of the regional landscape board).
- (6) Sections 15 to 22 (inclusive), and any other section of this Act prescribed by the regulations, do not apply in relation to the regional landscape board while an administrator is acting under this section.
- (7) The remuneration of an administrator (which will be determined by the Minister) and any liability incurred by the administrator in the course of the administration will be paid or satisfied out of the funds of the regional landscape board.
- (8) An administrator must report to the Minister at intervals determined by the Minister on the administration of the affairs of the regional landscape board.
- (9) The Minister may, by further notice in the Gazette, revoke a declaration under subsection (3).
- (10) A revocation under subsection (9) will take effect from a date specified by the Minister.
- (11) The Minister may, in a notice under subsection (9), do any of following (or any combination of the following):
 - (a) reinstate 1 or more members of the regional landscape board (on terms and conditions determined by the Minister for a term to be determined by the Minister);
 - (b) appoint 1 or more persons as members of the regional landscape board (on terms and conditions determined by the Minister for a term to be determined by the Minister);
 - (c) provide for the conduct of an election or elections to fill 1 or more vacancies in the membership of the board (with the election to take effect from a date determined by the Minister);
 - (d) provide for other matters associated with the reconstitution of the regional landscape board, including by specifying the terms of office of persons who take office under this subsection.

Part 3—State Landscape Strategy

44—State Landscape Strategy

- (1) The Minister must prepare and maintain a plan to be called the *State Landscape Strategy*.
- (2) The State Landscape Strategy is to set out principles, policies and high level strategic directions for achieving the objects of this Act throughout the State.
- (3) In connection with the operation of subsection (2), the State Landscape Strategy will—
 - (a) set out a long-term vision for managing the State's landscapes; and
 - (b) set out a guiding framework of principles and objectives for managing the State's natural resources; and
 - (c) support an effective and adaptive planning cycle for landscape management, with a particular emphasis on establishing links and alignment between State and regional planning; and
 - (d) set out high level principles for the Landscape Priorities Fund; and
 - (e) assess the state and condition of the natural resources of the State; and
 - (f) identify existing and future risks of damage to, or degradation of, the natural resources of the State; and
 - (g) provide for monitoring and evaluating the state and condition of the natural resources of the State; and
 - (h) identify outcomes that are expected to be achieved by the implementation of the strategy and timeframes for achieving those outcomes; and
 - (i) include or address other matters as may be contemplated by this Act or prescribed by the regulations.
- (4) The State Landscape Strategy must take into account—
 - (a) the key or strategic priorities of the regional landscape boards; and
 - (b) whole-of-government strategies and priorities that are relevant to the operation of this Act; and
 - (c) the best available climate science information.
- (5) The State Landscape Strategy must include a framework for measuring the success of the State Landscape Strategy.
- (6) The Minister must review the State Landscape Strategy at least once in every 10 years.
- (7) A review under subsection (6) must include a review of the success of the State Landscape Strategy after taking into account the outcomes sought to be achieved by the State Landscape Strategy.

45—Related provisions

- (1) Subject to subsections (2) and (3), the Minister should, in establishing or reviewing the State Landscape Strategy under section 44, undertake such consultation as the Minister determines to be necessary and appropriate taking into account—
 - (a) the status and scope of the State Landscape Strategy; and
 - (b) the need to promote government and community involvement in strategic policy planning under the Act.
- (2) The Minister must at least, in acting under subsection (1), consult with each peak body.
- (3) The Minister must at least, in acting under subsection (1), consult with bodies (other than peak bodies) that are, in the opinion of the Minister, bodies interested or involved in management of the State's landscapes.
- (4) At the conclusion of a review under section 44(6), the Minister must prepare a report on the outcome of the review and publish the report in such manner as the Minister considers appropriate.
- (5) The Minister may amend the State Landscape Strategy at any time after undertaking such consultation as the Minister determines to be necessary and appropriate after taking into account the status of the State Landscape Strategy and the extent of the proposed amendment.
- (6) The Minister must ensure that up-to-date copies of the State Landscape Strategy are made reasonably available to the public.
- (7) The State Landscape Strategy is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).

Part 4—Regional and water allocation plans

Division 1—Regional landscape plans and business plans

46—Preparation of regional landscape plans

A regional landscape board must prepare and maintain a plan for the purposes of its operations and to promote the objects of this Act through managing landscapes within its region (a *regional landscape plan*).

47—Key features of plan

- (1) A regional landscape plan must—
 - (a) include information about the issues surrounding the management of natural resources and the state of landscapes at the regional and local level, including information as to methods for protecting, improving and enhancing the quality or value of natural resources within the relevant region, and the health of those aspects of the environment that depend on those natural resources; and
 - (b) include—
 - (i) in the case of the Green Adelaide Board—a 5 year strategic plan that is focussed on its 7 key priorities; or

- (ii) in the case of any other regional landscape board—a 5 year strategic plan that is focussed on its 5 strategic priorities; and
 - (c) in the case of the priorities included under paragraph (b)(ii)—information about how the priorities were determined, including through identifying and taking into account local priorities and needs, scientific and other relevant expert information and advice, Aboriginal traditional knowledge, and other relevant information, evidence and factors; and
 - (d) include information about how these priorities are expected to maintain, protect, improve or enhance the state of landscapes at the regional and local level, with particular reference to the conservation, use and management of natural resources, after taking into account—
 - (i) the nature, extent, quality and value of those landscapes; and
 - (ii) environmental, social, cultural, economic and practical considerations relating to the use, management, conservation, protection, improvement and, if relevant, rehabilitation, of those landscapes; and
 - (iii) appropriate methods associated with the conservation and use of land, the management of water and water affecting activities, and the management of pest species of animals and plants; and
 - (iv) other prescribed matters; and
 - (e) set out the method or methods that the board will use to assess the extent to which it has succeeded in implementing the plan, and its business plan; and
 - (f) include such other information or material contemplated by this Act or required by the regulations.
- (2) A regional landscape plan must take into account the best available climate science information.
- (3) A regional landscape plan should be consistent with the State Landscape Strategy.
- (4) A regional landscape plan, when adopted, (and amendments made to a plan when adopted) should, as far as practicable, be consistent with such other plans, policies, strategies or guidelines as are prescribed by the regulations.
- (5) In addition, a plan must—
- (a) address, adopt or incorporate any plan, policy or strategy specified by the Minister; and
 - (b) address, and be consistent with, any intergovernmental agreement specified by the Minister.
- (6) A regional landscape board must, in preparing and reviewing its regional landscape plan, give due consideration to the plans of other boards insofar as this may be relevant to issues or activities under its plan.

- (7) A council or council subsidiary must, when performing functions or exercising powers under the *Local Government Act 1999* or any other Act, have regard to any regional landscape plan that applies within the relevant area and in particular must give consideration to the question whether it should implement changes to the manner in which, or the means by which, it performs a function or exercises a power or undertakes any other activity that has been identified in the plan as requiring change.
- (8) A plan must be in a form determined or approved by the Minister.
- (9) A regional landscape board may amend its regional landscape plan at any time (in accordance with the provisions of this Act).

48—Review of plan

- (1) A regional landscape board must review its regional landscape plan on a comprehensive basis at least once in every 5 years.
- (2) The purpose of a comprehensive review under subsection (1) is to—
 - (a) provide a review of the extent to which the implementation of the plan has been successful in maintaining, protecting, improving or enhancing the state of landscapes at the regional and local level; and
 - (b) assess or address any other matter prescribed by the regulations.
- (3) A regional landscape board may also review any aspect of its regional landscape plan at any time.
- (4) In undertaking a review under subsection (1) or (3), the regional landscape board will undertake such consultation as the board determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this section.
- (5) The consultation referred to in subsection (4) must also comply with any requirements prescribed by the regulations.
- (6) At the conclusion of a review under subsection (1), the regional landscape board must—
 - (a) report to the Minister on the outcome of the review; and
 - (b) make a public statement about the outcome of the review in such manner, and to such extent, as the board thinks appropriate.

49—Consultation associated with preparation of a plan or amendment

- (1) A regional landscape board proposing to create or amend a regional landscape plan must undertake such consultation as the board determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this section.
- (2) The consultation referred to in subsection (1) must also comply with any requirements prescribed by the regulations.
- (3) In connection with subsections (1) and (2), consultation on any proposed amendments to a regional landscape plan may be undertaken as part of a review of the plan under section 48.
- (4) The board must, at the time that it furnishes a proposal to the Minister to approve a regional landscape plan, or an amendment to a regional landscape plan, provide a report on the consultation undertaken by the board for the purposes of this section (and this report may be included as part of a report to the Minister under section 48).

- (5) A report under subsection (4) must provide information about any matters raised during consultation and comply with any requirements prescribed by the regulations.
- (6) A regional landscape board may, at the end of the processes referred to above, propose any amendments to the regional landscape plan as it thinks fit (and is not required to repeat the processes on account of any change to its original proposal or proposals).

50—Approval of Minister

- (1) Subject to this Act, a regional landscape plan, or an amendment of a regional landscape plan, does not have effect unless or until it has been approved by the Minister.
- (2) The Minister may, on receiving a proposal to approve a plan, or the amendment of a plan, (a *plan proposal*)—
 - (a) approve the plan proposal with or without amendment; or
 - (b) refer the plan proposal back to the board for further consideration.
- (3) The Minister must consult with the regional landscape board before making an amendment under subsection (2)(a).
- (4) If the Minister refers a plan proposal back to the regional landscape board, the board must take any further action specified by the Minister to reconsider the plan proposal (and the board may take such other action as it thinks fit), and then the board must refer the plan proposal (with or without amendment) back to the Minister.
- (5) After a regional landscape board has complied with subsection (4), the Minister may—
 - (a) approve the plan proposal with or without amendment; or
 - (b) refer the plan proposal back to the board again (in which case subsection (4) will again apply); or
 - (c) lay the plan proposal aside.
- (6) In a case where subsection (5)(b) applies, the Minister may, after the board has complied with subsection (4)—
 - (a) approve the plan proposal with or without amendment; or
 - (b) lay the plan proposal aside.
- (7) If the Minister lays a plan proposal aside, the Minister may give directions to the regional landscape board as to what steps the board should take in the circumstances.
- (8) The preceding subsections do not apply to an amendment of a regional landscape plan if—
 - (a) the amendment is to achieve consistency with any other plan under this Act, or to achieve consistency with any other plan, policy, strategy, program or guideline prescribed by the regulations; or
 - (b) the amendment is otherwise authorised by the regulations.
- (9) A regional landscape board must ensure that up-to-date copies of its regional landscape plan are made reasonably available to the public.

51—Annual business plan

- (1) A regional landscape board must prepare a business plan for each financial year (an *annual business plan*).
- (2) An annual business plan must be in a form determined or approved by the Minister and be prepared in accordance with any prescribed requirements.
- (3) An annual business plan must include—
 - (a) the regional landscape board's budget for the relevant financial year; and
 - (b) without limiting paragraph (a)—prescribed information with respect to amounts proposed to be recovered by the regional landscape board under Part 5 in relation to the relevant financial year; and
 - (c) information that clearly shows proposed expenditure for each of the regional landscape board's key or strategic priorities; and
 - (d) information about the board's staffing arrangements or plans for the relevant financial year; and
 - (e) such other information as may be contemplated by this Act or prescribed by the regulations.
- (4) Without limiting any other provision, the annual business plan must clearly show any proposal of the regional landscape board—
 - (a) to require a contribution from the constituent councils for the region under Part 5 Division 1 Subdivision 1 where it has not required such a contribution in relation to the financial year immediately preceding the relevant financial year; or
 - (b) to require a contribution from the constituent councils for the region under Part 5 Division 1 Subdivision 1 which will require the approval of the Minister under section 66(5); or
 - (c) for a change to be made to the basis of a levy under section 69(3); or
 - (d) to require a contribution from persons who occupy land outside council areas under Part 5 Division 1 Subdivision 2 where it has not required such a contribution in relation to the financial year immediately preceding the relevant financial year; or
 - (e) to require a contribution under Part 5 Division 1 Subdivision 2 which will require the approval of the Minister under section 71(10); or
 - (f) to make a change to the basis of a levy under section 71(4); or
 - (g) for a new levy to be imposed under Part 5 Division 2; or
 - (h) for the Minister to act under section 76(17)(b); or
 - (i) for a change to be made to the basis of a levy under section 76(7).

- (5) If a regional landscape board is intending to include in its annual business plan any proposal referred to in subsection (4) (referred to in the following subsections as a *prescribed levy proposal*), the board must—
- (a) publish, in accordance with any guidelines specified by the Minister for the purposes of this subsection, information relating to the proposal as well as a notice inviting members of the public to provide it with written submissions in relation to the proposal within a specified period (which must be at least 21 days); and
 - (b) in a case where the proposal relates to the payment (or proposed payment) of contributions by constituent councils under Part 5 Division 1 Subdivision 1—take steps to consult with each constituent council to the extent required by the regulations; and
 - (c) at the conclusion of the processes and consultation required under paragraphs (a) and (b)—prepare a report to the Minister on the outcome of those processes and that consultation.
- (6) When an annual business plan has been prepared in accordance with the preceding subsections, the regional landscape board must provide the plan to the Minister in accordance with the regulations.
- (7) The annual business plan must be accompanied by any report required under subsection (5)(c).
- (8) An annual business plan requires the approval of the Minister if—
- (a) it is inconsistent with the board's regional landscape plan; or
 - (b) it contains a prescribed levy proposal.
- (9) The Minister, in considering whether to approve an annual business plan under subsection (8)(b)—
- (a) must take into account—
 - (i) the report provided to the Minister under subsection (7); and
 - (ii) the requirements of section 66(5), 71(10) or section 76(17)(b) (if relevant); and
 - (b) may take into account such other matters as the Minister thinks fit.
- (10) If the Minister gives an approval under subsection (8)(b), the Minister must prepare a report on the matter and cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after so acting.
- (11) The House of Assembly may, by resolution passed within 6 sitting days after a report has been laid before it under subsection (10)—
- (a) resolve that it does not object to a prescribed levy proposal; or
 - (b) resolve to suggest amendments to a prescribed levy proposal; or
 - (c) resolve to disallow a prescribed levy proposal.
- (12) If, at the expiration of 6 sitting days, the House of Assembly has not made a resolution under subsection (11), it will be conclusively presumed that the House of Assembly does not object to the prescribed levy proposal and does not propose to suggest any amendments to it (and in this case the prescribed levy proposal may proceed).

- (13) If an amendment is suggested under subsection (11)(b)—
- (a) the Minister may make the amendment (and then the prescribed levy proposal, as amended, may proceed); or
 - (b) the Minister must report back to the House of Assembly that the Minister is not willing to make the amendment and, in this case, the House of Assembly may resolve that it does not object to the prescribed levy proposal as originally approved by the Minister (and in this case the prescribed levy proposal may proceed), or may resolve to disallow the prescribed levy proposal.
- (14) If the House of Assembly passes a resolution to disallow a prescribed levy proposal—
- (a) the prescribed levy proposal ceases to have effect; and
 - (b) the business plan will be taken to provide for an increase from the amount to be paid in relation to the immediately preceding financial year, adjusted to take account the percentage change in CPI as described in section 66(4), 71(9) or 76(16) (as the case may be and including in a case where the proposal was, or included, a proposal to change the basis of a levy).
- (15) A regional landscape board may adjust its annual business plan from time to time as circumstances require.
- (16) If a regional landscape board makes a material adjustment to its annual business plan, the regional landscape board must provide a copy of the business plan (as adjusted) to the Minister (and such an adjustment will require the approval of the Minister in circumstances prescribed by the regulations).
- (17) A regional landscape board must ensure that up-to-date copies of its annual business plan are made reasonably available to the public.

Division 2—Water allocation plans

52—Preparation of water allocation plans

- (1) Subject to subsection (2), a regional landscape board must prepare a water allocation plan—
- (a) for each prescribed water resource in its region; and
 - (b) for any prescribed water resource, situated in more than 1 region, which is located in its region more than in any other region (with any question as to the application of this paragraph being determined by the Minister).
- (2) The Chief Executive may, if determined by the Minister, prepare a water allocation plan for any prescribed water resource if—
- (a) the whole or any part of the water resource is within the Green Adelaide Region; or
 - (b) the Minister considers that special circumstances apply.
- (3) For the purposes of subsection (2)(b), special circumstances include—
- (a) that an administrator has been appointed under section 43; or
 - (b) that the relevant regional landscape board has failed to prepare a water allocation plan in a timely manner (as determined by the Minister).

- (4) A water allocation plan may relate to more than 1 prescribed water resource.
- (5) An entity entitled to prepare a water allocation plan is also responsible to review, or entitled to prepare an amendment to, a water allocation plan (in accordance with the provisions of this Act and on the basis that subsections (1) and (2) also apply to any review or amendment in the same way as those subsections apply to the preparation of a water allocation plan).
- (6) If the Chief Executive is the designated entity for a water allocation plan, the Chief Executive must take reasonable steps to consult with any regional landscape board within whose region the relevant prescribed water resource is situated (in whole or in part) in undertaking the key processes and procedures set out in this Division.
- (7) If—
 - (a) a regional landscape board is the designated entity for a water allocation plan; and
 - (b) the relevant prescribed water resource is situated in more than 1 region, the regional landscape board must take reasonable steps to consult with any other regional landscape board in whose area a part of the prescribed water resource is situated in undertaking the key processes and procedures set out in this Division.
- (8) A reference in this Division or Division 3, or in Part 8, to a *designated entity* is a reference to an entity that is able to prepare, review or amend a water allocation plan under this section.

53—Key features of plan

- (1) A water allocation plan—
 - (a) must include—
 - (i) an assessment of the quantity and quality of water needed by the ecosystems that depend on the water resource and the times at which, or the periods during which, those ecosystems will need that water; and
 - (ii) an assessment as to whether the taking or use of water from the resource will have a detrimental effect on the quantity or quality of water that is available from any other water resource; and
 - (b) must include—
 - (i) an assessment of the capacity of the water resource to meet environmental water requirements; and
 - (ii) information about the water that is to be set aside for the environment including, insofar as is reasonably practicable, information about the quantity and quality of that water, the time when that water is expected to be made available, and the type and extent of the ecosystems to which it is to be provided; and
 - (iii) a statement of the environmental outcomes expected to be delivered on account of the provision of environmental water under the plan; and

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- (c) must determine, or provide a mechanism for determining, from time to time, a consumptive pool, or consumptive pools, for the water resource; and
 - (d) must 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
 - (e) in providing for the allocation of water, must take into account the present and future needs of the occupiers of land in relation to the existing requirements and future capacity of the land and the likely effect of those provisions on the value of the land; and
 - (f) must assess the capacity of the resource to meet the demands for water on a continuing basis and provide for regular monitoring of the capacity of the resource to meet those demands; and
 - (g) must identify and assess methods for the conservation, use and management of water in an efficient and sustainable manner; and
 - (h) in connection with the conservation, management or protection of the water resource, may—
 - (i) make provision for the requirement to have a water management authorisation or a permit under Part 8 Division 2 to undertake an activity specified in the water allocation plan; and
 - (ii) make provision for the identification of the relevant authority for the purposes of the application and implementation of the provisions of the water allocation plan under Part 8 Division 2; and
 - (iii) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a water management authorisation or a permit under Part 8 Division 2 or Division 3; and
 - (iv) make provision for or in relation to the conditions of any water management authorisation or permit issued under Part 8 Division 2 or Division 3; and
 - (i) may identify the changes (if any) considered by the designated entity to be necessary or desirable to any statutory instrument, plan or policy (including subordinate legislation); and
 - (j) may include a framework for measuring the success of the water allocation plan; and
 - (k) may include such other information or material contemplated by this Act or required or authorised by the regulations.
- (2) A water allocation plan that relates to a surface water prescribed area may declare water in a prescribed watercourse, or a particular part of a prescribed watercourse, that is located within the boundary of the surface water prescribed area as forming part of the surface water prescribed area.

- (3) If a declaration is made under subsection (2)—
 - (a) the declaration will have effect according to its terms; and
 - (b) the water to which it relates, and the surface water, will be taken to form part of a single prescribed water resource; and
 - (c) the water allocation plan may account for and manage the relevant water as part of the prescribed water resource to which it relates (including as to any requirement for a water management authorisation).
- (4) A water allocation plan may provide for the constitution of 1 or more consumptive pools with respect to a particular part of a water resource and, in relation to those consumptive pools, may do any of the following (in any combination):
 - (a) assign the same purpose to more than 1 consumptive pool;
 - (b) assign different purposes to different consumptive pools;
 - (c) assign different purposes to a consumptive pool;
 - (d) not assign any purpose to a consumptive pool or consumptive pools.
- (5) The basis on which a water access entitlement is to be determined may be expressed—
 - (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
 - (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
 - (d) on any basis prescribed by the regulations; or
 - (e) on any other basis that the designated entity considers should apply under the water allocation plan.
- (6) The periods specified for the purposes of a water access entitlement may be recurrent periods (such as financial years).
- (7) 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 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 section 137 or 144.

- (8) 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.
- (9) If the taking, or the taking and use, of water from a water resource has, or is likely to have, a detrimental effect on the quantity or quality of water that is available from another water resource, the water allocation plan for the first mentioned resource must take into account the needs of persons and ecosystems using water from the other resource as well as the needs of persons and ecosystems using water from its own resource and may, to achieve an equitable balance between competing interests, include provisions designed to prevent or reduce those detrimental effects.
- (10) If the taking, or the taking and use, of water from a water resource affects, or is likely to affect, the management of water in another water resource, the water allocation plan for the second mentioned water resource may include provisions relating to the taking, or the taking and use, of water from the first mentioned water resource.
- (11) A water allocation plan may, in order to improve the management of a water resource, change the basis on which water is allocated from the resource notwithstanding that a consequential variation of a water licence to maintain consistency with the plan results in a reduction or increase in the quantity of water allocated in relation to the licence.
- (12) For the purposes of this section, environmental water requirements are those water requirements that must be met in order to sustain the ecological values of ecosystems that depend on the water resource, including their processes and biodiversity, at a low level of risk.
- (13) A water allocation plan may, in connection with the management of a prescribed water resource—
 - (a) set out or identify appropriate principles and methodologies to determine the impact that commercial forests may have on the prescribed water resource and, on the basis of those principles and methodologies, specify hydrological values, as measurements of hydrological impact, that may be assigned to various classes of commercial forest; and
 - (b) designate commercial forests, or commercial forests of a specified class or classes, within a defined area as commercial forests that, on account of assessments undertaken by the regional landscape board, have been identified as being appropriate to bring within the ambit of Part 8 Division 6 Subdivision 2 on account of their impacts on the prescribed water resource (taking into account the requirements of that Division); and
 - (c) set out policies or criteria that are to apply for the purposes of determining the extent to which a water allocation under Part 8 Division 6 should be varied in various cases (which may include circumstances that lead to an allocation being reduced to zero).
- (14) A water allocation plan may, for the purposes of subsection (13) do the following:
 - (a) make different provision as to any principles, methodologies or values according to any matter or circumstance specified by the designated entity;
 - (b) specify values (as measurements of hydrological impact) according to any number of trees, volume, area, year or other factor (as determined by the designated entity);

- (c) exclude specified forests, or forests of a specified class, from a designation under subsection (13)(b) (so as to exclude them from the operation of Part 8 Division 6 Subdivision 2).
- (15) A designation under subsection (13)(b) may be made on the basis of an assessment of hydrological impacts that the commercial forests are having, or may be expected to have, on the prescribed water resource.
- (16) A summary of the assessments undertaken for the purposes of subsection (13)(b) must be included in the water allocation plan.
- (17) For the purposes of subsections (13) and (14), hydrological impacts may be determined according to an assessment by the designated entity of 1 or more of the following:
 - (a) groundwater recharge reduction;
 - (b) surface water run off reduction;
 - (c) direct extraction from aquifers;
 - (d) any impact prescribed by the regulations.
- (18) To avoid doubt, a water allocation plan may make provision under subsection (13) in relation to 1 or more commercial forests despite the fact that the commercial forest or commercial forests have not been the subject of a notice under section 101(7).
- (19) A water allocation plan should be consistent with the State Landscape Strategy.
- (20) A water allocation plan, when adopted, (and amendments made to a water allocation plan when adopted) should, as far as practicable, be consistent with such other plans, policies, strategies or guidelines as are prescribed by the regulations.
- (21) In addition, a water allocation plan must—
 - (a) address, adopt or incorporate any plan, policy or strategy specified by the Minister; and
 - (b) address, and be consistent with, any intergovernmental agreement specified by the Minister.
- (22) A designated entity must, in preparing and reviewing a water allocation plan, give due consideration to any other water allocation plan insofar as this may be relevant to the water allocation plan.
- (23) In the event of an inconsistency between a regional landscape plan and a water allocation plan, the water allocation plan will prevail to the extent of the inconsistency.
- (24) A plan must be in a form determined or approved by the Minister.

54—Review of plan

- (1) A designated entity must review a water allocation plan on a comprehensive basis at least once in every 10 years.
- (2) The purpose of a comprehensive review under subsection (1) is to—
 - (a) provide a review of—
 - (i) the principles reflected in the plan; and

- (ii) the success of the plan after taking into account the outcomes sought to be achieved by the water allocation plan; and
- (b) provide an assessment of whether the water allocation plan remains appropriate or requires amendment; and
- (c) assess or address any other matter prescribed by the regulations.
- (3) A designated entity may also review any aspect of a water allocation plan at any time.
- (4) In undertaking a review under subsection (1) or (3), the designated entity will undertake such consultation as the designated entity determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this section.
- (5) The consultation referred to in subsection (4) must also comply with any requirements prescribed by the regulations.
- (6) At the conclusion of a review under subsection (1), the designated entity must—
 - (a) report to the Minister on the outcome of the review; and
 - (b) make a public statement about the outcome of the review in such manner, and to such extent, as the designated entity thinks appropriate.

55—Consultation associated with preparation of a plan or amendment

- (1) A designated entity proposing to create or amend a water allocation plan must undertake such consultation as the designated entity determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this section.
- (2) The consultation referred to in subsection (1) must—
 - (a) in the case of a proposal to create a water allocation plan—provide for a period of public consultation for at least 2 months from the time that a draft of the plan is released to the public; and
 - (b) comply with any other requirements prescribed by the regulations.
- (3) In connection with subsections (1) and (2)—
 - (a) consultation on any proposed amendments to a water allocation plan may be undertaken as part of a review of the plan under section 54; and
 - (b) if the proposal would lead to a reduction of existing water access entitlements or water allocations in connection with water licences in respect of the water resource, or a change to a consumptive pool, the designated entity must ensure that the holders of the licences affected by the reduction or change are notified of the proposal in accordance with the regulations (and provided with a reasonable opportunity to make representations in respect of the matter).
- (4) A designated entity must, at the time that it furnishes a proposal to the Minister to approve a water allocation plan, or an amendment to a water allocation plan, provide a report on the consultation undertaken by the designated entity for the purposes of this section (and this report may be included as part of a report to the Minister under section 54).
- (5) A report under subsection (4) must provide information about any matters raised during consultation and comply with any requirements prescribed by the regulations.

- (6) A designated entity may, at the end of the processes referred to above, propose any amendments to the water allocation plan as it thinks fit (and is not required to repeat the processes on account of any change to its original proposal or proposals).

56—Approval of Minister

- (1) Subject to this Act, a water allocation plan, or an amendment of a water allocation plan, does not have effect unless or until it has been approved by the Minister.
- (2) The Minister may, on receiving a proposal to approve a plan, or the amendment of a plan, (a *plan proposal*)—
 - (a) approve the plan proposal with or without amendment; or
 - (b) refer the plan proposal back to the designated entity for further consideration.
- (3) The Minister must consult with the designated entity before making an amendment under subsection (2)(a).
- (4) If the Minister refers a plan proposal back to the designated entity, the designated entity must take any further action specified by the Minister to reconsider the plan proposal (and the designated entity may take such other action as it thinks fit), and then the designated entity must refer the plan proposal (with or without amendment) back to the Minister.
- (5) After the designated entity has complied with subsection (4), the Minister may—
 - (a) approve the plan proposal with or without amendment; or
 - (b) refer the plan proposal back to the designated entity again (in which case subsection (4) will again apply); or
 - (c) lay the plan proposal aside.
- (6) In a case where subsection (5)(b) applies, the Minister may, after the designated entity has complied with subsection (4)—
 - (a) approve the plan proposal with or without amendment; or
 - (b) lay the plan proposal aside.
- (7) If the Minister lays a plan proposal aside, the Minister may give directions as to what steps should be taken in the circumstances.
- (8) The preceding subsections do not apply to the amendment of a water allocation plan if—
 - (a) the amendment is to achieve consistency with any other plan under this Act, or to achieve consistency with any other plan, policy, strategy, program or guideline prescribed by the regulations; or
 - (b) the amendment is otherwise authorised by the regulations.
- (9) A regional landscape board must ensure that up-to-date copies of any water allocation plan that relates to a prescribed water resource within its region are made reasonably available to the public.

57—Early adoption of plan

- (1) A draft water allocation plan or amendments to a water allocation plan that have not been approved by the Minister under section 56 may be implemented by the regional landscape board with the consent of the Minister under this section and, if subsection (2) applies, the consent of the Minister for the time being administering the *Water Industry Act 2012*.
- (2) The consent of the Minister for the time being administering the *Water Industry Act 2012* is required under subsection (1) if, in the opinion of the Minister for the time being administering this Act, implementation of the plan or the amendments under subsection (1) would affect the quality or quantity of water flowing into any infrastructure under the *Water Industry Act 2012*.
- (3) If the Minister and the Minister for the time being administering the *Water Industry Act 2012* cannot reach agreement for the purposes of subsection (2), the Minister may take steps to refer the matter to the Governor and the Governor will determine the matter (and any decision taken by the Governor will be taken to be a decision of both Ministers for the purposes of this section).

Division 3—Related matters**58—Application of Division**

This Division applies to a plan under Division 1 or Division 2.

59—Validity of plans

- (1) A plan, or a provision of a plan, is not invalid because it is inconsistent with the State Landscape Strategy.
- (2) A failure of a regional landscape board to comply with a requirement of this Part cannot be taken to affect the validity of a plan, or any other instrument under this Act.

60—Promotion of River Murray legislation and IGA

To the extent that a plan applies to the Murray-Darling Basin or in relation to the River Murray, the plan should—

- (a) seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act; and
- (b) be consistent with—
 - (i) the terms or requirements of the Murray-Darling Basin Agreement, and any relevant resolution of the Ministerial Council under that agreement; and
 - (ii) any relevant provisions of the Basin Plan under the *Water Act 2007* of the Commonwealth,
 (insofar as they may be relevant).

61—Associated Ministerial consents

- (1) Subject to subsection (4), if in the opinion of the Minister the implementation of a plan would affect the quality or quantity of water flowing into any water infrastructure under the *Water Industry Act 2012*, the Minister must not approve the plan without the consent of the Minister for the time being administering that Act.
- (2) Subject to subsection (4), if in the opinion of the Minister the implementation of a plan would adversely affect any native animal or native plant that is subject to any form of control under the *National Parks and Wildlife Act 1972*, the Minister must not approve the plan without the consent of the Minister for the time being administering that Act.
- (3) Subject to subsection (4), if in the opinion of the Minister the implementation of a plan would result in the clearance of any native vegetation, the Minister must not approve the plan without the consent of the Minister for the time being administering the *Native Vegetation Act 1991*.
- (4) If the relevant Ministers cannot reach agreement on a plan under subsection (1), (2) or (3), the Minister administering this Act may approve the plan with the consent of the Governor.

62—Amendment of plans without formal procedures

- (1) The Minister may amend a plan in order—
 - (a) to take action which, in the opinion of the Minister, is addressing—
 - (i) an unfair, inappropriate or unsustainable assumption or position contained or reflected in the plan; or
 - (ii) a matter that is, or that is based on, a mistake of fact; or
 - (b) to achieve greater consistency with the provisions of a management plan under the *Marine Parks Act 2007*; or
 - (c) to further the objects of the *River Murray Act 2003*, or the *Objectives for a Healthy River Murray* under that Act; or
 - (d) to achieve greater consistency with—
 - (i) the terms or requirements of the Murray-Darling Basin Agreement, or any relevant resolution of the Ministerial Council under that agreement; or
 - (ii) the provisions of the Basin Plan under the *Water Act 2007* of the Commonwealth; or
 - (e) to achieve greater consistency with the terms or requirements of the Border Groundwaters Agreement under the *Groundwater (Border Agreement) Act 1985*; or
 - (f) to achieve greater consistency with the terms or requirements of the Lake Eyre Basin Intergovernmental Agreement under the *Lake Eyre Basin (Intergovernmental Agreement) Act 2001*; or
 - (g) to achieve consistency with any other relevant intergovernmental agreement,

without the application or adoption of any procedures for amendment under Division 1 or Division 2 (as the case requires) if the Minister certifies, at the time of making the amendment, that the amendment is not to be used to effect a reduction in existing water access entitlements or water allocations in connection with water licences, or a change to a consumptive pool, and that the Minister has consulted with the relevant regional landscape board before taking action under this subsection.

- (2) If the Minister makes an amendment under subsection (1), the Minister must—
 - (a) prepare a report in relation to the matter; and
 - (b) cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after completing the report.
- (3) A regional landscape board, a designated entity or the Minister may amend a plan in order—
 - (a) to correct an error in the plan; or
 - (b) to achieve consistency with any other plan under this Act, or to give effect to the provisions of a stormwater management plan under Schedule 1A of the *Local Government Act 1999* (including by incorporating the whole or any part of that plan into the plan under this Part); or
 - (c) to make a change of form (not involving a change of substance) in the plan,without the application or adoption of any procedures for amendment under Division 1 or Division 2 (as the case requires).

63—Plans may confer discretionary powers

A plan may confer discretionary powers.

64—Effect of invalidity

If a part of a plan is found to be invalid—

- (a) the balance of the plan may nevertheless continue to have full force and effect; and
- (b) if the part that is found to be invalid arises from, or is attributable to, an amendment (or purported amendment) to the plan then the amendment (or purported amendment) will, to the extent of the invalidity, be disregarded and the plan will, to that extent, revert to the position that applied immediately before it was sought to give the amendment (or purported amendment) effect.

65—Time for preparation and review of plans

- (1) The initial regional landscape plan or water allocation plan prepared by or under this Act need not satisfy all the requirements of this Act but the Minister, a regional landscape board or a designated entity (as the case requires) must take reasonable steps to ensure that the plan is brought into a form that satisfies those requirements by an amendment, or series of amendments, or by the substitution of a comprehensive plan that satisfies those requirements within a period determined by the Minister.
- (2) If, in the opinion of the Minister, the scope of an initial plan will be so limited that no useful purpose will be served by the public and other consultation required by this Act, the Minister may dispense with the requirements for such consultation in relation to the preparation and adoption of that plan.

Part 5—Landscape and water levies

Division 1—Levies in respect of land

Subdivision 1—Council areas

66—Contributions by constituent councils

- (1) The constituent councils for the region of a regional landscape board are responsible to make a contribution towards the costs of the board performing its functions under this Act in respect of a particular financial year if the board's annual business plan specifies an amount to be contributed by the constituent councils for that financial year for the purposes of this section.
- (2) Liability for the amount to be contributed by constituent councils for a particular region will be shared between them according to a scheme set out in the relevant annual business plan.
- (3) Subsections (1) and (2) are subject to the qualification that the total amount to be paid by the constituent councils for the region in respect of a particular financial year should not exceed—
 - (a) unless paragraph (b) or (c) applies—the total amount of the constituent councils' contribution imposed under this Subdivision for the immediately preceding financial year adjusted by the percentage applying under subsection (4); or
 - (b) an amount allowed by the Minister under subsection (5); or
 - (c) an amount approved by the Minister under subsection (7).
- (4) The percentage applying under this subsection in respect of a particular financial year is the percentage change in the CPI (expressed to 1 decimal place) when comparing the CPI for the September quarter of the immediately preceding financial year with the CPI for the September quarter of the financial year immediately before that preceding financial year, being this percentage change published by the Australian Bureau of Statistics.
- (5) The Minister may allow a regional landscape board to require the constituent councils for the region to pay more than the amount that would otherwise be payable under subsection (3)(a) if the Minister is satisfied that exceptional circumstances exist that justify the principle established by subsection (3)(a) not applying in relation to the board for a particular financial year.
- (6) For the purposes of subsection (5), exceptional circumstances must fall into 1 of the following cases:
 - (a) that there is an urgent need to address an issue with existing infrastructure located within the board's region that cannot reasonably be dealt with through other funding sources or over a longer period;
 - (b) that there has been a natural or environmental disaster that has resulted in extraordinary measures being proposed by the board;

- (c) that some other major event with an adverse impact on a significant part of the community within the board's region has occurred and the board considers that it should take immediate action in relation to the matter;
 - (d) that some other situation exists that is exceptional and that the benefits in allowing the board to impose an amount under subsection (5) in a particular financial year outweigh the fact that additional costs are to be imposed on the relevant community in a particular financial year.
- (7) In a case where a regional landscape board did not require a contribution from the constituent councils for the region in relation to the immediately preceding financial year, the Minister may approve an amount under this subsection for the relevant financial year after taking into account—
 - (a) a report from the board on the outcome of the consultation required by section 51; and
 - (b) such other matters as the Minister thinks fit.

67—Payment of contributions by councils

- (1) Subject to subsection (2), a council's share of the amount to be contributed by the constituent councils is payable by the council in approximately equal instalments on 30 September, 31 December, 31 March and 30 June in the year to which the contribution relates and interest accrues on any amount unpaid at the rate and in the manner prescribed by regulation.
- (2) If notice of a regional landscape levy imposed by a council in respect of a financial year could not be included in the notice of general rates for that year because the regional landscape board's annual business plan was not finalised (and, if necessary, approved by the Minister) on or before 1 June preceding that year, the council may pay its share in approximately equal instalments on 31 December, 31 March and 30 June in that year.
- (3) An amount payable by a council to a regional landscape board under this section and any interest that accrues in respect of that amount is recoverable by the board as a debt.

68—Funds may be expended in subsequent years

To avoid doubt, if an amount paid by a council under this Subdivision is not spent by a regional landscape board in the financial year in respect of which it was paid, it may be spent by the board in a subsequent financial year.

69—Imposition of levy by councils

- (1) In order to reimburse themselves for the amounts contributed (or to be contributed) to a regional landscape board under this Subdivision, the constituent councils must impose a levy (a *regional landscape levy*) on rateable land in the region of the board.
- (2) Except to the extent that the contrary intention appears, Chapter 10 of the *Local Government Act 1999* applies to and in relation to a regional landscape levy as if it were a separate rate under that Chapter.

- (3) Without limiting the operation of any other provision of this Act, the following provisions apply with respect to the application of Chapter 10 of the *Local Government Act 1999* to and in relation to a regional landscape levy:
- (a) section 154(1) and (2) of that Act will not apply in relation to the levy and the basis for the levy will be chosen from the following, as determined under a scheme set out in the relevant annual business plan:
 - (i) the value of rateable land; or
 - (ii) a fixed charge of the same amount on all rateable land; or
 - (iii) a fixed charge of an amount that depends on the purpose for which rateable land is used; or
 - (iv) the area of rateable land;
 - (b) if the value of rateable land is to be the basis for the levy, a council must use capital value, site value or annual value as the basis to impose the levy;
 - (c) any section, or any part of any section, of Chapter 10 of that Act prescribed by the regulations (including any other part of section 154 of that Act) will not apply in relation to the levy;
 - (d) the regulations may modify the operation of Chapter 10 of that Act in any other respect.
- (4) To avoid doubt, nothing in subsection (3) prevents the operation of section 158 of the *Local Government Act 1999*.
- (5) The purposes for which land may be used that may be the basis for a regional landscape levy under subsection (3)(a)(iii) may be prescribed by the regulations.
- (6) A council must (as far as is reasonably practicable) fix a regional landscape levy in a manner calculated to return the same amount as the council's share of the amount to be contributed to the relevant regional landscape board under this Division.
- (7) A regional landscape levy imposed under this section will be taken to be a rate imposed under the *Local Government Act 1999* for the purposes of the *Rates and Land Tax Remission Act 1986*.
- (8) The amount that applies under subsection (6) will be arrived at after taking into account any rebates or remissions to be granted by the council.
- (9) A regional landscape levy is not invalid because it raises more or less than the amount that applies under subsection (6).
- (10) If a council writes off a debt constituted by an unpaid regional landscape levy (or part of a regional landscape levy) under section 143 of the *Local Government Act 1999*, the regional landscape board must, on application by the council in accordance with the regulations, refund to the council an amount equal to the amount of the levy (not including any related interest) that has been written off (payable from the fund under section 96).
- (11) A regulation cannot be made modifying the operation of Chapter 10 of the *Local Government Act 1999* under this section unless the Minister has given the LGA notice of the proposal to make a regulation under this section and given consideration to any submission made by the LGA within a period (of at least 21 days) specified by the Minister.

70—Costs of councils

- (1) A regional landscape board is liable to pay to each of the constituent councils for the region an amount determined in accordance with the regulations on account of the costs of the council in complying with the requirements of this Subdivision.
- (2) Regulations made for the purposes of subsection (1) may—
 - (a) provide a method or methods by which a council's costs are to be determined, including by the use of estimates or prescribed amounts in prescribed circumstances; and
 - (b) limit any calculation of costs to amounts prescribed as fair costs; and
 - (c) take into account any financial benefit to a council in receiving payment of a regional landscape levy before it pays its share of the amount to be contributed to the board under this Subdivision.
- (3) A payment under subsection (1) must be paid in accordance with the regulations.
- (4) A regulation cannot be made for the purposes of this section unless the Minister has given the LGA notice of the proposal to make a regulation under this section and given consideration to any submission made by the LGA within a period (of at least 21 days) specified by the Minister.

Subdivision 2—Outside council areas**71—Board may declare a levy**

- (1) If the annual business plan for a regional landscape board specifies an amount to be contributed by persons who occupy land outside council areas towards the costs of the board performing its functions under this Act in a particular financial year, the board may, by notice in the Gazette, declare a levy under this section.
- (2) Subject to this section, a levy may be declared with respect to land within the relevant area (to be called *rateable land* for the purposes of this section).
- (3) The regulations may exclude land, or land of a prescribed class, from the operation of this section.
- (4) A levy may be based on 1 of the following factors, as specified in the relevant annual business plan:
 - (a) the capital value of rateable land;
 - (b) a fixed charge of the same amount on all rateable land within the relevant area;
 - (c) a fixed charge of an amount that depends on the purpose for which rateable land is used;
 - (d) the area of rateable land;
 - (e) any other factor prescribed by the regulations.
- (5) Differential levies may be declared on any basis prescribed by the regulations.
- (6) The purposes for which land may be used that may be the basis for a regional landscape levy under subsection (4)(c) may be prescribed by the regulations.

- (7) A regional landscape board may, in declaring a levy, fix a minimum amount payable by way of a levy under this section (despite a preceding subsection).
- (8) The amount specified by a regional landscape board in an annual business plan under subsection (1) in respect of a particular financial year should not exceed—
 - (a) unless paragraph (b) or (c) applies—the amount imposed by the board under this section for the immediately preceding financial year adjusted by the percentage applying under subsection (9); or
 - (b) an amount allowed by the Minister under subsection (10); or
 - (c) an amount approved the Minister under subsection (12).
- (9) The percentage applying under this subsection in respect of a particular financial year is the percentage change in the CPI (expressed to 1 decimal place) when comparing the CPI for the September quarter of the immediately preceding financial year with the CPI for the September quarter of the financial year immediately before that preceding financial year, being this percentage change published by the Australian Bureau of Statistics.
- (10) The Minister may allow a regional landscape board to specify an amount under this section that exceeds the amount that would otherwise be payable under subsection (8)(a) if the Minister is satisfied that exceptional circumstances exist that justify the principle established by subsection (8)(a) not applying in relation to the board for a particular financial year.
- (11) For the purposes of subsection (10), exceptional circumstances must fall into 1 of the following cases:
 - (a) that there is an urgent need to address an issue with existing infrastructure located within the board's region that cannot reasonably be dealt with through other funding sources or over a longer period;
 - (b) that there has been a natural or environmental disaster that has resulted in extraordinary measures being proposed by the board;
 - (c) that some other major event with an adverse impact on a significant part of the community within the board's region has occurred and the board considers that it should take immediate action in relation to the matter;
 - (d) that some other situation exists that is exceptional and that the benefits in allowing the board to impose an amount under subsection (10) in a particular financial year outweigh the fact that additional costs are to be imposed on the relevant community in a particular financial year.
- (12) In a case where a regional landscape board did not require a contribution under this section in relation to the immediately preceding financial year, the Minister may approve an amount under this subsection for the relevant financial year after taking into account such matters as the Minister thinks fit.
- (13) To avoid doubt, if an amount due or paid to a regional landscape board under this section is not received or spent by the regional landscape board in the relevant financial year, it may be spent by the board in a subsequent financial year.

72—Liability and payment of levy

- (1) Subject to subsection (2), the owner of any rateable land will be taken to be the occupier of the land and so liable to pay a levy declared under this Subdivision.
- (2) If a person other than the owner of rateable land has, by notice to the relevant regional landscape board in a manner and form determined by the board, assumed liability to pay a levy under this Subdivision, that person will be liable to pay the levy.
- (3) The relevant regional landscape board must as soon as is reasonably practicable after the declaration of a levy cause a notice of the amount of the levy that is payable in respect of any land for the relevant financial year to be served on the person liable to pay the levy.
- (4) The notice must state—
 - (a) the amount of the levy payable; and
 - (b) the factor on which the levy is based and, if it is a differential levy, the differential basis; and
 - (c) the date on or before which the levy must be paid or, if the regional landscape board is prepared to accept payment in instalments, the amount of each instalment and the date on or before which it must be paid.
- (5) If there are 2 or more persons liable to pay a levy, service of a notice on 1 of them will be taken to be service on both or all of them.
- (6) A regional landscape board—
 - (a) may arrange for service of a notice to be effected as part of any other notice served by a public authority or other person; and
 - (b) may arrange for collection of a levy to be effected by a public authority or other person.
- (7) The Governor may, by regulation—
 - (a) make other provisions for the collection of the levy; and
 - (b) grant remissions in respect of the levy, or a part of the levy; and
 - (c) provide for such other matters as the Governor thinks fit.

Subdivision 3—Related provisions**73—Land across boundaries**

If a piece of land to which the provisions of this Division apply is divided—

- (a) by the boundaries of 2 or more landscape management 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 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 Part will then apply accordingly so that only 1 levy under this Division 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 landscape board for the region to which the assignment relates).

74—Application of levy

- (1) To avoid doubt, nothing in this Division prevents any levy raised in 1 part of the State being applied by a regional landscape board in another part of the State in accordance with the provisions of an annual business plan.
- (2) However, the Minister cannot, by direction or by the exercise of any other power under this Act, require a regional landscape board to apply any levy raised in its region in another part of the State.
- (3) To avoid doubt, nothing in this Division limits the requirement to pay amounts into the Landscape Priorities Fund under Part 6.

Division 2—Levies in respect of water

75—Interpretation

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

accounting period means a financial year, or part of a financial year, in respect of which a levy is payable under this Division in accordance with a notice served under section 78;

consumption period in relation to an accounting period means a period of approximately the same length as the accounting period that commences or terminates during the accounting period and in respect of which the quantity of water taken is measured by meter readings;

imported water permit means a permit required under section 104(3)(e) with respect to the use of water in the circumstances described in section 104(4)(i);

to irrigate land includes to water land by any means for the purpose of growing any kind of plant or plants;

levy includes an instalment of a levy.

- (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.

76—Declaration of levies

- (1) The Minister may, by notice in the Gazette, declare a levy or levies (a ***water levy or levies***) payable by persons who—
 - (a) are the holders of any water management authorisation granted in relation to a water resource within a specified landscape management region; or
 - (b) are the holders of imported water permits; or
 - (c) are authorised under section 105 to take water from a water resource within a specified landscape management region; or
 - (d) are the holders of forest water licences granted in relation to commercial forests within a specified landscape management region.

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- (2) A levy declared by the Minister under this section must be set at a level that will return an amount that is near as reasonably practicable to the amount stated in the annual business plan (or plans) of the relevant regional landscape board (or boards) as the amount to be raised by way of that particular water levy under this Division.
 - (3) A levy is not invalid because it raises more or less than the amount referred to in subsection (2).
 - (4) An annual business plan may include proposals for money raised through the imposition of a levy in 1 or more years to be expended in a subsequent year or years (and a levy may be declared on this basis).
 - (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; and
 - (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; and
 - (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.
 - (6) 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.
 - (7) A levy may comprise of 1 or more components based on 1 or more of the following factors (in any combination), as determined under a scheme set out in the relevant business plan (or plans):
 - (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.
- (8) A quantity of water may be determined according to a unit, percentage, volume or proportion of water.
- (9) Without limiting subsection (7)(i), in the case of the River Murray, a factor on which a levy may be based is the effect that the use of water may have on salinity levels associated with the River Murray.
- (10) Different levies may be declared in respect of the same water resource based on 1 or more of the following factors:
 - (a) the part of the water resource from which the water may be, or is, taken;
 - (b) the place or location where the water may be, or is, used;
 - (c) the purpose for which the water may be, or is, used;
 - (d) the manner in which the water may be, or is, used;
 - (e) when the right to take or use the water was granted;
 - (f) any other factor prescribed by the regulations.
- (11) For the purposes of subsection (7) or (9), the Minister may, by notice in the Gazette, determine a method or methods by which the effect that the taking or using of water is having may be determined, measured or used.
- (12) The Minister may, in declaring a levy, fix a minimum amount payable by way of a levy under this section (despite a preceding subsection).
- (13) If a levy that relates to the River Murray has a component based on the effect that the use of water may have on salinity levels associated with the River Murray, money raised from the levy that is attributable to that component must be applied towards reducing salinity levels associated with the River Murray.
- (14) A levy cannot be imposed under this section with respect to the taking of water for domestic purposes or for watering stock that are not subject to intensive farming.
- (15) Furthermore, the amount of a levy imposed in relation to a particular component under subsection (7) in respect of a particular financial year should not exceed the amount imposed under this section for the immediately preceding financial year adjusted by the percentage applying under subsection (16).
- (16) The percentage applying under this subsection in respect of a particular financial year is the percentage change in the CPI (expressed to 1 decimal place) when comparing the CPI for the September quarter of the immediately preceding financial year with the CPI for the September quarter of the financial year immediately before that preceding financial year, being this percentage change published by the Australian Bureau of Statistics.

- (17) Subsections (15) and (16) do not apply if—
- (a) a levy was not imposed in relation to the particular component under subsection (7) in respect of the immediately preceding financial year; or
 - (b) the Minister is satisfied that it is appropriate that the subsections do not apply in the particular circumstances.
- (18) A notice under subsection (1)—
- (a) has effect in relation to the financial year specified in the notice; and
 - (b) subject to subsection (19), must be published in the Gazette on or before the first day of that financial year.
- (19) 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.

77—Liability for levy

- (1) For the purposes of this section—
- (a) a Category A levy is a levy within the ambit of section 76(5)(a)(i)(A), (ii)(A) or (iii)(A); and
 - (b) a Category B levy is a levy within the ambit of section 76(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 the person holds the water management authorisation throughout the year or not.
- (3) Subject to subsection (6), a person who takes water pursuant to an authorisation under section 105 at any time during a financial year in respect of which a levy with respect to the taking of water has been declared is liable to pay to the Minister the amount of the levy that applies in relation to the authorisation.
- (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;
 - (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;
 - (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;
 - (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);
 - (c) in the case of a levy with respect to an authorisation under section 105—the owner of the land (if the owner is not the person primarily liable under subsection (3)) when the water was taken;
 - (d) all persons who own or occupy the land at any time—
 - (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.
- (5) A person who makes a payment to the Minister in respect of the person's liability under subsection (4) may recover the amount of the payment from the person primarily liable under subsection (2) or (3).
- (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:
 - (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
 - (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 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.
- (8) A person who holds an imported water permit 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 that levy whether the person holds the permit throughout the year or not.
- (9) A person who holds a forest water licence 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 the person holds the licence throughout the year or not.
- (10) A levy becomes payable on the date for payment stated in the notice under section 78.
- (11) A levy or instalments of a levy are payable pursuant to a notice served under section 78 despite the fact that the person liable disputes the amount of the levy, but any overpayment must be refunded when the correct amount is finally determined.
- (12) If 2 or more persons hold an interest in a water management authorisation, they are each jointly and severally liable for the payment of any levy that relates to that interest.

78—Notice of liability for levy

- (1) The Minister may serve the notice referred to in subsection (2) on a person who is liable to pay a levy under section 77.
- (2) The notice must state—
 - (a) the amount of the levy payable and the accounting period or periods to which the notice relates; and
 - (b) the factor, or combination of factors, on which the levy is based; and
 - (c) the date on or before which the levy must be paid or, if the Minister is prepared to accept payment in instalments, the amount of each instalment and the date on or before which it must be paid.
- (3) The accounting period or periods to which a notice relates must be confined to 1 financial year or to part of a financial year.

79—Determination of quantity of water taken

- (1) If the basis of a levy is or includes the quantity of water taken then the following provisions apply:
 - (a) meter readings will be used to determine the quantity of water taken except where—
 - (i) a meter has not been installed; or
 - (ii) the readings given by the meter are unreliable in the opinion of the Minister;
 - (b) if meter readings are used, the quantity of water taken during an accounting period will be taken to be the quantity of water taken during the consumption period for that accounting period;
 - (c) if meter readings are not used, the quantity of water taken during an accounting period will, subject to subsection (2), be assessed by the Minister on—
 - (i) the basis of the pumping capacity of the pump (if any) used to take the water; or
 - (ii) the basis of the area of land irrigated and the crop grown on that land; or
 - (iii) such basis as the Minister thinks fit;
 - (d) water taken—
 - (i) by the occupier of land for domestic purposes on the land or for providing stock (other than stock subject to intensive farming) kept on the land with drinking water; or
 - (ii) for firefighting,must be disregarded;

- (e) if water taken for domestic or stock purposes or for firefighting is not measured by meter, or the water taken is used for other purposes as well, the Minister must make an assessment of the quantity of water taken for those purposes in accordance with paragraph (c);
 - (f) water taken for the purposes of the construction or repair of a public road must be disregarded;
 - (g) if water taken for the purposes of the construction or repair of a public road is not measured by meter, or the water is taken for other purposes as well, the Minister must make an assessment of the quantity of water taken for those purposes on such basis as the Minister thinks fit.
- (2) For the purposes of subsection (1)(c), the Minister must publish a notice in the Gazette setting out—
 - (a) if the basis of assessment is to be pumping capacity—the method to be used in assessing the quantity of water on that basis; or
 - (b) if the basis of assessment is to be crop area—water use rates for the crop concerned; or
 - (c) if some other basis of assessment is to be used—the basis to be used and the method by which it will be used.
- (3) A notice under subsection (2)—
 - (a) may relate to a particular water resource or class of resource; and
 - (b) is not required in relation to water taken for stock or domestic purposes; and
 - (c) may be varied by the Minister from time to time, or revoked by the Minister.
- (4) If a person liable to pay a levy with respect to water taken from a prescribed water resource is dissatisfied with the accuracy of a meter supplied by the Minister that is being used to measure any quantity of water taken, the person may, on payment of the fee prescribed by the regulations, require the Minister to test the meter.
- (5) If—
 - (a) the meter used to measure any quantity of water taken has not been supplied by the Minister; and
 - (b) the Minister requires that the meter be tested,then the person liable to pay a levy with respect to that water must ensure that the meter is tested in the manner prescribed by the regulations and provide a certificate relating to the testing to the Minister in accordance with the regulations.

Maximum penalty: \$10 000.
- (6) If a person fails to comply with subsection (5), the Minister may arrange for the meter to be tested and recover the cost of the testing from that person as a debt due to the Crown in a court of competent jurisdiction.
- (7) If on testing a meter in accordance with this section it is found—
 - (a) that the quantity of water measured by the meter was not more than 5% more or less than the quantity of water actually taken, the quantity of water measured by the meter will be the quantity in respect of which the levy is payable;

- (b) that the quantity of water as measured by the meter was inaccurate by more than 5% and the Minister is able to determine the degree of inaccuracy, the Minister may serve a further notice under section 78 based on the quantity of water taken appropriately adjusted;
 - (c) that the quantity of water as measured by the meter was inaccurate by more than 5% but the Minister is unable to determine the degree of inaccuracy, the Minister may serve a further notice under section 78 based on the Minister's assessment under subsection (1)(c) and subsection (2) does not apply in relation to an assessment in these circumstances.
- (8) If the quantity of water as measured by a meter tested under subsection (4) was inaccurate by more than 5%, the Minister must refund the fee referred to in that subsection.
- (9) A person who is dissatisfied with the finding or determination of the Minister under subsection (7) may appeal to the ERD Court against the finding or determination.
- (10) If the Minister assesses—
 - (a) the quantity of water taken under subsection (1)(c); or
 - (b) the quantity of water used for domestic or stock purposes or for firefighting under subsection (1)(e); or
 - (c) the quantity of water taken by a person who is not authorised by a licence or under section 105 to take the water,
 the assessment and the basis on which it was made cannot be called into question by, or before, any court, tribunal or other authority except on the ground that the assessment was not made in good faith.
- (11) The Governor may, by regulation, prescribe standards for meters used for the purpose of determining the quantity of water taken.

80—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 78, 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).

81—Costs associated with collection

- (1) Subject to subsection (2), a regional landscape board is liable to pay to the Minister an amount determined in accordance with guidelines approved by the Treasurer on account of the costs incurred by the Minister in collecting any levy under this Division that applies in respect of a water resource located within the region of the board.

- (2) An amount payable by a regional landscape board with respect to a particular financial year cannot exceed an amount determined in accordance with the regulations.

Division 3—Special provisions

82—Application of Division

This Division applies to—

- (a) an OC levy; and
- (b) a water levy.

83—Interest

- (1) Interest accrues—
- (a) on an unpaid levy; and
 - (b) on any unpaid instalments of a levy; and
 - (c) on unpaid interest,
- in accordance with the regulations.
- (2) A person who is liable to pay a levy is also liable to pay interest that accrues, or has accrued, on or in relation to the levy under this section.
- (3) The Minister may release a person suffering financial hardship from liability to pay the whole or part of interest that has accrued under this section.

84—Discounting levies

The Minister may discount a levy in accordance with the regulations to encourage early payment of the levy.

85—Recovery rights with respect to unpaid levy

- (1) In the case of an OC 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 a 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; and
 - (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 78, together with any interest under section 83, 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.

86—Sale of land for non-payment of a levy

- (1) If a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for 3 years or more, the Minister may sell the land.
- (2) Before the Minister sells land in pursuance of this section, the Minister must serve notice on the owner and occupier of the land—
 - (a) stating the period for which the levy and interest have been in arrears; and
 - (b) stating the amount of the total liability for the levy and interest presently outstanding and charged on the land; and
 - (c) stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the levy or interest.
- (3) A copy of a notice must be served on—
 - (a) any registered mortgagee or encumbrancee of the land; and
 - (b) the holder of any caveat over the land.
- (4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.
- (5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).
- (6) An auction under this section must be advertised on at least 2 separate occasions in a newspaper circulating generally throughout the State.
- (7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.
- (8) If—
 - (a) an auction fails; or
 - (b) the land is held from the Crown under a lease, licence or agreement to purchase,
 the Minister may sell the land by private contract for the best price that the Minister can reasonably obtain.
- (9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:
 - (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly—in discharging the liability for the levy and interest and any other liabilities to the Minister in respect of the land;

- (c) thirdly—in discharging the liability (if any) to any other authority under this Act that relates to the administration of this Act;
 - (d) fourthly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);
 - (e) fifthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;
 - (f) sixthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (g) seventhly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
 - (h) eighthly—in payment to the former owner of the land.
- (10) If the former owner cannot be found after making reasonable inquiries as to that person's whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (11) If land is sold by the Minister in pursuance of this section, an instrument of transfer executed by the Minister will operate to vest title to the land in the purchaser.
- (12) If the Minister cannot sell the land under this section after taking all reasonable steps to do so—
 - (a) the Minister may, by notice in the Gazette, assume title to the land (and title will then, by force of this subsection, vest in the Minister); and
 - (b) the value of the land vested in the Minister under paragraph (a), as at the date of the notice under that paragraph, will be deducted from any outstanding amount and the costs incurred by the Minister in proceeding under this section.
- (13) The title vested under subsection (11) or (12) will be free of—
 - (a) all mortgages, charges and caveats; and
 - (b) except in the case of land held from the Crown under lease or licence—all leases and licences.
- (14) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Chief Executive of the Department stating that the requirements of this section in relation to the dealing with the land have been observed.
- (15) The Chief Executive of the Department must, as soon as is reasonably practicable after the publication of a notice under subsection (12), inform the Registrar-General of the publication of the notice and lodge with the Registrar-General a statutory declaration stating that the requirements of this section in relation to dealing with the land have been observed.
- (16) A reference in this section to land, or title to land, held from the Crown under lease, licence or agreement to purchase, is a reference to the interest of the lessee, licensee or purchaser in the land.

Division 4—Related matters

87—Refund of levies

- (1) A regional landscape plan, annual business plan or the regulations may set out natural resources management practices designed to conserve, protect, maintain or improve the quality or state of natural resources of a specified kind that will form the basis of an application for a refund of the levy imposed under this Part.
- (2) Without limiting subsection (1), natural resources management practices may include—
 - (a) the establishment of, or participation in, a drainage scheme, or a scheme to restore or rehabilitate natural resources; or
 - (b) the establishment or maintenance of infrastructure, plant or equipment; or
 - (c) other initiatives.
- (3) The plan or the regulations must specify the amount of the refund that may be applied for.
- (4) A person who has undertaken or adopted practices referred to in subsection (1) in a financial year may apply for a refund of the whole or a part of a levy (or a component of a levy) under this Part paid by that person for that year.
- (5) The application must be made to the relevant regional landscape board.
- (6) A regional landscape board must grant an application under this section if the relevant criteria set out in the regional landscape plan, annual business plan or the regulations have been satisfied.
- (7) Without limiting the criteria that may be used, a plan or regulations may specify accreditation by a specified body as the criterion or 1 of the criteria on which an application will be granted.
- (8) An applicant may apply to the Minister for a review of a decision of a regional landscape board under this section.
- (9) On the granting of an application, the relevant regional landscape board must pay to the applicant the amount of the refund applied for.
- (10) The Minister may also grant a refund of, or an exemption from, the whole or a part of a levy (or a component of a levy)—
 - (a) as a condition of a water management authorisation; or
 - (b) under the terms of a management agreement under the *River Murray Act 2003*; or
 - (c) by notice in the Gazette.
- (11) A refund under this section may be granted on conditions determined by the regional landscape board or by the Minister.
- (12) Without limiting subsection (11), a condition may be that the person who has the benefit of the refund pay a fee to cover—
 - (a) any administrative costs associated with granting the refund; or

- (b) any monitoring or assessment costs associated with ensuring that specified criteria or conditions are met.

88—Declaration of penalty in relation to unauthorised or unlawful taking of water

- (1) The Minister may, by notice in the Gazette, declare a penalty payable by—
 - (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
 - (d) 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
 - (e) a person who takes water and is not authorised under section 105 or as part of a water allocation to take that water, and so acts in contravention of this Act; or
 - (f) a person who has acted in contravention of a notice under section 109.
- (2) The Minister may declare different penalties—
 - (a) depending on the quantity of water taken or used; or
 - (b) for water taken from different water resources; or
 - (c) in the case of a contravention of a notice under section 109—depending on the relevant circumstances.
- (3) Subject to subsection (4), a notice declaring a penalty under subsection (1)(a), (b), (c) or (d)—
 - (a) will apply with respect to the taking of water in a consumption period that corresponds to an accounting period specified in the notice; and
 - (b) must be published in the Gazette during the first half of the accounting period.
- (4) If the Minister has not declared a penalty or penalties under paragraph (a), (b), (c) or (d) of subsection (1) by the end of the first half of a particular accounting period (the **new accounting period**), it will be taken that the last penalty or penalties declared by the Minister under that paragraph also apply to the taking or use of water in the consumption period that corresponds to the new accounting period.
- (5) A notice declaring a penalty under subsection (1)(e) or (f)—
 - (a) will apply with respect to the taking of water in the period specified in the notice; and
 - (b) may be published in the Gazette at any time before or during that period.

- (6) The sections of this Part prescribed by the regulations apply to, and in relation to, a penalty under this section as though it were a levy declared under section 76 (subject to such modifications as are necessary to give effect to this section and such other modifications (if any) as may be prescribed by the regulations).

- (7) In this section—

accounting period means the period determined by the Minister from time to time by notice in the Gazette (with the period not necessarily being the same period as the accounting period under Division 2);

consumption period in relation to an accounting period means a period of approximately the same length as the accounting period that commences or terminates during the accounting period and during which water is taken or used.

89—Appropriation of levies, penalties and interest

- (1) Money paid in satisfaction of a liability for a levy under this Part, after any appropriate deductions authorised by or under this Act, and penalty or interest, must—
- (a) —
 - (i) in the case of a levy collected under Division 1—be paid to the regional landscape board for the region in respect of which the levy is declared; and
 - (ii) in the case of a levy paid to the Minister under Division 2—
 - (A) unless subsubparagraph (B) applies—be paid to the regional landscape board for the region where the water resource in relation to which the levy was declared is located; or
 - (B) in the case of a levy attributable to a water resource situated in more than 1 region—be paid to the regional landscape board determined under a scheme for the allocation of levies between regional landscape boards established by the Minister for the purposes of this provision; and
 - (b) in the case of a penalty under section 88—be paid into the Landscape Administration Fund; and
 - (c) in any other case—be paid in accordance with the regulations.
- (2) The Treasurer may authorise deductions that will have effect under subsection (1).
- (3) The following will initially be deposited in the Landscape Administration Fund:
- (a) money paid to the Minister;
 - (b) money paid in satisfaction of a liability for a levy collected under Division 1.
- (4) This section applies subject to any provision made under Part 6.

Part 6—Statutory funds

Division 1—The Landscape Administration Fund

90—The Landscape Administration Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Landscape Administration Fund*.
- (2) The Landscape Administration Fund will consist of—
 - (a) any money provided by Parliament for the purposes of the fund; and
 - (b) grants, gifts and loans made to the Minister for payment into the fund; and
 - (c) any income arising from the investment of the fund under subsection (3); and
 - (d) money paid by a regional landscape board that is the repayment of a loan or other form of financial accommodation that has been financed by money drawn from the fund; and
 - (e) the prescribed percentage of fees (other than expiation fees) paid under this Act; and
 - (f) expiation fees and the prescribed percentage of penalties recovered in respect of offences against this Act; and
 - (g) all other money that is required or authorised by or under this Act or any other law to be paid into the fund.
- (3) Any money in the Landscape Administration Fund that is not for the time being required for the purposes of this Act may be invested by the Minister after consultation with the Treasurer.
- (4) The Minister may apply any part of the Landscape Administration Fund—
 - (a) in making payments to regional landscape boards; or
 - (b) in making grants or other payments to other persons or bodies for the purposes of this Act; or
 - (c) in satisfying any requirements to use levies for a particular purpose; or
 - (d) in refunding a levy under Part 5; or
 - (e) in paying any amount into the Landscape Priorities Fund that the Minister determines should be held and applied for the purposes of that fund rather than under this section (and any such determination will have effect according to its terms); or
 - (f) for any other purpose to further the objects of this Act or to support the operation or administration of this Act; or
 - (g) in making any other payment required or authorised by or under this Act or any other law.

91—Accounts

The Minister must cause proper accounts to be kept of money paid to and from the Landscape Administration Fund.

92—Audit

The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Landscape Administration Fund.

Division 2—The Landscape Priorities Fund**93—The Landscape Priorities Fund**

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Landscape Priorities Fund*.
- (2) The Landscape Priorities Fund will consist of—
 - (a) any money provided by Parliament for the purposes of the fund; and
 - (b) grants, gifts and loans made to the Minister for payment into the fund; and
 - (c) any income arising from the investment of the fund under subsection (4); and
 - (d) the designated percentage of contributions received by the Green Adelaide Board under Part 5 Division 1 Subdivision 1; and
 - (e) the designated percentage of the amount that would otherwise be payable to the Green Adelaide Board under section 89(1)(a)(ii)(A); and
 - (f) any money that the Minister pays into the fund from the Landscape Administration Fund; and
 - (g) any other money that the Minister determines should be held and applied for the purposes of the fund (and any such determination will have effect according to its terms); and
 - (h) all other money that is required or authorised by or under this Act or any other law to be paid into the fund.
- (3) For the purposes of subsection (2)(d) and (e), the Minister may from time to time, by notice in the Gazette, designate a percentage for each (or either) of those provisions.
- (4) Any money in the Landscape Priorities Fund that is not for the time being required for the purposes of this Act may be invested by the Minister after consultation with the Treasurer.
- (5) The Minister may apply any part of the Landscape Priorities Fund—
 - (a) in addressing any priority for managing, improving or enhancing the State's landscape or natural resources, whether the priority is of sub-regional, regional, cross-regional or State wide significance; or
 - (b) in making any other payment required or authorised by or under this Act or any other law.
- (6) The Minister must, in acting under subsection (5), take into account any principles relating to the use of the fund set out in the State Landscape Strategy.

- (7) For the purposes of subsection (5)(a), the Minister may establish criteria and processes associated with—
- (a) receiving and assessing applications for funding to address those priorities; and
 - (b) making grants or other payments to bodies, organisations, groups or persons who may undertake activities to address those priorities.
- (8) The Minister may, in acting under subsection (7), make grants or provide financial assistance on such conditions as the Minister thinks fit.

94—Accounts

The Minister must cause proper accounts to be kept of money paid into and from the Landscape Priorities Fund.

95—Audit

The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Landscape Priorities Fund.

Division 3—Regional landscape board funds

96—Regional landscape board funds

- (1) Each regional landscape board must establish, maintain and administer a fund to be called by a distinctive name and to be managed in accordance with any relevant requirements of the *Public Finance and Audit Act 1987*.
- (2) The fund of a regional landscape board will consist of—
- (a) any money received by the board from the Minister; and
 - (b) any money received by the board under this Act; and
 - (c) any income arising from the investment of the fund under subsection (3); and
 - (d) other money received by the board in the performance of its functions or the exercise of its powers under this Act; and
 - (e) all other money that is required or authorised by or under this Act or any other law to be paid into the fund.
- (3) Any money in the fund of a regional landscape board that is not for the time being required for the purposes of this Act may, with the consent of the Minister, be invested by the board in accordance with the usual requirements that apply with respect to the investment of trust funds.
- (4) A regional landscape board may apply any part of its fund—
- (a) in implementing its regional landscape plan or annual business plan, or any water allocation plan, in initiating or supporting other programs and projects under this Act, and in performing its other functions; or
 - (b) in defraying any expenses incurred by the board in the administration of any part of this Act; or
 - (c) in providing financial assistance to other bodies or persons in accordance with this Act; or

- (d) without limiting paragraph (c), in acting under section 27 or 28; or
- (e) in refunding a levy under Part 5 (as necessary); or
- (f) in making any other payment required or authorised by or under this Act or any other law.

Part 7—Management and protection of land

97—Interpretation

In this Part—

degradation of land means any change in the quality of land, or any loss of soil, that has an adverse effect on water, native vegetation or other natural resources associated with, or reliant on, land, any other aspect of the environment, or biological diversity;

relevant authority means—

- (a) the regional landscape board for the relevant area; or
- (b) in prescribed circumstances—an authorised officer.

98—Special provisions relating to land

- (1) Subject to this section, if a relevant authority considers—
 - (a) that an owner of land has been, is, or is likely to be, in breach of the general statutory duty on account of land management practices or activities undertaken in relation to land for which the owner is responsible; and
 - (b) that those practices or activities have resulted in, or could reasonably be expected to result in, unreasonable degradation of land or an unreasonable risk of degradation of land,

the relevant authority may require the owner to prepare an **action plan** in accordance with the requirements of this Part.

- (2) The following are relevant to determining whether a practice or activity involves (or may involve) unreasonable degradation, or an unreasonable risk of degradation, of land:
 - (a) any relevant provisions of the regional landscape plan or any relevant landscapes affecting activities control policy;
 - (b) the extent to which a practice or activity has been authorised under another Act, or is being, or will be, undertaken in connection with an activity authorised under another Act;
 - (c) the local situation, conditions and surrounding circumstances, with regard being given to contributing factors such as climate, the condition of land, land and water use, and degrees of risk and impact;
 - (d) any factors prescribed by the regulations.
- (3) Action should not be taken under this section in relation to—
 - (a) an activity that a person is required to take under another provision of this Act; or
 - (b) an activity that is required or authorised by—

- (i) an environment protection policy, an environment protection order, an environmental authorisation or a clean-up order under the *Environment Protection Act 1993*; or
- (ii) a protection order, a reparation order or a reparation authorisation under the *River Murray Act 2003*; or
- (c) an activity that is required to implement an approved property plan under the *Pastoral Land Management and Conservation Act 1989*; or
- (d) an activity that is required to comply with a notice under section 43 of the *Pastoral Land Management and Conservation Act 1989*; or
- (e) an activity that is required to comply with a requirement under the *Fire and Emergency Services Act 2005*; or
- (f) an activity that is required to comply with a requirement under the *South Eastern Water Conservation and Drainage Act 1992*; or
- (g) an activity undertaken in circumstances prescribed by the regulations.

99—Requirement to implement action plan

- (1) A requirement to prepare an action plan under this Part is to be imposed by notice in a form approved by the Minister.
- (2) A notice under subsection (1) must specify a reasonable period (which must be at least 21 days) within which the relevant owner of land must prepare the action plan.
- (3) An owner of land who receives a notice under subsection (1) may, within 21 days after receiving the notice, apply to the Chief Executive for a review of the notice.
- (4) The Chief Executive may, on application under subsection (3) and after giving the applicant a reasonable opportunity to be heard and to place material before the Chief Executive, confirm, vary or set aside the notice.
- (5) The Chief Executive must prepare and make available written reasons for the Chief Executive's decision on an application under subsection (3).
- (6) Subject to the outcome of any review under subsection (4) (and, if relevant, any appeal under Part 11), if an owner of land is required to prepare an action plan then the owner must submit such a plan to the relevant authority that issued the notice in accordance with the requirements of the notice.
- (7) An action plan submitted under subsection (6) must set out in detail—
 - (a) the measures that the owner proposes to take to address any breach of the general statutory duty, and to comply with the general statutory duty in the future; and
 - (b) the period or periods within which those measures are proposed to be taken.
- (8) The relevant authority to which the action plan is submitted should, within 6 weeks after receiving the plan—
 - (a) approve the plan; or
 - (b) after consulting with the owner, amend the plan,and must then notify the owner of its decision.

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- (9) The owner may, within 21 days after receiving a notice under subsection (8), apply to the Chief Executive for a review of the action plan.
- (10) The Chief Executive may, on application under subsection (9) and after giving the applicant a reasonable opportunity to be heard and to place material before the Chief Executive, confirm, vary or set aside the action plan.
- (11) The Chief Executive must prepare and make available written reasons for the Chief Executive's decision on an application under subsection (9).
- (12) If an owner of land—
- (a) fails to comply with a notice under this section; or
 - (b) fails to implement an action plan in accordance with its terms (including as varied from time to time),
- the following provisions will apply:
- (c) the owner is guilty of an offence and liable to a penalty not exceeding \$20 000; and
 - (d) the Chief Executive or a regional landscape board may—
 - (i) cause to be carried out such measures as appear to the Chief Executive or regional landscape board (as the case may be) to be appropriate in view of the failure on the part of the owner (being, if an action plan has been agreed, measures contemplated by, or consistent with, that plan); or
 - (ii) engage a suitably qualified person to devise and implement measures to address the problem or problems to which the relevant requirement relates (being, if an action plan has been agreed, measures contemplated by, or consistent with, that plan).
- (13) A person taking action under subsection (12)(d) may, after giving reasonable notice, enter the relevant land at any reasonable time (using any force that may be reasonably necessary in the circumstances) and carry out such measures as appear to be appropriate in view of the failure on the part of the owner.
- (14) A person must not hinder or obstruct a person acting under subsection (12)(d) or (13).
Maximum penalty: \$10 000.
- (15) The reasonable costs and expenses incurred by the Chief Executive or a regional landscape board in taking action under subsection (12)(d) may be recovered as a debt from the relevant owner.
- (16) If an amount is recoverable by the Chief Executive or a regional landscape board under subsection (15), the Chief Executive or regional landscape board (as the case may be) may, by notice in writing to the relevant owner, fix a period (which must be at least 28 days) within which the amount must be paid by the relevant owner and if the amount is not paid by the owner within that period, the owner is also liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (17) A relevant authority may, on its own initiative or on application by an owner of land, by notice in writing to the owner of land, vary or revoke an action plan under this section.

- (18) However, a relevant authority must take reasonable steps to consult with the relevant owner of land before it takes action under subsection (17) (unless the relevant authority is acting at the request of the owner).
- (19) If an action plan includes an activity for which a permit would, but for section 106, be required under Part 8, a relevant authority must not approve the plan, or the variation of the plan, without first consulting and having regard to views of the authority under that Part to whom an application for a permit for that activity would otherwise have to be made.

Part 8—Management and protection of water resources

Division 1—General rights in relation to water

100—Right to take water subject to certain requirements

- (1) Subject to this Act and to any other Act or law to the contrary, a person who has lawful access to a watercourse, lake or well may take water from the watercourse, lake or well for any purpose.
- (2) Subject to this Act and to any other Act or law to the contrary, the occupier of land is entitled to take surface water from the land for any purpose.
- (3) Subject to this Act, any other Act or law to the contrary, any provision made by the regulations, or the provisions of a stormwater management plan incorporated into a regional landscape plan or a water allocation plan under section 62(3), a person who has lawful access to any stormwater infrastructure may take water from the infrastructure for any purpose.
- (4) However, subject to subsections (5), (7) and (8)—
 - (a) —
 - (i) an authorisation under section 105; 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
 - (b) a person must not take water from a watercourse, lake or well that is not prescribed if to do so—
 - (i) would detrimentally affect the ability of another person to exercise a right to take water from the watercourse or lake or from the same underground aquifer; or
 - (ii) would detrimentally affect the enjoyment of the amenity of water in the watercourse or lake by the occupier of land—
 - (A) that adjoins the watercourse or through which the watercourse runs; or
 - (B) that adjoins the lake or on which the lake is situated.
- (5) Subsection (4) does not apply to the taking of water if—
 - (a) the water is taken by the occupier of land from—

- (i) a watercourse that adjoins or runs through the land; or
 - (ii) a lake that adjoins or is on the land; or
 - (iii) a well that is on the land; or
- (b) the water is surface water and is taken by the occupier of land from the land, and is used by the occupier for domestic purposes or for watering stock (other than stock subject to intensive farming).
- (6) Subsection (5) does not apply to the taking of water from a prescribed watercourse, lake or well or the taking of surface water from a surface water prescribed area if the regulation declaring the watercourse, lake or well or the surface water prescribed area excludes the operation of that subsection.
- (7) Subsection (4) does not apply to the taking of water for the purposes of drinking or cooking by the person who takes it or by a person to whom the water is given if the rate at which the water is taken does not exceed the rate prescribed by regulation.
- (8) Subsection (4) does not apply—
 - (a) to the taking of water from stormwater infrastructure in circumstances prescribed by regulation; or
 - (b) to the taking of water from stormwater infrastructure, or a part of stormwater infrastructure, brought within the ambit of this paragraph by regulation.
- (9) Despite the other provisions of this section, water must not be taken contrary to the provisions of a regional landscape plan, a water allocation plan or a water affecting activities control policy that applies in relation to that water unless the water is taken pursuant to an authorisation under section 105 or a water allocation that relates to the relevant water resource.
- (10) This section operates subject to any requirement to have a licence with respect to a commercial forest under Division 6.
- (11) Rights at common law in relation to the taking of naturally occurring water are abolished.

101—Declaration of prescribed water resources

- (1) The Governor may, by regulation made on the recommendation of the Minister, declare that a watercourse, lake or well is a prescribed watercourse, lake or well.
- (2) The Governor may, by regulation made on the recommendation of the Minister, declare that part of the State is a surface water prescribed area.
- (3) The Governor may, by subsequent regulation made on the recommendation of the Minister, vary or revoke a regulation under subsection (1) or (2).
- (4) A regulation under subsection (1) or (3) may refer to watercourses, lakes or wells individually or by reference to the part of the State in which they are situated or by any other classification.
- (5) A regulation under subsection (2) or (3) may operate (wholly or in part) by reference to particular stormwater infrastructure (or a part of stormwater infrastructure).

- (6) Before making a recommendation to the Governor, the Minister must—
- (a) cause to be published, in the Gazette and in such other manner as the Minister thinks appropriate, 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
 - (b) serve a copy of the notice on all councils in the area that will be affected by the proposed regulation; and
 - (c) have regard to all submissions made in accordance with the notice.
- (7) The Minister may, in a notice under subsection (6), include an outline of proposals to introduce controls on the hydrological impacts of commercial forests, or specified classes of commercial forests, on the water resource under Division 6.
- (8) The Minister must not make a recommendation under subsection (1) or (2) for a regulation declaring a water resource to be a prescribed water resource unless satisfied that the proposed regulation is necessary or desirable for the proper management of the water resource to which it will apply.
- (9) After a regulation is made the Minister must cause to be published in a newspaper circulating generally throughout the State and in a local newspaper a notice stating the date on which the regulation was made and explaining its effect.

Division 2—Control of activities affecting water

Subdivision 1—Water affecting activities control policies

102—Water affecting activities control policies

- (1) A prescribed authority may prepare a policy under this section (a ***water affecting activities control policy***) with respect to the conservation, management or protection of—
- (a) a watercourse, lake or well (insofar as the watercourse, lake or well is within the board's region); or
 - (b) an area or a place containing (or from time to time containing) surface water (insofar as the area or place is within the relevant regional landscape board's region).

- (2) However, in the case of—

- (a) a prescribed watercourse, lake or well; or
- (b) a surface water prescribed area,

a water affecting activities control policy should not overlap with the provisions of a water allocation plan that is in operation under this Act in relation to that prescribed water resource.

- (3) A water affecting activities control policy may—
- (a) make provision for the requirement to have a water management authorisation or a permit under this Division to undertake an activity specified in the policy; and

- (b) make provision for the identification of the relevant authority for the purposes of the application and implementation of the policy under this Division; and
 - (c) set out matters that should be taken into account when a relevant authority is exercising a power to grant or refuse a water management authorisation or a permit under this Division or Division 3; and
 - (d) make provision for or in relation to the conditions of any water management authorisation or permit issued under this Division or Division 3; and
 - (e) specify rules, and make other provision, in relation to taking water from a watercourse, lake or well, or from an area or place, other than with respect to a prescribed water resource; and
 - (f) include any other matter prescribed by the regulations.
- (4) A prescribed authority may amend a water affecting activities control policy at any time (in accordance with the provisions of this Act).
 - (5) Schedule 2 makes provision in relation to the review, preparation and amendment of a water affecting activities control policy.
 - (6) In this section—

prescribed authority means a regional landscape board and includes, in relation to Green Adelaide, the Chief Executive.

Subdivision 2—Determination of relevant authority

103—Determination of relevant authority

- (1) The relevant authority in relation to the granting of a water management authorisation is the Minister.
- (2) Subject to subsections (3) and (5), the relevant authority in relation to activities for which a permit is required under this Division is—
 - (a) in the case of an activity referred to in section 104(3)(a), (b) or (c)—the Minister; and
 - (b) in the case of an activity referred to in section 104(3)(d)—
 - (i) if so provided by a water allocation plan or a water affecting activities control policy—the regional landscape board or a designated authority, as specified in the plan or policy (as the case may be); or
 - (ii) in any other case—the Minister; and
 - (c) in the case of the discharge of water into a watercourse for the purpose of running the water down the watercourse for storage in a reservoir or other facility—the Minister; and
 - (d) in the case of an activity (other than an activity referred to in paragraph (c)) referred to in section 104(3)(e) or (f)—the authority (being the Minister, the regional landscape board, a designated authority, a council or a council subsidiary) specified in a water allocation plan, a water affecting activities control policy or a regulation as the authority from whom the permit must be obtained.

- (3) The authority that is the relevant authority under subsection (2) may appoint the Minister, a regional landscape board, a designated entity, a council or a council subsidiary in its place to be the relevant authority and in that event the Minister, regional landscape board, designated entity, council or council subsidiary so appointed is the relevant authority.
- (4) An appointment under subsection (3) must be in writing.
- (5) In the case of an activity of a prescribed class within the Murray-Darling Basin, the Minister will be the relevant authority in relation to activities for which a permit is required under this Division.

Subdivision 3—Control of activities

104—Water affecting activities

- (1) A person must not take water from a prescribed watercourse, lake or well or take surface water from a surface water prescribed area—
 - (a) unless the person is—
 - (i) —
 - (A) authorised to do so under section 105; or
 - (B) taking the water as part of a water allocation that relates to the relevant water resource; or
 - (ii) entitled to take the water for domestic purposes or for watering stock under Division 1; and
 - (b) if the taking of water consists of the erection, construction or enlargement of a dam, wall or other structure that collects or diverts water flowing in a watercourse or flowing over any other land—unless the person is authorised to erect, construct or enlarge the dam by a water management authorisation or a permit referred to in subsection (3).
- (2) A person must not take water from a watercourse, lake or well that is not prescribed or take surface water from land that is not in a surface water prescribed area in contravention of a water affecting activities control policy.
- (3) Subject to this Act, a person must not undertake any of the following activities unless authorised to do so by a water management authorisation or permit granted by the relevant authority:
 - (a) drilling, plugging, backfilling or sealing of a well;
 - (b) repairing, replacing or altering the casing, lining or screen of a well;
 - (c) draining or discharging water directly or indirectly into a well;
 - (d) the erection, construction, modification, enlargement or removal of a dam, wall or other structure that will collect or divert, or collects or diverts—
 - (i) water flowing in a prescribed watercourse; or
 - (ii) water flowing in a watercourse in the Mount Lofty Ranges Watershed that is not prescribed; or

- (iii) surface water flowing over land in a surface water prescribed area or in the Mount Lofty Ranges Watershed;
 - (e) an activity of a kind referred to in subsection (4) that is identified in a water allocation plan or a water affecting activities control policy that applies or makes provision in relation to the region or area in which the activity is to be undertaken as being an activity for which a permit is required under this subsection;
 - (f) an activity prescribed by the regulations made on the recommendation of the Minister.
- (4) Subject to this Act, a person must not undertake any of the following activities contrary to a water allocation plan or a water affecting activities control policy that applies or makes provision in relation to the region or area in which the activity is to be undertaken:
 - (a) the erection, construction, modification, enlargement or removal of a dam, wall or other structure that will collect or divert, or collects or diverts, water flowing in a watercourse that is not in the Mount Lofty Ranges Watershed and that is not prescribed or flowing over any other land that is not in a surface water prescribed area or in the Mount Lofty Ranges Watershed;
 - (b) the erection, construction or placement of any building or structure in a watercourse or lake or on the floodplain of a watercourse;
 - (c) draining or discharging water directly or indirectly into a watercourse or lake;
 - (d) depositing or placing an object or solid material in a watercourse or lake;
 - (e) obstructing a watercourse or lake in any other manner;
 - (f) depositing or placing an object or solid material on the floodplain of a watercourse or near the bank or shore of a lake to control flooding from the watercourse or lake;
 - (g) destroying vegetation growing in a watercourse or lake or growing on the floodplain of a watercourse;
 - (h) excavating or removing rock, sand or soil from—
 - (i) a watercourse or lake or the floodplain of a watercourse; or
 - (ii) an area near to the banks of a lake so as to damage, or create the likelihood of damage to, the banks of the lake;
 - (i) using water in the course of carrying on a business in a landscape management region at a rate that exceeds the rate prescribed by a water allocation plan or a water affecting activities control policy if the water has been brought into the region by means of a pipe or other channel;
 - (j) using effluent in the course of carrying on a business in a landscape management region at a rate that exceeds a rate prescribed by a water allocation plan or a water affecting activities control policy;
 - (k) undertaking commercial forestry;
 - (l) an activity prescribed by the regulations.

- (5) Without limiting a preceding subsection, in the case of a prescribed watercourse, lake or well or a surface water prescribed area—
- (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
 - (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.
- (6) Subsection (5) does not apply—
- (a) in the case of subsection (5)(a)—to any works prescribed by regulation under this paragraph; or
 - (b) in the case of subsection (5)(b)—to any circumstance or situation, or after any point, prescribed by regulation under this paragraph; or
 - (c) in the case of subsection (5)(c)—to any circumstance or situation prescribed by regulation under this paragraph.
- (7) A person who—
- (a) contravenes subsection (1), (2), (3), (4) or (5); or
 - (b) contravenes or fails to comply with a term or provision of a water management authorisation; or
 - (c) contravenes or fails to comply with a condition to which a water management authorisation, an authorisation under section 105 or a permit is subject,

is guilty of an offence.

Maximum penalty:

- (a) if the offence relates to the taking or using of water and the court by which the conviction is recorded has accepted evidence as to the amount of water taken or used in contravention of this Act—
 - (i) a sum calculated at the prescribed rate for each kilolitre of water so taken or used; or
 - (ii) —
 - (A) where the offender is a body corporate—\$100 000;
 - (B) where the offender is a natural person—\$50 000,whichever is the greater;
- (b) in any other case—
 - (i) where the offender is a body corporate—\$100 000;
 - (ii) where the offender is a natural person—\$50 000.

Expiation fee: If the offence is constituted by a breach of a prescribed condition of a water management authorisation or permit—\$1 000.

- (8) The Minister, a regional landscape board, a council or a council subsidiary that proposes to undertake an activity does not require a permit for the activity if the Minister, regional landscape board, council or council subsidiary is the relevant authority for the purposes of granting permits for that kind of activity.
- (9) The relevant authority may, in conjunction with the operation of subsection (3)(d), determine not to grant any more permits for the erection, construction or enlargement of a dam, wall or other structure in a particular area unless or until there has been a reduction, to a level determined by the relevant authority, of the capacity of water capable of being retained by other dams, walls or structures already existing in the relevant area.
- (10) In this section—
prescribed rate means \$25.

105—Certain uses of water authorised

- (1) Subject to subsection (2), the Minister may, by notice published in the Gazette and in such other manner as the Minister thinks appropriate, authorise the taking of water from a prescribed watercourse, lake or well, or the taking of surface water from a surface water prescribed area, for a particular purpose specified in the notice.
- (2) A notice under subsection (1) cannot authorise the taking of water by stopping, impeding or diverting the flow of water for the purpose of collecting the water or diverting the flow of water from a watercourse unless the Minister is satisfied that it is reasonable to allow the water to be taken in this way after taking into account any criteria prescribed by the regulations for the purposes of this subsection.
- (3) A notice under subsection (1) may apply generally throughout the State or in relation to a particular watercourse or lake or to the wells, or the wells of a particular class, in a particular part of the State or to a particular surface water prescribed area (including as to particular stormwater infrastructure (or a part of stormwater infrastructure) or stormwater infrastructure of a particular class).
- (4) An authorisation under subsection (1) will be subject to such conditions as the Minister thinks fit and specifies in the notice.
- (5) The Minister may vary or revoke a notice under subsection (1) by a subsequent notice published in the Gazette and in such other manner as the Minister thinks appropriate.
- (6) A notice published under subsection (5) does not have effect, insofar as it revokes or restricts the right to take water or imposes further conditions on that right, until the expiration of 7 days after its publication in the Gazette.
- (7) If SA Water has discharged water into a prescribed watercourse, the Minister may authorise SA Water to take water from the watercourse.
- (8) An authorisation under subsection (7) is subject to such conditions as the Minister thinks fit and may be varied or revoked by the Minister at any time.

106—Activities not requiring a permit

- (1) Subject to subsection (2) and (3), a permit is not required—
 - (a) to authorise a person to undertake an activity that the person is authorised to undertake by a water management authorisation; or

- (b) to authorise a person to erect, construct or enlarge contour banks to divert surface water solely for the purpose of preventing or reducing soil erosion but only if—
 - (i) a regional landscape plan, a water allocation plan, a water affecting activities control policy or an approved action plan under Part 7, that includes guidelines, recommendations or directions in relation to the erection or construction of contour banks is in force; and
 - (ii) the contour banks are erected or constructed in accordance with those guidelines, recommendations or directions; or
 - (c) to destroy vegetation growing in a watercourse or lake or on the floodplain of a watercourse pursuant to an obligation under Part 9 or in accordance with consent granted under the *Native Vegetation Act 1991*; or
 - (d) to undertake an activity that is required to implement an approved action plan under this Act or an order or requirement under Part 10 Division 2; or
 - (e) to undertake an activity that is development for the purposes of the *Planning, Development and Infrastructure Act 2016* and that is authorised by a development authorisation under that Act; or
 - (f) to undertake an activity that is required or authorised by—
 - (i) an environment protection policy, an environment protection order, an environmental authorisation or a clean-up order under the *Environment Protection Act 1993*; or
 - (ii) a protection order, a reparation order or a reparation authorisation under the *River Murray Act 2003*; or
 - (g) to undertake an activity under an approved property plan under the *Pastoral Land Management and Conservation Act 1989*; or
 - (h) to undertake an activity under section 43 of the *Pastoral Land Management and Conservation Act 1989*; or
 - (i) to authorise a person to undertake an activity that the person is authorised to undertake by a licence granted under Part 3 Division 2 of the *South Eastern Water Conservation and Drainage Act 1992*; or
 - (j) to undertake an activity in circumstances prescribed by the regulations.
- (2) Subsection (1) does not apply to or in relation to—
- (a) drilling, plugging, backfilling or sealing a well; or
 - (b) repairing, replacing or altering the casing, lining or screen of a well.
- (3) If an activity is to be undertaken within the Murray-Darling Basin—
- (a) subsection (1)(e) does not apply unless the application for the relevant development authorisation was referred to the Minister to whom the administration of the *River Murray Act 2003* is committed under section 122 of the *Planning, Development and Infrastructure Act 2016*; and
 - (b) in any event, subsection (1) does not apply if the operation of this section is excluded by the regulations.

- (4) In addition, subsection (1)(e) does not apply in relation to any activity of a class prescribed by the regulations under this subsection.
- (5) A permit is not required to undertake an activity contemplated by subsection (2) if the well is within the ambit of Schedule 3.

107—Notice to rectify unauthorised activity

- (1) If a person has—
 - (a) undertaken an activity of a kind referred to in this Subdivision in contravention of—
 - (i) this Subdivision; or
 - (ii) a corresponding previous enactment; or
 - (b) contravened or failed to comply with a condition of a water management authorisation or an authorisation under section 105 or a permit,

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

- (2) If the owner fails to comply with a notice—
 - (a) the person is guilty of an offence; and
 - (b) the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner to the authority or, if appropriate, the Crown.

Maximum penalty:

- (a) where the offender is a body corporate—\$70 000;
 - (b) where the offender is a natural person—\$35 000.
- (3) In this section—

corresponding previous enactment means—

- (a) the *Local Government Act 1934*; or
- (b) the *Natural Resources Management Act 2004*; or
- (c) the *Water Resources Act 1990*; or
- (d) the *Water Resources Act 1997*;

relevant authority means—

- (a) where subsection (1)(a) applies—the authority that has the power to grant or refuse a licence, authority or permit in relation to the activity referred to in subsection (1); or
- (b) where subsection (1)(b) applies in relation to a water management authorisation or a permit—the authority that granted the water management authorisation or permit; or
- (c) where subsection (1)(b) applies in relation to an authorisation under section 105—the Minister or the Chief Executive.

108—Notice to maintain watercourse or lake

- (1) The relevant authority may, by notice served on the owner of land on which a watercourse or lake is situated or that adjoins a watercourse or lake, direct the owner to take the action specified in the notice to maintain the watercourse or lake in good condition.
- (2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty:

- (a) where the offender is a body corporate—\$70 000;
 - (b) where the offender is a natural person—\$35 000.
- (3) If the owner on whom a notice has been served under this section fails to comply with the notice, the relevant authority may enter the land and take the action specified in the notice and such other action as the authority considers appropriate in the circumstances and the authority's costs will be a debt due by the owner to the authority or, if appropriate, the Crown.
- (4) In this section—
relevant authority means—
 - (a) the Minister; or
 - (b) the Chief Executive; or
 - (c) the relevant regional landscape board.

109—Restrictions in case of inadequate supply or overuse of water

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

- (ii) is having a serious effect on a watercourse or lake, or the level of water in an underground aquifer, that depends on the surface water for replenishment,

the Minister may, by notice published in the Gazette and in such other manner as the Minister thinks appropriate—

- (d) prohibit or restrict the taking of water from the watercourse, lake or well or the taking of surface water; or
 - (e) limit the quantity of water that may be taken from the watercourse, lake or well, or from any surface water; or
 - (f) direct that dams, reservoirs, embankments, walls or other structures be modified to allow water to pass over, under or through them.
- (2) When determining the demands on available water under subsection (1), the need for water of the ecosystems that depend on water from the water resource concerned must be taken into account.
- (3) A notice under subsection (1) has effect on a date specified in the notice.
- (4) A notice under subsection (1) remains in force for such period (not exceeding 2 years) as is stated in the notice unless it is revoked under subsection (9).
- (5) If, in the opinion of the Minister, the rate at which, or the manner in which, water is taken from a water resource that has not been prescribed is causing, or is likely to cause, damage to ecosystems that depend on water from the water resource, the Minister may, by notice served on a person taking the water—
- (a) restrict the rate and the times at which the person may take water; or
 - (b) direct the person to take such action as is specified in the notice to rectify any problem relating to the manner in which water is taken.
- (6) A notice under subsection (1) or (5)—
- (a) may require the removal of the means by which water can be taken from the watercourse, lake or well or the means by which surface water can be taken; or
 - (b) may specify conditions subject to which water may be taken from the watercourse, lake or well or surface water may be taken.
- (7) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.
- Maximum penalty:
- (a) where the offender is a body corporate—\$70 000;
 - (b) where the offender is a natural person—\$35 000.
- Expiation fee: \$400.
- (8) If the owner or occupier of land fails to comply with a requirement of a notice under subsection (6)(a), the Chief Executive may enter the land and take the action specified in the notice and such other action as the Chief Executive considers appropriate in the circumstances and the Chief Executive's costs will be a debt due by the owner or occupier to the Crown.

- (9) If a notice has been published under subsection (1), the Minister may vary or revoke the notice by notice published in the Gazette and in such other manner as the Minister thinks appropriate.
- (10) If the Minister has served notice on a person under subsection (5), the Minister may vary or revoke the notice by subsequent notice served on that person.

110—Specific duty with respect to damage to a watercourse or lake

- (1) It is the duty of the owner of land on which a watercourse or lake is situated, or that adjoins a watercourse or lake, to take reasonable measures to prevent damage to the bed and banks of the watercourse or the bed, banks or shores of the lake and to the ecosystems that depend on the watercourse or lake.
- (2) A person who breaches subsection (1) is not, on account of the breach alone, liable to any civil or criminal action, but—
 - (a) compliance with that subsection may be enforced by the issuing of a protection order under Part 10 Division 2 Subdivision 1; and
 - (b) a reparation order or reparation authorisation may be issued under Part 10 Division 2 Subdivision 1; and
 - (c) an order may be made by the ERD Court under Part 10 Division 2 Subdivision 2 in respect of the non-compliance.
- (3) In this section—

damage does not include—

 - (a) damage caused in the normal course of an activity authorised by or under this Act; or
 - (b) damage of a minor nature.

111—Minister may direct removal of dam etc

- (1) The Minister may, on the recommendation of a regional landscape board or on the Minister's own initiative after consultation with the relevant regional landscape board, by notice served on the owner of land, direct the owner to remove or modify a dam, embankment, wall or other obstruction or object that collects water, or diverts or impedes the flow of water, in a watercourse or flowing over any other land and that was lawfully placed in or near the watercourse or on the land before the prescribed date.
- (2) Compensation is payable under section 226 in relation to the removal of a dam, embankment, wall or other obstruction or object by the owner in compliance with a notice under subsection (1).
- (3) If the owner on whom a notice has been served under this section fails to comply with the notice, the Minister may enter the land and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances.

Subdivision 4—Permits

112—Permits

- (1) An application for a permit must be in a form approved by the relevant authority and must, if a fee has been prescribed by regulation in relation to the application, be accompanied by the fee.
- (2) The applicant must provide the relevant authority with such information as the authority reasonably requires to consider the application.
- (3) A relevant authority must—
 - (a) take into account the provisions of any relevant water allocation plan or water affecting activities control policy when considering an application for a permit; and
 - (b) ensure that the permit, if granted, and any conditions of the permit, are not inconsistent with the provisions of a plan or policy under paragraph (a).
- (4) A relevant authority must not grant a permit contrary to a notice for the time being in force under section 109.
- (5) Subject to its terms, a permit is binding on and operates for the benefit of the applicant and the owner and occupier of the land to which it relates when it is granted and all subsequent owners and occupiers of the land.
- (6) A permit is subject to such conditions as are prescribed by this Act or by the regulations, or are specified in the permit by the relevant authority.
- (7) Depending on its nature, a condition may remain in force after the activity authorised by the permit has been completed.
- (8) It is a condition of a permit to drill, plug, backfill or seal a well or to repair, replace or alter the casing, lining or screen of a well that the work be undertaken by a person who is a licensed well driller or is supervised in carrying out the work by a licensed well driller.
- (9) If the relevant authority is satisfied that the holder of a permit or a person acting on behalf of the holder of a permit has contravened or failed to comply with a condition of the permit, the authority may, by notice served on the holder of the permit, vary, suspend or revoke the permit.
- (10) If a water allocation plan or water affecting activities control policy has been varied, a relevant authority may vary a permit granted by it so that the permit is not inconsistent with the plan or policy.
- (11) If it is not possible or practicable to vary a permit under subsection (10) so that the permit is not inconsistent with a water allocation plan or water affecting activities control policy, the relevant authority may revoke the permit.
- (12) If the rising level of underground water is—
 - (a) damaging soil, rock or other structures; or
 - (b) damaging ecosystems; or
 - (c) affecting the natural drainage of surface water,

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

- (13) In any other case, the relevant authority may vary, suspend or revoke a permit with the consent of the holder of the permit.
- (14) The variation or revocation of a permit under this section will be effected by the relevant authority serving notice of the variation or revocation on the holder of the permit.
- (15) The holder of a permit may appeal to the ERD Court against the variation or revocation of the permit under this section.
- (16) A relevant authority that has granted a permit to undertake an activity and a person employed by, or who acted on behalf of, the authority in granting the permit is not liable for any injury, loss or damage caused by, or resulting from—
 - (a) the manner in which the activity is carried out; and
 - (b) in the case of the erection, construction or enlargement of a dam, wall, building or other structure—the design of the dam, wall, building or other structure or the materials used for its erection, construction or enlargement.
- (17) In this section—

relevant authority in relation to a permit means the authority that is for the time being the relevant authority under section 103 for the purpose of granting or refusing an application for a permit of that kind.

113—Requirement for notice of certain applications

- (1) This section applies to an application for a permit if a water allocation plan or water affecting activities control policy provides that this section applies to the application.
- (2) Notice of an application to which this section applies must be given by the relevant authority to whom the application has been made in accordance with the regulations to—
 - (a) those persons specified in the plan or policy (as the case may be); and
 - (b) those persons (if any) prescribed by the regulations; and
 - (c) the public generally.
- (3) If notice of an application has been given under this section, a person who desires to do so may, in accordance with the regulations, make representations in writing to the relevant authority in relation to the granting or refusal of the permit.
- (4) The relevant authority must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations.
- (5) The response referred to in subsection (4) must be made within the number of days prescribed by the regulations after the relevant material is forwarded to the applicant.
- (6) The relevant authority must allow a person who made a representation and who, as part of that representation, indicated an interest in appearing before the authority, a reasonable opportunity to appear personally or by representative before it to be heard in support of the representation.

- (7) If a person appears before the relevant authority under subsection (6), the relevant authority must also allow the applicant a reasonable opportunity, on request, to appear personally or by representative before it in order to respond to any relevant matter.
- (8) If representations have been made under this section, the relevant authority must—
 - (a) give to each person who made a representation notice of its decision on the application and of the date of the decision and of the person's appeal rights under this Act; and
 - (b) give notice to the ERD Court—
 - (i) of its decision on the application and of the date of the decision; and
 - (ii) of the names and addresses of persons who made representations to the relevant authority under this section.
- (9) A notice under subsection (8) must be given within 5 business days from the date of the relevant authority's decision on the application.
- (10) A person who is entitled to be given notice of the decision under subsection (8) may, within 15 business days after the date on which the notice was given to the person, appeal to the ERD Court against the decision.
- (11) If an appeal is lodged, the applicant for the permit must be notified by the ERD Court of the appeal and will be a party to the appeal.
- (12) A decision of a relevant authority in respect of which representations have been made under this section does not operate—
 - (a) until the time within which any person who made any such representation may appeal against a decision to grant the permit has expired; or
 - (b) if an appeal is commenced—
 - (i) until the appeal is dismissed, struck out or withdrawn; or
 - (ii) until the questions raised by the appeal have been finally determined (other than any question as to costs).
- (13) The relevant authority must make written representations made under this section in relation to an application for a permit, and the written response of the applicant (if any), available for inspection (without charge) and purchase by members of the public (and must not charge more than the fee prescribed by the regulations in so doing).

114—Refusal of permit to drill well

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

Subdivision 5—Provisions relating to wells

115—Well drillers' licences

- (1) The Chief Executive may grant a well driller's licence to a natural person who—
 - (a) is of or over the age of 18 years; and

- (b) holds qualifications (if any) prescribed by regulation; and
 - (c) is, in the Chief Executive's opinion, a fit and proper person to hold such a licence.
- (2) An application for a licence must be in a form approved by the Minister and must be accompanied by the fee prescribed by the regulations.
- (3) A licence must specify the term of the licence and is subject to such conditions prescribed from time to time by the regulations and to such further conditions specified in the licence by the Chief Executive.
- (4) If the holder of a well driller's licence contravenes or fails to comply with a condition of the licence—
 - (a) the Chief Executive may cancel or suspend the licence, or vary a condition of the licence; and
 - (b) the holder of the licence is guilty of an offence.

Maximum penalty: \$35 000.

- (5) The Chief Executive may cancel a well driller's licence if the Chief Executive is satisfied that the holder of the licence is no longer a fit and proper person to hold such a licence.
- (6) The holder of a well driller's licence or the former holder of a licence may appeal to the ERD Court against a decision of the Chief Executive under subsection (4)(a) or (5) on the ground that the decision was harsh or unreasonable.
- (7) The Chief Executive may vary a well driller's licence on the application of the holder of the licence.

116—Renewal of licence

- (1) A well driller's licence may be renewed from time to time.
- (2) An application for renewal of a licence must be in a form approved by the Minister and must be accompanied by the fee prescribed by the regulations.

117—Non-application of certain provisions

- (1) A provision of this Subdivision does not apply to, or in relation to, a well of a class declared by proclamation to be excluded from the operation of that provision.
- (2) A proclamation under subsection (1) may be varied or revoked by subsequent proclamation.

118—Defences

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

- (a) to prove that the well is of a class specified by or under Schedule 3; or
- (b) to prove that the person who carried out the work was the owner of the land on which the well is situated or was the employee or sharefarmer of the owner of that land and that—

- (i) the well gives access to underground water the surface of which is at atmospheric pressure and the total dissolved salts of which exceed 1 800 milligrams per litre; and
- (ii) the work was carried out solely for the purposes of maintenance and did not involve—
 - (A) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications; or
 - (B) a substantial repositioning of the casing, lining or screen; or
 - (C) deepening the well by more than 1.5 metres; or
- (c) to prove that—
 - (i) the work comprising the alleged offence was carried out to prevent or reduce pollution of water in the well and that in the circumstances it was unreasonable to expect the defendant—
 - (A) to have obtained a permit; or
 - (B) to have obtained the services of a licensed well driller; and
 - (ii) the work was carried out in accordance with the regulations (if any); and
 - (iii) the Chief Executive was given written notice of the work as soon as practicable after it was completed; or
- (d) to prove that—
 - (i) the work comprising the alleged offence was carried out pursuant to a permit issued by the relevant authority; and
 - (ii) the work comprising the alleged offence was carried out by or under the supervision of the owner of the land on which the well is situated; and
 - (iii) at the time of the alleged offence the well was not more than 15 metres in depth (or such other depth as may be prescribed by regulation); and
 - (iv) the work was carried out in accordance with the regulations (if any).

119—Obligation to maintain well

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

Maximum penalty:

- (a) where the offender is a body corporate—\$40 000;
- (b) where the offender is a natural person—\$20 000.

- (2) It is a defence to prosecution for an offence against subsection (1) to prove that—
- (a) the defendant could not lawfully carry out the necessary maintenance work without a permit granted under Subdivision 4; and
 - (b) the defendant had applied for the required permit within a reasonable time but the relevant authority had refused or failed to grant it.

120—Requirement for remedial or other work

- (1) If the Chief Executive is satisfied that the water of a well is likely to be degraded or wasted because—
- (a) of a defect in the well, or in the casing, lining or screen of the well; or
 - (b) the well or the casing, lining or screen is in need of maintenance; or
 - (c) there is no mechanism for capping the well or the mechanism for capping the well is inadequate or in need of maintenance,

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

- (2) If the Chief Executive is satisfied—
- (a) —
 - (i) that there is a defect in a well, or in the casing, lining or screen of a well; or
 - (ii) that a well, or the casing, lining or screen of a well, is in need of extensive maintenance; or
 - (iii) that the drawing of water from a well has caused, or would be likely to cause, damage to a water resource; or
 - (iv) that a well has been constructed in contravention of this Act, or has been used in connection with a contravention of this Act; and
 - (b) that it is reasonable in the circumstances to act under this subsection,

the Chief Executive may, by notice served on the owner or occupier of the land on which the well is situated, direct that the well be plugged, backfilled or sealed.

- (3) If, in the Chief Executive's opinion, a defect in a well resulted from work carried out by a licensed well driller, the Chief Executive may, in addition to or instead of serving notice on the owner or occupier of the land, serve notice under subsection (1) or subsection (2) on the well driller (but the notice must not be served later than 6 months after the work was carried out).
- (4) A well driller on whom a notice is served is entitled to enter the land on which the well is situated in order to comply with the notice.
- (5) A person who fails to comply with a notice is guilty of an offence.

Maximum penalty:

- (a) where the offender is a body corporate—\$40 000;
- (b) where the offender is a natural person—\$20 000.

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

Division 3—Licensing and associated rights and entitlements

Subdivision 1—Water licences

121—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.
- (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*).
- (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) The consumptive pool or consumptive pools may be affected by water allocations attached to forest water licences (and these allocations must then be taken into account in connection with the operation of the scheme established by this section).
- (7) 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.

122—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).
- (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) 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.
- (5) 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.
- (6) 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.

123—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.

124—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 in accordance with the relevant water allocation plan and this Act; or
 - (c) at any time if there has been an alteration to the water allocation plan 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
 - (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.
- (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.
- (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,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) 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).
- (4) A licensee may appeal to the ERD Court against—
 - (a) a decision to refuse to grant an application to vary the licensee's licence under subsection (1)(a); or
 - (b) the variation of the licensee's licence under subsection (1)(b), (c) or (d).
- (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.

125—Transfer of water licences

- (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.
- (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
 - (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 the Minister's approval must—
 - (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.
- (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 water levy that has been imposed in relation to the licence has been paid.

- (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) 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 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.
- (11) 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 to ensure consistency with the relevant water allocation plan;
 - (c) if relevant, take any other action required or permitted under an Interstate Water Entitlements Transfer Scheme;
 - (d) require a reduction in the size of a dam, or require other work to be undertaken with respect to a dam, wall or structure, to match the effect of the transfer.
- (12) As an example but without limiting subsection (11), if, following a transfer, the water will not be taken from the same part of the water resource as before, the Minister may exercise the Minister's powers under subsection (11)—
 - (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.
- (13) A person who holds a water licence that is subject to the operation of subsection (11)(d) must comply with that requirement within a period specified by the Minister.

Maximum penalty:

 - (a) where the offender is a body corporate—\$70 000;
 - (b) where the offender is a natural person—\$35 000.
- (14) A transfer is subject to the operation of Schedule 4 clause 7.

- (15) 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).
- (16) 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.

126—Surrender of water licences

- (1) Subject to subsection (2), a licensee may surrender the licensee's 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.

Subdivision 2—Allocation of water

127—Allocation of water

- (1) A water allocation may be obtained—
 - (a) on account of a water access entitlement under a water licence; or
 - (b) as a carry-over under subsection (8)(a) or (b); or
 - (c) under an Interstate Water Entitlements Transfer Scheme; or
 - (d) from the holder of a forest water licence (subject to any conversion or adjustment under the provisions of any relevant water allocation plan).
- (2) In a case where subsection (1)(a) applies, the water allocation may be obtained—
 - (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.
- (3) In a case where subsection (1)(b) applies, the water allocation that is carried over will be subject to such adjustments (including a reduction) as the Minister may determine for the purposes of this section.
- (4) In a case where subsection (1)(c) applies, the Minister will issue a water allocation that is to take effect for the purposes of this Act.
- (5) A water allocation will relate to a specified water resource (or part of a water resource)—
 - (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.

- (6) 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.
- (7) 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.
- (8) A water allocation will initially relate to a specified period (not exceeding 12 months) and if water is not taken under the terms of the allocation during that period the allocation may be carried over if—
 - (a) to do so is authorised by the relevant water allocation plan; or
 - (b) a carry-over is allowed by the Minister (either by determination of the Minister in a particular case or cases or under a policy established by the Minister for the purposes of this section by notice in the Gazette),but otherwise the water allocation will expire at the end of the period.
- (9) To avoid doubt, subsection (8) extends to a water allocation converted from a water allocation attached to a forest water licence under Division 6 to a water allocation within the operation of this section.

128—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
 - (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.

129—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) 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.

130—Reduction of water allocation

- (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—
 - (i) under or by virtue of the *Groundwater (Border Agreement) Act 1985*; or
 - (ii) on account of the operation of the Murray-Darling Basin Agreement, the operation or effect of a resolution of the Ministerial Council under that agreement, or the operation or effect of the Basin Plan under the *Water Act 2007* of the Commonwealth.
- (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.
- (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—
 - (a) consult the relevant regional landscape board; and
 - (b) cause to be published, in the Gazette and in such other manner as the Minister thinks appropriate, 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
 - (c) have regard to the views of the regional landscape 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.
- (7) Nothing in this section limits or affects the operation of section 131.

131—Variation of water allocations

- (1) A water allocation may be varied by the Minister—
 - (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 in accordance with the relevant water allocation plan and this Act; or
 - (c) at any time if there has been an alteration to the water allocation plan 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
 - (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 156; or
 - (g) 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.
- (3) The Minister's decision on the variation of a water allocation—
 - (a) must—
 - (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,

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
 - (b) must be made in the public interest; and
 - (c) 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).
- (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).
- (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 130.

132—Transfer of water allocations

- (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 the Minister's approval must—
 - (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
- (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 water levy that has been imposed in relation to the relevant water licence has been paid.

- (5) In addition, the Minister's decision to grant or refuse approval for the transfer of a water allocation—
- (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
 - (b) must be made in the public interest; and
 - (c) 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).
- (6) The Minister may, when granting an application for the transfer of a water allocation—
- (a) vary the basis on which the water allocation is determined;
 - (b) reduce the water allocation;
 - (c) vary any condition of the water allocation to ensure consistency with the relevant water allocation plan.
- (7) As an example but without limiting paragraph (b), 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 the Minister's powers under subsection (6)—
- (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
 - (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.
- (8) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water allocation is not chargeable with duty under that Act.

133—Surrender of water allocations

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

Subdivision 3—Water resource works approvals

134—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.
- (4) 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.

135—Issuing of approvals

- (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) may specify a maximum volume of water that may be taken, collected, diverted or extracted under the approval; and
 - (c) 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
 - (d) may be classified in connection with a management zone or zones specified in the relevant water allocation plan.

- (2) A water resource works approval may relate to more than 1 form of works (including different forms of works).
- (3) In connection with subsection (1)(b)—
 - (a) a maximum volume of water may apply to more than 1 works (and different maximums may apply in relation to different works); and
 - (b) a water resource works approval may specify a maximum volume that will apply—
 - (i) for a specified time; or
 - (ii) until a specified day; or
 - (iii) from time to time according to circumstances, or for periods, specified in the water resource works approval; or
 - (iv) indefinitely (subject to any variation made by the Minister); or
 - (v) on some other basis specified in the water resource works approval.
- (4) Without limiting the operation of subsection (1)(c), 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 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;
 - (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).
- (5) A condition of a kind referred to in subsection (4) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.

136—Variation of approvals

- (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 in accordance with the relevant water allocation plan and this Act; or
 - (c) at any time if there has been an alteration to the water allocation plan 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
 - (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) at any time if the variation is necessary, in the opinion of the Minister, to provide consistency with action taken with respect to the variation or transfer of a water licence or water allocation that is relevant to the water resource works approval; 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
 - (b) be accompanied by the fee prescribed by the regulations.
- (3) For the purposes of subsection (1)(e), a water resource works approval is relevant to a water licence or water allocation if the works approved under the approval are used or may be used to take water under the licence or water allocation that is being varied or transferred.
- (4) 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
 - (c) 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).
- (5) A person who holds 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 the person's water resource works approval under subsection (1)(b), (c) or (d).

- (6) However, if the approval relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (5) if the regulations so provide.
- (7) 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.
- (8) 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.
- (9) Without limiting a preceding subsection, a water resource works approval may be varied—
 - (a) by operation of the provisions of the relevant water allocation plan, and the variation will take effect by force of this subsection; or
 - (b) by the Minister acting in a circumstance specified by the water allocation plan under section 53(8).

137—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—

- (a) notice of the application must be given by the Minister, in accordance with the regulations, to—
 - (i) those persons specified in the plan; and
 - (ii) those persons (if any) prescribed by the regulations; and
 - (iii) the public generally; and
- (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
- (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
- (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
- (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
- (g) if representations have been made under this subsection, the Minister must, within the period prescribed by the regulations—

- (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—
 - (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
- (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 the person, 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 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—
 - (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) if 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).

138—Cancellation if works not constructed or used

- (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.
- (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.

139—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.

140—Expiry

A water resource works approval will expire according to its terms if the provisions of the approval so provide.

Subdivision 4—Site use approval

141—Site use approvals—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.
- (4) In addition, the Minister's decision on the grant of an approval must be consistent with requirements (if any) prescribed by the regulations.

142—Issuing of approvals

- (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) may specify the maximum volume of water that may be used at the place under paragraph (a) under the approval; and
 - (c) 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
 - (d) may be classified in connection with a management zone specified in the relevant water allocation plan.
- (2) In connection with subsection (1)(b), a site use approval may specify a maximum volume of water that will apply—
- (a) for a specified time; or
 - (b) until a specified day; or
 - (c) from time to time according to circumstances, or for periods, specified in the site use approval; or
 - (d) indefinitely (subject to any variation made by the Minister); or
 - (e) on some other basis specified in the site use approval.
- (3) 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;
 - (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).
- (4) A condition of a kind referred to in subsection (3) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.

143—Variation of approvals

- (1) A site use 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 use of water from the resource in accordance with the relevant water allocation plan and this Act; or
 - (c) at any time if there has been an alteration to the water allocation plan 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
 - (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.
- (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
 - (c) 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).
- (4) A person who holds a site use 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 the person's approval under subsection (1)(b), (c) or (d).
- (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.
- (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—
 - (a) by operation of the provisions of the relevant water allocation plan, and the variation will take effect by force of this subsection; or

- (b) by the Minister acting in a circumstance specified by the water allocation plan under section 53(8).

144—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—

- (a) notice of the application must be given by the Minister, in accordance with the regulations, to—
 - (i) those persons specified in the plan; and
 - (ii) those persons (if any) prescribed by the regulations; and
 - (iii) the public generally; and
- (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
- (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
- (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
- (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
- (g) if representations have been made under this subsection, the Minister must, within the period prescribed by the regulations—
 - (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—
 - (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
- (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 the person, 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
- (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
 - (ii) if 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).

145—Cancellation

- (1) The Minister may, in accordance with a scheme prescribed by the regulations, cancel a site use approval in prescribed circumstances.
- (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.

146—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.

147—Expiry

A site use approval will expire according to its terms if the provisions of the approval so provide.

Subdivision 5—Delivery capacity entitlements

148—Delivery capacity entitlements—applications and matters to be considered

- (1) An application for a delivery capacity entitlement must be in a form approved by the Minister and must—
 - (a) specify—
 - (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

- (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
 - (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, 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).
- (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
 - (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
 - (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.
- (5) 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.
- (6) 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.
- (7) 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.

149—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.

150—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)).

151—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
 - (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 in accordance with the relevant water allocation plan and this Act; or
 - (c) at any time if there has been an alteration to the water allocation plan 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

- (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
 - (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
 - (b) be accompanied by the fee prescribed by the regulations.
- (3) The Minister's decision on the variation 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
 - (b) must be made in the public interest; and
 - (c) 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).
- (4) A person who holds a delivery capacity entitlement may appeal to the ERD Court against—
 - (a) a decision to refuse to grant an application to vary the person's delivery capacity entitlement under subsection (1)(a); or
 - (b) the variation of the person's 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.
- (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.

152—Transfer of delivery capacity entitlements

- (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.
- (4) An application to the Minister for the Minister's approval must—
 - (a) be made in a form approved by the Minister; and

- (b) be accompanied by the fee prescribed by the regulations.
- (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.
- (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 water levy that has been imposed in relation to the delivery capacity entitlement has been paid.
- (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
 - (b) must be made in the public interest; and
 - (c) 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).
- (8) Subsection (7)(a) operates subject to the terms or requirements of an Interstate Water Entitlements Transfer Scheme.
- (9) 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 *South Australian Water Corporation Act 1994*.
- (10) 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.
- (11) The Minister may, when granting an application for the transfer of a delivery capacity entitlement—
 - (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 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.

- (12) A delivery capacity entitlement that has been transferred for a limited period reverts automatically to the transferor when the period expires.
- (13) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a delivery capacity entitlement is not chargeable with duty under that Act.

153—Surrender of delivery capacity entitlements

The holder of a delivery capacity entitlement may surrender the delivery capacity entitlement at any time.

Subdivision 6—Interstate agreements

154—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—
 - (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;
 - (c) for the assignment of water allocations from 1 State or Territory to another State or Territory.
- (2) In this section—

water entitlement means—

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

Subdivision 7—Related matters

155—Allocation on declaration of prescribed water resource

- (1) On declaration of a watercourse, lake or well as a prescribed watercourse, lake or well or declaration of a part of the State as a surface water prescribed area, an existing user of water from the water resource concerned—
 - (a) may, subject to a restriction or prohibition under section 109, continue to use water without a water management authorisation until the end of the prescribed period or, if the existing user 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 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 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—
 - (a) based on their reasonable requirements during the establishment period; or
 - (b) for water for a development, project or other undertaking to which they were legally committed or in respect of which they 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—
 - (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 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 109, a person 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 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—

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

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

- (a) who took water from the resource at any time during the establishment period; or
- (b) who did not take any water during that period but who needs water for a development, project or undertaking to which the person was legally committed or in respect of which the person 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 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.
- (12) If a person who is an existing user under a preceding subsection divests themselves of land (or an interest in land) in relation to which the rights of an existing user arises under those subsections—
 - (a) the person who acquires the land (or the interest in land), or any successor to that person, will be regarded as the existing user in substitution for the earlier existing user (and to obtain the benefit of any action or commitment taken or made by an earlier existing user); and
 - (b) those subsections will apply subject to any modifications necessary to take into account the operation of this subsection, and such other modifications as may be prescribed by the regulations.

156—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—
 - (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.
- (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—
 - (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
 - (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
 - (c) the Water 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
 - (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.
- (8) The Governor may, by regulation, make provision for related or ancillary matters connected with the operation of this section.

157—Consequences of breach of water management authorisations

- (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,

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.

- (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 109, 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.
- (3) If—
- (a) the holder of a water management authorisation, or a person acting on behalf of the holder of a water management authorisation—
 - (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
 - (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,
- 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.
- (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.
- (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.

158—Effect of cancellation of water management authorisations

- (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
 - (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,
- 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 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 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;
 - (b) secondly—in discharging any liability (if any) for an unpaid levy or instalment of a levy under Part 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 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;
 - (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 their whereabouts, an amount payable to the former holder of the entitlement must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (8) The purchaser of an entitlement under this section takes the entitlement free of all charges.

Division 4—Reservation of excess water by Minister

159—Interpretation

In this Division, unless the contrary intention appears—

reserved water means water reserved by notice published in the Gazette under section 160.

160—Reservation of excess water in a water resource

- (1) If—
 - (a) a water allocation plan has been approved by the Minister in relation to a water resource; and
 - (b) the water resource includes excess water that is available for allocation; and
 - (c) the Minister is satisfied that it is necessary or desirable for the proper management of the water of the resource to reserve the whole or part of that excess water either from allocation under any circumstances or for allocation subject to restrictions,the Minister may, by notice published in the Gazette, reserve the whole or a part of the excess water.
- (2) The notice—
 - (a) must specify the quantity of water that is reserved; and

- (b) must state whether the water is reserved from allocation under any circumstances or may be allocated by the Minister if the requirements referred to in a regulation under section 161 are satisfied; and
 - (c) may, if water can be allocated, specify the requirements (if any) that must be satisfied in addition to those referred to in a regulation under section 161 before water is allocated.
- (3) The Minister may, at any time, by subsequent notice published in the Gazette vary or revoke a notice under subsection (1).

161—Allocation of reserved water

- (1) The following provisions apply in relation to the allocation of reserved water despite the other provisions of this Act:
 - (a) the restrictions (if any) in the relevant water allocation plan as to the purpose for which allocated water can be used do not apply to the allocation of reserved water (but this paragraph does not prevent the Minister from allocating reserved water subject to the same or similar restrictions);
 - (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;
 - (c) the Minister may require an applicant to pay to the Minister for the allocation of reserved water an amount negotiated with the applicant either in 1 payment or a series of periodic payments;
 - (d) section 122(2) and (5) do not apply in relation to an allocation of reserved water;
 - (e) a person cannot transfer an allocation of reserved water to another person.
- (2) The Minister must not allocate reserved water unless—
 - (a) a regulation that sets out requirements that must be satisfied is in force; and
 - (b) those requirements have been satisfied.
- (3) A regulation referred to in subsection (2)(a) cannot come into operation until it is no longer possible for the regulation to be disallowed under section 10 of the *Subordinate Legislation Act 1978*.

162—Public notice of allocation of reserved water

- (1) If—
 - (a) the Minister has by notice in the Gazette reserved water under this Division; and
 - (b) under the terms of the notice the reserved water may be allocated,the Minister must, subject to subsection (3), publish notice in the Gazette in respect of each quarter setting out—
 - (c) the quantity of reserved water allocated to each person during the quarter; and
 - (d) the name of each person to whom the water was allocated; and
 - (e) the term during which the allocation operates; and

- (f) the amount or amounts payable for the allocation of the water and the date or dates on which those amounts are payable.
- (2) A notice under subsection (1) must be published in the Gazette as soon as practicable after the end of the quarter to which it relates.
- (3) A notice need not be published under subsection (1) if no water was allocated in the relevant quarter.
- (4) In this section—
quarter means the periods of 3 months ending on 30 September, 31 December, 31 March and 30 June in each financial year.

Division 5—Water conservation measures

163—Water conservation measures

- (1) For the purposes of this section, water conservation measures may do 1 or more of the following:
 - (a) prohibit the use of water for a specified purpose or purposes, or restrict or regulate the purposes for which water can be used;
 - (b) prohibit the use of water in a specified manner or by specified means, or restrict or regulate the manner in which, or the means by which, water may be used;
 - (c) prohibit specified uses of water during specified periods, or restrict or regulate the times at which water may be used.
- (2) The Governor may, by regulation, introduce 1 or more water conservation measures.
- (3) Regulations under subsection (2) must be declared to be made—
 - (a) for the purposes of taking action to provide for the better conservation, use or management of water (*longer-term measures*); or
 - (b) for the purposes of taking action on account of a situation, or likely situation, that, in the opinion of the Governor, has resulted, or is likely to result, in a decrease of the amount of water available within a water resource (whether prescribed or not) (*short-term measures*).
- (4) A regulation under subsection (2) will, unless it has already been revoked, expire—
 - (a) in the case of a longer-term measure—at the expiration of 5 years from the day on which it comes into operation;
 - (b) in the case of a short-term measure—at the expiration of 1 year from the day on which it comes into operation.
- (5) Before a regulation is made under subsection (2)—
 - (a) the Minister should take reasonable steps to consult with persons who, in the opinion of the Minister, are appropriate representatives of groups who will be affected by the proposed regulation; and
 - (b) the Minister should give consideration—

- (i) to the impact that the regulation would have on any rights or entitlements arising under or by virtue of any licences or permits granted under this Part; and
 - (ii) to the provisions of any relevant water allocation plan, and of any other relevant provision of this Part.
- (6) A regulation under this section may provide that a specified activity involving the use of water cannot occur except under the authority of an approval issued by the Minister in accordance with the regulations.
- (7) A regulation under this section may—
 - (a) apply in relation to any water—
 - (i) that forms part of the water resources (whether prescribed or not) of the State; or
 - (ii) that is available for use within the State (including through a water reticulation system);
 - (b) apply in relation to the whole or any part of the State;
 - (c) apply any measure in relation to specified classes of persons or bodies, or generally;
 - (d) specify conditions or provide for exemptions;
 - (e) otherwise make different provision according to circumstances specified in the regulation.
- (8) A person who contravenes or fails to comply with a regulation under this section is guilty of an offence.

Maximum penalty:

 - (a) where the offender is a body corporate—\$12 500;
 - (b) where the offender is a natural person—\$6 000.

Expiation fee: \$350.

Division 6—Commercial forestry

Subdivision 1—Preliminary

164—Interpretation

- (1) In this Division—

forest manager, in relation to a commercial forest, means the person who has effective control of the forest vegetation that makes up the forest, either as the owner or occupier of the land on which the vegetation is growing or as owner of the forest vegetation under a forest property (vegetation) agreement under the *Forest Property Act 2000*.
- (2) In this Division, a reference to harvesting does not include any activity prescribed by the regulations for the purposes of this subsection.

165—Declaration of forestry areas

- (1) The Minister may, by notice in the Gazette, declare an area of the State to be a *declared forestry area* for the purposes of this Act.
- (2) However, the Minister must not declare an area to be a declared forestry area unless—
 - (a) the area has been identified in a water allocation plan; and
 - (b) the Minister has referred the matter to the Minister primarily responsible for commercial forestry within the State and has considered any advice provided by that Minister; and
 - (c) the Minister is satisfied, after taking into account such matters as the Minister thinks fit—
 - (i) that commercial forests in the relevant area (including after taking into account expansions that are reasonably likely to occur into the future) are having, or are reasonably likely to have, a significant hydrological impact on a prescribed water resource; and
 - (ii) that the declaration is a reasonable measure to improve the management of the prescribed water resource.
- (3) While a declaration is in force under subsection (1), the forest manager for a commercial forest within the declared forestry area that falls within the relevant designation under the water allocation plan must ensure that the forest is the subject of a forest water licence granted by the Minister under Subdivision 2 (unless the commercial forest is a forest excluded from the operation of Subdivision 2 by the relevant water allocation plan).
- (4) The Minister may, by subsequent notice in the Gazette—
 - (a) vary the declaration of an area under subsection (1);
 - (b) revoke the declaration of an area under subsection (1).
- (5) If a notice is published under subsection (4), the Minister may, by the same or a subsequent notice in the Gazette, make provision for any transitional or consequential matter, including for the status or operation of any forest water licence that may apply in relation to the relevant area and the status or hydrological transfer value (if any) of any water allocation attached to any forest water licence after taking into account the provisions of the relevant water allocation plan (and any such notice will have effect according to its terms).
- (6) For the purposes of this section, the expansion of a commercial forest will be taken to include a situation where there is to be an increase in the land that is to be planted with trees for the purposes of a commercial forest.

Subdivision 2—Licences

166—Forest water licences

- (1) A forest water licence will be granted by the Minister.
- (2) An application for a licence must be in a form approved by the Minister and must—
 - (a) specify—

- (i) the commercial forest in relation to which the licence is being sought; or
 - (ii) if the forest is yet to be established, the land where the forest is to be located, the proposed size of the forest (by area and by number of trees), and the type or types of trees proposed to be planted; and
 - (b) be made by the forest manager, or by some other person authorised by the Minister; and
 - (c) be accompanied by the fee prescribed by the regulations; and
 - (d) be accompanied by such other information or material as the Minister may require.
- (3) The Minister may refuse to grant a forest water licence—
- (a) to a person, or to the associate of a person, who formerly held a licence that was cancelled under this Act; or
 - (b) to a person who has acted in contravention of this Act; or
 - (c) on any ground prescribed by the regulations; or
 - (d) on any other reasonable ground.
- (4) In addition, the Minister's decision on the grant of a forest water licence must be consistent with—
- (a) any relevant provisions of the water allocation plan; and
 - (b) requirements (if any) prescribed by the regulations.
- (5) A forest water licence applies to the site of the commercial forest to which the licence relates and is attached to—
- (a) subject to paragraph (b)—the land constituting the site;
 - (b) if the forest is the subject of a forest property (vegetation) agreement—the forest vegetation.
- (6) If land within the ambit of subsection (5)(a) is transferred, the transferee must furnish the Minister with notice of the transfer in accordance with the regulations.
- (7) If the interest conferred under the *Forest Property Act 2000* by a forest property (vegetation) agreement within the ambit of subsection (5)(b) is assigned to another person, the person to whom the interest is assigned must furnish the Minister with notice of the assignment in accordance with the regulations.

167—Allocation of water

- (1) A forest water licence must have a water allocation attached to the licence.

- (2) The water allocation must provide for a quantity of water that is at least equal to the water required to fully offset the impact of the forest on the relevant water resource, as determined in accordance with the hydrological values that are relevant to the commercial forest under the relevant water allocation plan (as relevant at the time of the issue of the licence and as relevant taking into account any expansion or reduction in the size of the forest) and subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (on such conditions as the Minister thinks fit) for the purposes of this section.
- (3) The water allocation may be obtained—
 - (a) by the holder of the relevant forest water licence, on the basis that a water allocation is being granted by the Minister; or
 - (b) by the holder of the relevant forest water licence on the basis of a transfer of a water allocation—
 - (i) from the holder of another forest water licence; or
 - (ii) from the holder of a water licence,(or by a combination of both).
- (4) The Minister may require the payment of a fee for a water allocation granted by the Minister under subsection (3)(a).
- (5) The Minister may, in connection with the operation of subsection (4), determine a fee that is based on—
 - (a) the Minister's assessment of the value of the water allocation; or
 - (b) a process that determines the value of the water allocation according to a procedure determined by the Minister (including, if the Minister thinks fit, a tender or auction process).
- (6) A water allocation (as attached to a forest water licence) must be consistent with the relevant water allocation plan (and, in the case of a water allocation under subsection (3)(b), will be obtained subject to any conversion or adjustment under the provisions of the relevant water allocation plan).
- (7) 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.
- (8) In this section—

hydrological values means the values specified by the water allocation plan (as measurements of hydrological impact).

168—Variations—allocations

- (1) A water allocation attached to a forest water licence may be varied (including so as to provide for a reduction in the water allocation) by the Minister—
 - (a) at any time on the application of, or with the consent of, the holder of the licence; or
 - (b) at the time, or within the prescribed period following the time, when a part (or all) of the forest is harvested; or

- (c) 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.
- (3) A variation to provide for the reduction of a water allocation under subsection (1)(c) may only be made within the prescribed period following the time when a part (or all) of the forest is harvested.
- (4) The Minister's decision on the variation of a water allocation under subsection (1) must be consistent with the relevant water allocation plan.
- (5) A variation under subsection (1) may operate subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (and subject to complying with any conditions attached to that approval).
- (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.

169—Transfer of allocations

- (1) Subject to this Act and the relevant water allocation plan, the holder of a forest water licence may transfer the whole or a part of the water allocation attached to the licence—
 - (a) to the holder of another forest water licence for a forest in the same declared forestry area; or
 - (b) to the holder of another forest water licence for a forest in a different declared forestry area; or
 - (c) to the holder of a water licence; or
 - (d) to the Minister.
- (2) A reference in subsection (1)(a), (b) or (c) to a forest water licence or a water licence includes a reference to a licence created to receive the relevant transfer.
- (3) A transfer requires the approval of the Minister.
- (4) An application to the Minister for the Minister's approval must—
 - (a) be made in a form approved by the Minister; and
 - (b) be accompanied by the fee prescribed by the regulations.
- (5) The Minister must refuse to grant approval for the transfer of a water allocation if the result would be that the water allocation attached to the licence would fall below the water required to offset the impact of the forest on the relevant water resource (as determined under the relevant water allocation plan).
- (6) The Minister may refuse to grant approval for the transfer of a water allocation if the holder of the licence is in breach of a condition of the licence.
- (7) In addition, the Minister's decision to grant or refuse approval for the transfer of a water allocation—
 - (a) must be consistent with the relevant water allocation plan; and

- (b) if—
 - (i) the transfer is to the holder of another forest water licence for a forest in a different declared area—must be consistent with the water allocation plan for the water resource that is relevant to the other forest water licence; or
 - (ii) the transfer is to the holder of a water licence that relates to a different prescribed water resource—must be consistent with the water allocation plan for that other prescribed water resource; and
 - (c) must be made in the public interest; 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).
- (8) Depending on—
- (a) the class of the commercial forest under the other licence on a transfer under subsection (1)(a) or (b), taking into account the provisions of the relevant water allocation plan; and
 - (b) the provisions of any relevant water allocation plan as to how water allocations are to be converted or adjusted if transferred from 1 class of forest to another, or in relation to 1 prescribed water resource to another,
- the hydrological value of a water allocation may be reduced or increased (by force of the provisions of a water allocation plan or plans and by force of this subsection) on its transfer.
- (9) Without limiting a preceding subsection, if a forest property (vegetation) agreement to which a forest water licence is attached comes to an end, the forest manager may, subject to the regulations, deal with a water allocation attached to the licence in a manner approved by the Minister.
- (10) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water allocation under this section is not chargeable with duty under that Act.

170—Conditions

A forest water licence will be subject to such conditions—

- (a) prescribed from time to time by the regulations; or
- (b) endorsed on the licence itself by the Minister.

171—Variations—conditions

- (1) A condition to a forest water licence may be varied by the Minister—
- (a) at any time on the application of, or with the consent of, the holder of the licence; or
 - (b) at the time, or within the prescribed period following the time, when a part of the forest is harvested; or
 - (c) at intervals specified by the Minister in the licence; or
 - (d) if the Minister is authorised to do so under the provisions of the relevant water allocation plan; 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.
- (3) The Minister's decision on the variation of a condition—
 - (a) must not be seriously at variance with the relevant water allocation plan; and
 - (b) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for variation must be refused).
- (4) The holder of a licence may appeal to the ERD Court against—
 - (a) a decision to refuse to grant an application to vary a condition of the licence under subsection (1)(a); or
 - (b) the variation of a condition under subsection (1)(b) or (c).
- (5) The Minister is not required to conduct a hearing or to give notice to a third party before varying a condition under this section.

172—Establishment of licence on declaration of areas

- (1) On or after a relevant day, the forest manager for a commercial forest within the relevant declared forestry area (as the forest exists on the relevant day) is entitled, on due application under this Act made within a period specified by the relevant water allocation plan, to be issued a forest water licence with respect to that forest that has attached to the licence a water allocation granted by the Minister (without the payment of a purchase price) (and until the period so specified expires and, if due application is made within that period, until the forest water licence is issued, the forest manager will be taken not to be in breach of section 165(3)).
- (2) The Minister must, in acting under subsection (1), take into account the provisions of the relevant water allocation plan (as at the date of issue of the licence), and may take into account such other matters as the Minister thinks fit.
- (3) A water allocation plan may, in connection with the operation of subsections (1) and (2), make any provision on account of any water allocation held in relation to a commercial forest immediately before the commencement of this section by virtue of a requirement to hold a permit under section 104(3)(f) (an *off-set allocation*), including that the water allocation attached to a forest water licence under subsection (1) is to be adjusted to take into account the existence of the off-set allocation, that the off-set allocation take the place of an allocation under subsection (1), that the off-set allocation may be transferred (subject to the provisions of this Act and of the water allocation plan), or that the off-set allocation will be subject to any other requirement or provision due to the replacement of a requirement for a permit with the scheme set out in this Division.

- (4) Any provision made under subsection (3) will also operate subject to any principles or adjustments set out in the relevant water allocation plan (including so as to vary the hydrological value of an off-set allocation on account of the need to convert the allocation to an allocation under this Division or in connection with any transfer of a water allocation from 1 class of forest to another or in relation to 1 prescribed water resource to another).
- (5) In this section—
relevant day, in relation to a commercial forest within a declared forestry area, is the day from which a forest water licence is required under this Division in relation to the commercial forest.

173—Surrender of licences

A licensee may surrender the licensee's forest water licence in prescribed circumstances.

174—Cancellation of licences

The Minister may cancel a forest water licence in circumstances—

- (a) specified in the relevant water allocation plan; or
- (b) prescribed by the regulations.

Subdivision 3—Offences

175—Offences

- (1) A person who—
- (a) contravenes section 165(3); or
 - (b) contravenes or fails to comply with a condition to which a licence under this Division is subject,

is guilty of an offence.

Maximum penalty:

- (a) if the court by which the conviction is recorded has accepted evidence as to the extent of the deficiency in a water allocation, as assessed according to hydrological values, and considers it appropriate that this paragraph applies—
 - (i) a sum calculated at the prescribed rate for each kilolitre of water represented by those hydrological values; or
 - (ii) —
 - (A) where the offender is a body corporate—\$250 000;
 - (B) where the offender is a natural person—\$125 000,whichever is the greater; or
- (b) in any other case—
 - (i) where the offender is a body corporate—\$250 000;
 - (ii) where the offender is a natural person—\$125 000.

- (2) A forest manager who is required to comply with section 165(3) in relation to a particular commercial forest must ensure that the water allocation attached to the relevant forest water licence is at all times at least equal to the water required to fully offset the hydrological impacts of the forest on the relevant water resource, as determined in accordance with the hydrological values that are relevant to the forest under the relevant water allocation plan and subject to any allowance under a scheme (if any) relating to the management of the forest (including as to the planting and harvesting of trees constituting the forest) approved by the Minister (and subject to complying with any conditions attached to that approval).

Maximum penalty:

- (a) if the court by which the conviction is recorded has accepted evidence as to the extent of the deficiency in a water allocation, as assessed according to hydrological values, and considers it appropriate that this paragraph applies—
- (i) a sum calculated at the prescribed rate for each kilolitre of water represented by those hydrological values; or
 - (ii) —
 - (A) where the offender is a body corporate—\$250 000;
 - (B) where the offender is a natural person—\$125 000,
- whichever is the greater; or
- (b) in any other case—
- (i) where the offender is a body corporate—\$250 000;
 - (ii) where the offender is a natural person—\$125 000.

Division 7—Interaction with Irrigation Acts

176—Interaction with *Irrigation Act 2009*

- (1) The Minister may transfer a water licence, and deal with any related entitlement under this Part, held by an irrigation trust to another trust or a person or other body to give effect to any determination or approval of the relevant Minister under Part 2 Division 4 of the *Irrigation Act 2009*.
- (2) The Minister may allocate water transferred by an irrigation trust to a person or other body under section 30 of the *Irrigation Act 2009* to a person or body holding a water licence under this Act to give effect to the operation of that section.
- (3) The Minister may—
- (a) grant a water licence to a person whose irrigation right is being transformed into a water licence under section 32 or 33 of the *Irrigation Act 2009* unless the Minister considers that the water licence should not be granted on a ground that applies under Division 3 Subdivision 1;
 - (b) make adjustments to a water licence already held by a person whose irrigation right is being transformed into a water licence under section 32 or 33 of the *Irrigation Act 2009* on account of that transformation.
- (4) This section does not limit the operation or effect of any other provision of this Act.

- (5) A fee (if any) prescribed by the regulations is payable in respect of any action taken by the Minister under this section (and the Minister may decline to take the action unless or until the fee is paid).

177—Interaction with *Renmark Irrigation Trust Act 2009*

- (1) The Minister may allocate water transferred by RIT to a person or other body under section 31 of the *Renmark Irrigation Trust Act 2009* to a person or body holding a water licence under this Act to give effect to the operation of that section.
- (2) The Minister may—
- (a) grant a water licence to a person whose irrigation right is being transformed into a water licence under section 33 or 34 of the *Renmark Irrigation Trust Act 2009* unless the Minister considers that the water licence should not be granted on a ground that applies under Division 3 Subdivision 1;
 - (b) make adjustments to a water licence already held by a person whose irrigation right is being transformed into a water licence under section 33 or 34 of the *Renmark Irrigation Trust Act 2009* on account of that transformation.
- (3) This section does not limit the operation or effect of any other provision of this Act.
- (4) A fee (if any) prescribed by the regulations is payable in respect of any action taken by the Minister under this section (and the Minister may decline to take the action unless or until the fee is paid).
- (5) In this section—
- RIT* means the Renmark Irrigation Trust.

Division 8—Related matters

178—Effect of water use on ecosystems

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

179—Activities relating to Murray-Darling Basin

When making a decision under this Part that relates to—

- (a) an activity to be carried out in an area within the Murray-Darling Basin; or
- (b) the management of water within a part of the Murray-Darling Basin; or
- (c) the taking, allocation or use of water from a water resource within a part of the Murray-Darling Basin; or
- (d) any other matter of a prescribed kind,

the Minister or other person or body making that decision must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).

180—Consultation with Minister responsible for *River Murray Act 2003*

- (1) The Minister must, before acting under this Part in any case or circumstance prescribed by the regulations for the purposes of this section—
 - (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
 - (b) comply with that Minister's directions (if any) in relation to the matter.
- (2) Without limiting paragraph (a), a direction under subsection (1)—
 - (a) may have the effect of prohibiting the taking of a specified step, the granting of an application, or the issuing, variation or transfer of a specified authority or approval; and
 - (b) may require the imposition or variation of a specified condition or conditions with respect to the taking of a specified step, the granting of an application, or the issuing, variation or transfer of a specified authority or approval; and
 - (c) without limiting paragraph (a) or (b), may make provision in relation to or affect—
 - (i) an allocation of water, or any other entitlement to water under this Part, or the transfer of such an allocation or other entitlement; or
 - (ii) the taking or use of water (including so as to impose a prohibition or condition); and
 - (d) may otherwise have effect in relation to the exercise of any statutory function or power conferred on the Minister to whom the administration of this Act is committed under another provision of this Act.

181—Representations by SA Water

- (1) If water is discharged into a watercourse or lake in the region of a regional landscape board by SA Water, SA Water may make representations to the board in respect of the performance or exercise by the board of its functions or powers in relation to that water.
- (2) A regional landscape board must have regard to representations made under subsection (1).

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

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

- (a) the right of a person to take water from a watercourse or lake or to take surface water or underground water whether pursuant to a water management authorisation or not;
- (b) the right of SA Water to erect dams or reservoirs across and in the bed of the River Torrens;
- (c) the right of SA Water—
 - (i) to erect buildings upon any watercourse; or
 - (ii) to divert, impound or take water from a watercourse or lake; or

- (iii) to alter the course of a watercourse.

183—Water management authorisation is not personal property for the purposes of Commonwealth Act

A water management authorisation is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

184—Law governing decisions under this Part

- (1) In this section—

permit means a permit under section 112;

prescribed decision means a decision under this Part with respect to—

- (a) an application for a water management authorisation, a permit or a forest water licence; or
 - (b) a water allocation (including a water allocation under a WETS); or
 - (c) the variation of a water management authorisation or permit; or
 - (d) the variation of a condition of a water management authorisation, permit or forest water licence; or
 - (e) the transfer of a water management authorisation.
- (2) If a prescribed decision is being made under this Part, the law to be applied in deciding the matter, and the provisions of any water allocation plan or water affecting activities control policy 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 water allocation plan or water affecting activities control policy 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).
- (3) However, if the Minister does not determine an application for a water management authorisation, permit or forest water licence (as the case may be) within the prescribed period, the provisions of the relevant water allocation plan or water affecting activities control policy that are relevant to the determination of the matter will be the provisions as in force at the end of that prescribed period.
- (4) If the Minister requests an applicant for a water management authorisation, permit or forest water licence—
- (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.
- (5) 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.

- (6) If the ERD Court makes an order under subsection (5), 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
 - (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 has been a failure to comply with a requirement imposed by or under this Act; or
 - (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.

Part 9—Control of animals and plants

Division 1—Preliminary

185—Preliminary

- (1) The Minister may, by notice in the Gazette—
- (a) declare that a specified provision of this Part applies to—
 - (i) a specified class of animals; or
 - (ii) a specified class of plants; and
 - (b) in addition, with respect to a class of animals or a class of plants specified under paragraph (a), do either or both of the following:
 - (i) declare that a specified area (which may be the whole or a part of the State) is a declared area for that class of animals or plants for the purposes of that provision;
 - (ii) declare that a prohibition contained in that provision operates as an absolute prohibition in relation to that class of animals or plants and declared area (if any).
- (2) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).
- (3) A notice under subsection (1) cannot be made with respect to a class of native animals.
- (4) Subsection (3) does not apply if the notice is being made to give effect to a provision of a landscapes affecting activities control policy, or any other policy made or approved by the relevant regional landscape board and adopted by the Minister for the purposes of this section.
- (5) For the purposes of this Part, there will be 3 categories of animals and plants declared under subsection (1), being—
- (a) Category 1; or
 - (b) Category 2; or

- (c) Category 3.
- (6) The following provisions will apply in relation to the assignment of animals and plants declared under subsection (1) to these categories:
 - (a) a particular class of animals or plants may be assigned to a category by a declaration of the Minister under subsection (1), or by a separate notice published by the Minister in the Gazette under this subsection;
 - (b) a particular class of animals or plants may be assigned to different categories for different parts of the State and for the purposes of different provisions of this Part;
 - (c) any class of animals or plants that is not assigned to a category in the manner contemplated by paragraph (a) will be taken to be assigned to Category 1 in the particular circumstances.
- (7) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (6).

Division 2—Control provisions

Subdivision 1—Specific controls

186—Movement of animals or plants

- (1) Subject to this Act, a person must not bring an animal or plant of a class to which this subsection applies, or cause or permit an animal or plant of a class to which this subsection applies, to be brought into a declared area for that class of animals or plants.

Maximum penalty: \$12 500.

- (2) Subject to this Act, a person must not transport or move, or cause or permit to be transported or moved, on a public road within a declared area for a class of animals or plants to which this subsection applies—
 - (a) an animal or plant of that class; or
 - (b) any animal, plant, soil, vehicle, farming implement or other produce, goods, material or thing carrying an animal or plant of that class.

Maximum penalty: \$12 500.

Expiation fee: \$600.

- (3) Subject to this Act, a person who owns land within a declared area for a class of animals or plants to which this subsection applies must not move, or cause or permit to be moved—
 - (a) an animal or plant of that class; or
 - (b) in the case of a class of plants any animal, plant, soil, vehicle, farming implement or other produce, goods, material or thing carrying a plant of that class,

from one part of the land to another part of that land that is not affected or infested with animals or plants of that class, or to any land within the declared area.

Maximum penalty: \$12 500.

Expiation fee: \$600.

- (4) It is a defence to a charge of an offence against subsection (2) or (3) if the defendant proves that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.
- (5) An authorised officer may, subject to conditions as the authorised officer thinks fit, exempt a person from compliance with a preceding subsection.
- (6) An exemption should be given in writing but may be given orally in a case of an emergency.
- (7) If an exemption is given orally, the authorised officer who gave it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person who has the benefit of the exemption.
- (8) An authorised officer may, by notice in writing given to a person who has the benefit of an exemption, vary or revoke the exemption, or a condition of the exemption, or attach a further condition to the exemption.
- (9) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Maximum penalty: \$12 500.

187—Possession etc of animals or plants

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

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal—\$12 500.

Expiation fee:

- (a) if the offence relates to a Category 2 animal—\$1 000;
- (b) if the offence relates to a Category 3 animal—\$600.

- (2) Subject to this Act, a person must not keep, or have in the person's possession or control, an animal of a class to which this subsection applies within a declared area for that class of animals.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal—\$25 000 or imprisonment for 6 months;

- (c) if the offence relates to a Category 3 animal—\$12 500.

Expiation fee:

- (a) if the offence relates to a Category 2 animal—\$1 000;
- (b) if the offence relates to a Category 3 animal—\$600.

- (3) Subject to this Act, a person must not have a plant of a class to which this subsection applies in the person's possession within a declared area for that class of plants.

Maximum penalty:

- (a) if the offence relates to a Category 1 plant—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 plant—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 plant—\$12 500.

Expiation fee: If the offence relates to a Category 3 plant—\$600.

- (4) For the purposes of subsection (3), a person who cultivates a plant, or allows a plant to grow on land that the person occupies, will be taken to be in possession of the plant (but this subsection does not in any way limit the operation of that subsection).

188—Sale of animals, plants etc

- (1) Subject to this Act, a person must not sell an animal or plant of a class to which this subsection applies.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal or plant—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal or plant—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal or plant—\$12 500.

Expiation fee: If the offence relates to a Category 3 animal or plant—\$600.

- (2) Subject to this Act, a person must not sell any animal, plant, soil, vehicle, farming implement or other produce, goods, material or thing carrying an animal or plant of a class to which this subsection applies.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal or plant—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal or plant—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal or plant—\$12 500.

Expiation fee: If the offence relates to a Category 3 animal or plant—\$600.

- (3) It is a defence to a charge of an offence against subsection (2) if the defendant proves that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.
- (4) An authorised officer may, subject to conditions as the authorised officer thinks fit, exempt a person from compliance with a preceding subsection.

- (5) An exemption should be given in writing but may be given orally in a case of an emergency.
- (6) If an exemption is given orally, the authorised officer who gave it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person who has the benefit of the exemption.
- (7) An authorised officer may, by notice in writing given to a person who has the benefit of an exemption, vary or revoke the exemption, or a condition of the exemption, or attach a further condition to the exemption.
- (8) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Maximum penalty: \$12 500.

189—Offence to release animals or plants

- (1) A person must not release an animal of a class to which this subsection applies, or cause or permit an animal of that class to be released.
Maximum penalty: \$125 000 or imprisonment for 2 years.
- (2) A person must not release an animal of a class to which this subsection applies, or cause or permit an animal of that class to be released, in a declared area for that class of animals.
Maximum penalty: \$125 000 or imprisonment for 2 years.
- (3) A person must not release a plant of a class to which this subsection applies, or cause or permit a plant of that class to be released, in a declared area for that class of plants.
Maximum penalty: \$125 000 or imprisonment for 2 years.
- (4) Subject to subsection (5), it is a defence to a charge of an offence against this section if the defendant proves that the circumstances alleged to constitute the offence were not the result of a wilful or negligent act or omission on the defendant's part.
- (5) The defence prescribed by subsection (4) does not apply if an authorised officer furnished to the defendant a notice in a form approved by the Minister—
 - (a) in a case relating to an animal or class of animals—
 - (i) requiring the defendant to keep the particular animal, or any animal of the relevant class, in captivity, or to take any other action relating to securing, controlling or managing the animal, or animals of that class; and
 - (ii) warning the defendant that if the animal, or an animal of that class (as the case may be) were to be released into a declared area the defence would not apply;
 - (b) in a case relating to a plant or class of plants—
 - (i) requiring the defendant to keep the plant, or any plant of the relevant class, in a particular way, or to take any other action relating to securing, controlling or managing the plant, or plants of that class; and

- (ii) warning the defendant that if the plant, or a plant of that class, (as the case may be) were to be released into a declared area then the defence would not apply.
- (6) Any reasonable costs or expenses incurred by the Minister, or a regional landscape board, in the capture or destruction, or attempted capture or destruction, of an animal released in contravention of this section may be recovered as a debt from the owner of the animal or from the person who released it or caused or permitted it to be released.
- (7) Any reasonable costs or expenses incurred by the Minister, or a regional landscape board, in collecting, dealing with or destroying a plant released in contravention of this section may be recovered as a debt from the person who was in possession of the plant or from the person who released it or caused or permitted it to be released.
- (8) An apparently genuine document purporting to be a certificate of the Minister or a regional landscape board (as the case may be) stating the amount of any costs or expenses referred to in subsection (6) or (7) will, in the absence of proof to the contrary, be accepted as proof of the amount of those costs or expenses in any legal proceedings for their recovery.
- (9) An authorised officer may, subject to conditions as the authorised officer thinks fit, exempt a person from compliance with a preceding subsection.
- (10) An authorised officer may, by notice in writing given to a person who has the benefit of an exemption under subsection (9), vary or revoke the exemption, or a condition of the exemption, or attach a further condition to the exemption.
- (11) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.
Maximum penalty: \$12 500.
- (12) In this section—
release—
 - (a) in relation to an animal, means to set the animal at liberty or to release the animal from captivity or to allow (in any way) the animal to go at large;
 - (b) in relation to a plant, means to release the plant into the open environment (including by sowing or planting any plant or plant material or by otherwise distributing seeds, spores, cuttings, divisions or other plant propagating material), whether or not it is released with provision for limiting the dissemination or persistence of the plant, or any related plant material, in the environment.

190—Notification of presence of animals or plants

- (1) If an owner of land within a declared area for a class of animals or plants to which this section applies becomes aware of the presence of an animal or plant of that class on that land, the owner must, within the prescribed period, notify the regional landscape board for the area in which the land is situated of the species of animal or plant and the locality in which it was seen or is to be found.
Maximum penalty: \$12 500.
Expiation fee: \$600.

- (2) If a regional landscape board becomes aware (other than by notification under subsection (3)) of the presence of an animal or plant of a class to which this section applies on land situated within both a declared area for that class of animals or plants and its region, the board must, within 48 hours, notify the Chief Executive of the species of animal or plant and the locality in which it was seen or is to be found.
- (3) If the Chief Executive becomes aware (other than by notification under subsection (2)) of the presence of an animal or plant of a class to which this section applies on land situated within a declared area for that class of animal or plant, the Chief Executive must, within 48 hours, notify the regional landscape board for the area in which the land is situated of the species of the animal or plant and the locality in which it was seen or is to be found.
- (4) In this section—
prescribed period means—
 - (a) in relation to a Category 1 animal or plant—24 hours;
 - (b) in relation to a Category 2 animal or plant—3 days;
 - (c) in relation to a Category 3 animal or plant—7 days.

191—Requirement in respect of keeping or management of certain animals or plants

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

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal—\$12 500.

Expiation fee: If the offence relates to a Category 3 animal—\$600.

- (2) An owner of land within a declared area for a class of animals to which this subsection applies must comply with any instructions of an authorised officer with respect to keeping any animal of that class on that land in captivity.

Maximum penalty:

- (a) if the offence relates to a Category 1 animal—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 animal—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 animal—\$12 500.

Expiation fee: If the offence relates to a Category 3 animal—\$600.

- (3) An owner of land within a declared area for a class of plants to which this subsection applies must comply with any instructions of an authorised officer with respect to keeping any plant of that class within the boundaries of that land.

Maximum penalty:

- (a) if the offence relates to a Category 1 plant—\$60 000 or imprisonment for 1 year;
- (b) if the offence relates to a Category 2 plant—\$25 000 or imprisonment for 6 months;
- (c) if the offence relates to a Category 3 plant—\$12 500.

Expiation fee: If the offence relates to a Category 3 plant—\$600.

- (4) An instruction under this section must be given by notice in a form approved by the Minister.

192—Owner of land to take action to destroy or control animals or plants

- (1) Subject to this section, an owner of land within a declared area for a class of animals or plants to which this subsection applies must destroy all animals or plants of that class on that land.
- (2) Subject to this section, an owner of land within a declared area for a class of animals or plants to which this subsection applies must control and keep controlled all animals or plants of that class on that land.
- (3) An owner of land within a declared area for a class of animals or plants to which this subsection applies must—
 - (a) take any measures prescribed by the regulations or specified by a relevant authority in the prescribed manner for the control of all animals or plants of that class that are, or may be, on that land;
 - (b) take any measures prescribed by the regulations or specified by a relevant authority in the prescribed manner requiring that the land, or anything present on the land, be subjected to specified treatment.
- (4) A relevant authority may, subject to such conditions as the relevant authority thinks fit, exempt a person from compliance with a preceding subsection.
- (5) A relevant authority may, by notice in writing given to a person who has the benefit of an exemption under subsection (4), vary or revoke the exemption, or a condition of the exemption, or attach a further condition to the exemption.
- (6) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.
Maximum penalty: \$12 500.
- (7) A person who breaches a requirement under subsection (1), (2) or (3) is not, on account of that breach alone, liable to any civil action, but is subject to the operation of section 193 and Part 10.
- (8) All regional landscape boards must carry out proper measures for the destruction of all animals or plants of a class to which subsection (1) applies and for the control of all animals or plants of a class to which subsection (2) applies on road reserves situated within both a declared area for that class of animals or plants and the region of the board.
- (9) In this section—
relevant authority means—
 - (a) the regional landscape board for the relevant area; or

- (b) the Chief Executive; or
- (c) an authorised officer.

193—Action orders

- (1) If a relevant authority considers that an owner of land has been, is, or is likely to be, in breach of section 192(1), (2) or (3), the relevant authority may, by notice in a form approved by the Minister, issue an order (an *action order*) to the owner of the land under this section.
- (2) An action order—
 - (a) must be in the form of a written notice served on the person to whom the order is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must specify the land or area to which the order relates; and
 - (d) must state the grounds on which the order is issued; and
 - (e) must state the species of animals or plants to which the order applies; and
 - (f) must specify the action required to be taken to destroy or control the relevant animals or plants, or to otherwise comply with any requirement under section 192; and
 - (g) must specify a period (which must be at least 14 days) within which the required action must be taken; and
 - (h) may specify any other requirement considered reasonable by the relevant authority; and
 - (i) must state that the person may, within 14 days, appeal to the ERD Court against the order or any subsequent variation to the order.
- (3) A relevant authority may, by written notice served on a person to whom an action order has been issued, vary or revoke the order.
- (4) A person to whom an action order is issued must comply with the order.
Maximum penalty: \$25 000.
- (5) If a person fails to comply with an action order, a relevant authority may take any action required by the order.
- (6) Action taken by a relevant authority under subsection (5) may be taken on the relevant authority's behalf by an authorised officer, a member of the Department, or another person authorised by the relevant authority for the purpose.
- (7) A person taking action under subsection (5) or subsection (6) may, after giving reasonable notice, enter the relevant land at any reasonable time (using any force that may be reasonably necessary in the circumstances) and carry out such measures as appear to be appropriate in the circumstances.
- (8) A person must not hinder or obstruct a person acting under this section.
Maximum penalty: \$10 000.

- (9) The reasonable costs and expenses incurred by a relevant authority under this section (including under subsection (5) or subsection (6)) may be recovered as a debt from the person to whom the order was issued.
- (10) If an amount is recoverable by a relevant authority under subsection (9), the relevant authority may, by notice in writing to the relevant person, fix a period (which must be at least 28 days) within which the amount must be paid and if the amount is not paid within that period, the person is also liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (11) In this section—
relevant authority means—
 - (a) the regional landscape board for the relevant area; or
 - (b) the Chief Executive; or
 - (c) an authorised officer.

194—Boards may recover certain costs from owners of land adjoining road reserves

- (1) If a regional landscape board carries out on road reserve measures for the destruction or control of animals or plants of a class to which this section applies, the board may, within 3 months, give notice in writing to each owner of land adjoining the road reserve requiring the owner to pay to the board an amount specified in the notice within a period specified in the notice, being not less than 28 days from the date of the notice.
- (2) Subject to subsection (3), the amount specified in a notice under subsection (1) directed to an owner of land must be the amount determined by the regional landscape board to be the costs and expenses incurred by the board in carrying out the measures referred to in subsection (1) on the section of road reserve adjoining the owner's land up to the middle of the road reserve.
- (3) Despite subsection (2), a regional landscape board may, from time to time, fix a standard charge and determine the circumstances in which the standard charge is to apply (being a standard charge not exceeding an amount determined on the basis for the time being fixed by the Minister), and, if those circumstances apply in relation to an owner of land, the amount specified in a notice under subsection (1) directed to that owner will be the standard charge.
- (4) If an amount is not paid by an owner of land within the period within which it is required to be paid under this section, the owner is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.
- (5) An amount payable to a regional landscape board by an owner of land under this section (including any interest charge) may be recovered by the board as a debt.
- (6) A regional landscape board may, if it is satisfied that just and proper grounds exists for it to do so, remit the whole, or part, of any amount payable by a person under this section.

195—Destruction or control of animals outside the dog fence by poison and traps

- (1) An owner of land bounded by and inside the dog fence may, for the purpose of the destruction or control of animals required to be destroyed or controlled in pursuance of this Division, lay poison or set traps on adjoining land immediately outside the dog fence in accordance with the terms of approved proposals and may gain such access to the adjoining land as is necessary for that purpose.

- (2) In this section—

approved proposals means—

- (a) proposals contained in a notice given under subsection (3) to which no notice of objection has been given under subsection (4); or
 - (b) proposals contained in a notice given under subsection (3) as confirmed or varied by the Chief Executive under subsection (6).
- (3) If an owner of land proposes to lay poison or set traps pursuant to this section, the owner must first give notice, in a form approved by the Minister, of the proposal to the owner of the adjoining land.

Maximum penalty: \$1 750.

Expiation fee: \$225.

- (4) The owner of the adjoining land may, if not in agreement with any proposals contained in a notice given under subsection (3), within 14 days of the receipt of that notice, give notice of objection to the other owner.
- (5) If a notice of objection is given under subsection (4), an application for review of the proposals may be made to the Chief Executive within 14 days of the giving of that notice.
- (6) The Chief Executive may, on application made under subsection (5), confirm, vary or set aside the proposals.

196—Ability of Minister to control or quarantine any animal or plant

- (1) For the purposes of providing for the control of, or preventing the spread of, any animal or plant to which a provision of this Division applies, or the spread of any disease that may be carried by such an animal or plant, the Minister may, by notice in the Gazette, declare a portion of the State specified in the notice to be a quarantine area under this section.

- (2) A notice under subsection (1) may—

- (a) prohibit or restrict the movement from or within the quarantine area of—
 - (i) any animal or plant of a specified kind;
 - (ii) any soil, vehicle, farm implement or other produce, goods, material or thing of a specified kind,

that might, in the opinion of the Minister, spread the relevant animals or plants or any disease;

- (b) require the owner of any land or the occupier of any premises within the quarantine area to take measures (including the destruction of animals or plants), specified in the notice, that are, in the opinion of the Minister, necessary to control, or to prevent the spread of, the relevant animals or plants, or the spread of any disease;
 - (c) require the owner of any land or the occupier of any premises within specified parts of the quarantine area to take more stringent measures (including the destruction of animals or plants), specified in the notice, than owners or occupiers of other land or premises within the quarantine area;
 - (d) prohibit the planting or propagation of plants, or plants of a specified kind, within the quarantine area during a period specified in the notice;
 - (e) prohibit absolutely or subject to exceptions or conditions specified in the notice, the importing into the quarantine area of any animal, plant, soil, produce, goods, material or other thing of a specified kind;
 - (f) provide that a prohibition or requirement under the notice will not apply in specified circumstances;
 - (g) provide for any other matter prescribed by the regulations.
- (3) A notice under subsection (1) will have effect from a date specified in the notice.
- (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (1).
- (5) The Minister may, by notice in writing, confer exemptions from the operation of a notice, or specified parts of a notice, under this section.
- (6) An exemption under subsection (5) may be granted on such conditions as the Minister thinks fit.
- (7) The Minister may, by subsequent notice in writing—
- (a) vary or revoke an exemption; or
 - (b) vary or revoke a condition of an exemption, or impose a new condition.
- (8) A person who contravenes or fails to comply with—
- (a) a notice under this section; or
 - (b) a condition of an exemption under this section,
- is guilty of an offence.
- Maximum penalty: \$125 000 or imprisonment for 2 years.
- Expiation fee: \$700.

Subdivision 2—Permits

197—Permits

- (1) The relevant authority may issue a permit to a person—
- (a) authorising the movement of a specified animal or animals of a specified class, or of a specified plant or plants of a specified class; or

- (b) authorising the keeping or possession of an animal or animals of a specified class, or of a specified plant or plants of a specified class; or
 - (c) authorising the sale of a specified animal or animals of a specified class, or of a plant or plants of a specified class.
- (2) Subject to this section, a permit authorises an act, activity or circumstance that would otherwise not be permitted under Subdivision 1.
- (3) A permit under this section may be issued by the relevant authority on such conditions as the relevant authority thinks fit.
- (4) A permit may not be issued under this section if a provision of Subdivision 1 operates as an absolute prohibition of the conduct for which the permit is sought by virtue of a declaration under Division 1.
- (5) The relevant authority must, in considering whether to issue a permit under this section and, if so, the conditions on which the permit may be issued, take into account any relevant provision of a landscapes affecting activities control policy.
- (6) The relevant authority must, in issuing a permit under this section that applies to a situation or circumstance within the Murray-Darling Basin, take into account, and seek to further, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act (insofar as they may be relevant).
- (7) If an application for a permit under this section applies to a situation or circumstance within a River Murray Protection Area and is within a class of applications prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of applications for all such permits), the relevant authority must, before making its 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 applications (including a direction that the application not be granted, or that if it is to be granted, then the permit be subject to conditions specified by the Minister).
- (8) A person applying for a permit under this section must—
 - (a) pay a fee (if any) prescribed by the regulations with respect to the application; and
 - (b) if required by the relevant authority before the issuing of the permit, pay an amount, not exceeding an amount prescribed by the regulations, as security for compliance with any condition of the permit.
- (9) An amount paid under subsection (8)(b) will be paid into the Landscape Administration Fund and will, on the expiration or revocation of the permit, be repaid to the person by whom it was paid unless the person failed to comply with a condition of the permit, in which case, it is forfeited to the State and will be retained in the Landscape Administration Fund (to be applied for the purposes of that fund).
- (10) The relevant authority may, by notice in writing to the holder of a permit—
 - (a) vary or revoke the permit; or
 - (b) vary or revoke a condition of the permit, or impose a new condition.

- (11) A person who contravenes or fails to comply with a provision or condition of a permit under this section is guilty of an offence.

Maximum penalty: \$60 000.

Expiation fee: \$800.

- (12) In this section—

relevant authority means—

- (a) in relation to a Category 1 or Category 2 animal or plant—the Chief Executive; or
- (b) in relation to a Category 3 animal or plant—the regional landscape board for the relevant area.

Subdivision 3—Related matters

198—Animal-proof fences

If a court is exercising jurisdiction conferred on it under the *Fences Act 1975*, an apparently genuine document purporting to be a certificate of the Minister stating—

- (a) that—
 - (i) a fence conforms, or a proposed fence would conform, with the prescribed requirements for an animal-proof fence; or
 - (ii) fencing work has made, or proposed fencing work would make, a fence animal-proof; and
- (b) that such a fence or such fencing work is necessary or desirable for the control of animals in the locality that are liable to be controlled under this Part,

is admissible as proof that the nature of such fence or fencing work is adequate and appropriate in the circumstances.

199—Offence to interfere with certain fences

- (1) A person must not interfere with an animal-proof fence except with the permission of the owner of the land on which the fence is situated.

Maximum penalty: \$5 000.

Expiation fee: \$250.

- (2) A court may, on the conviction of a person of an offence against subsection (1), order the person to pay compensation to the owner of the land on which the fence is situated.

- (3) In this section—

animal-proof fence includes any gate or ramp pertaining to the fence.

200—Offence to leave gates open

A person must not leave open a gate in an animal-proof fence except—

- (a) for so long as is reasonably necessary for passage through the opening; or

- (b) with the permission of the owner of land on which the fence is situated.

Maximum penalty: \$1 250.

Expiation fee: \$160.

201—Protection of certain vegetation and habitats

- (1) A person must, in taking measures for the control of animals or plants under this Part, take all reasonable steps to ensure—

- (a) that native vegetation is not cleared except in accordance with guidelines prepared by the Native Vegetation Council under section 25 of the *Native Vegetation Act 1991*; and
- (b) that damage to or destruction of other vegetation is kept to a minimum (unless the vegetation is subject to destruction or control under this Part).

Maximum penalty: \$25 000.

Expiation fee: \$750.

- (2) A person must, in taking measures for the control of animals or plants under this Part—

- (a) comply with any requirement—

- (i) set out in a landscapes affecting activities control policy; or
- (ii) prescribed by the regulations,

with respect to the identification or reporting of any habitat or native animal of a specified class; and

- (b) comply with any requirement—

- (i) set out in a landscapes affecting activities control policy; or
- (ii) specified by a relevant authority in the manner prescribed by the regulations,

with respect to the protection, preservation or relocation of any habitat or native animal of a specified class.

Maximum penalty: \$25 000.

Expiation fee: \$750.

- (3) In this section—

relevant authority means—

- (a) the regional landscape board for the relevant area; or
- (b) the Chief Executive; or
- (c) an authorised officer.

Part 10—Enforcement

Division 1—Authorised officers

202—Authorised officers

- (1) The Minister may appoint a person to be an authorised officer.
- (2) An appointment under this section may be made subject to such conditions or limitations as the Minister thinks fit.
- (3) Without limiting subsection (2), the powers conferred on an authorised officer under this or any other Act may be exercised in the whole of the State or such part or parts of the State as may be specified in the instrument of appointment.
- (4) The Minister may only appoint an officer of a council as an authorised officer under this section with the agreement of the council.
- (5) The Minister may vary or revoke an appointment at any time.

203—Identity cards

- (1) An authorised officer must be issued with an identity card—
 - (a) containing the person's name and a photograph of the person; and
 - (b) stating that the person is an authorised officer for the purposes of this Act.
- (2) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).
- (3) An authorised officer must, on request, produce evidence of the officer's appointment by showing a copy of the officer's notice of appointment, or by showing the officer's identity card for inspection, before exercising the powers of an authorised officer under this Act in relation to any person.
- (4) For the purposes of subsection (3), an authorised officer who produces a copy of the officer's notice of appointment is not required to produce an identity card, and vice versa.

204—Powers of authorised officers

- (1) An authorised officer may, as may reasonably be required in connection with the administration, operation or enforcement of this Act, at any reasonable time—
 - (a) enter any place;
 - (b) inspect any place, including the stratum lying below the surface of any land, and water on or under any land, and inspect any works, plant or equipment;
 - (c) enter and inspect any vehicle and for that purpose require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer, and board any vessel or craft;
 - (d) use reasonable force to break into or open any part of, or anything in or on, any place or vehicle, but only if the authorised officer—
 - (i) is acting under the authority of a warrant issued by a magistrate; or

- (ii) is acting with the permission of the owner of the relevant land, or the person apparently in charge of the vehicle (as the case requires); or
 - (iii) believes on reasonable grounds that immediate action is required because a Category 1 or Category 2 animal may be present in the place or vehicle;
- (e) give directions with respect to the stopping, securing or movement of a vehicle, plant, equipment or other thing;
- (f) require a person apparently in charge of a vessel or craft to facilitate any boarding;
- (g) bring any equipment or other thing on to any land, and use that equipment or thing on the land;
- (h) take measurements, including measurements of the flow of any water on or under any land or relating to any change in any aspect of a natural resource;
- (i) place any markers, pegs or other items or equipment in order to assist in testing or monitoring;
- (j) take samples of any substance or thing from any place (including under any land) or vehicle;
- (k) with the authority of a warrant issued by a magistrate, require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
- (l) with the authority of a warrant issued by a magistrate, examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
- (m) take photographs, films, audio, video or other recordings;
- (n) examine or test any vehicle, plant, equipment, fitting or other thing, or cause or require it to be so examined or tested, or require its production for such examination or testing;
- (o) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act, or require a person to surrender, either immediately or within a specified period and at a specified place, anything held or maintained in contravention of this Act;
- (p) without limiting the operation of paragraph (o), if the authorised officer finds any animals or plants that are being held or maintained contrary to any requirement or provision of this Act, that are liable to be destroyed or controlled under this Act, or that are prohibited from being in the State under any other Act or law, seize and remove the animals or plants or take measures for their destruction or control;
- (q) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

- (r) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required in connection with the administration, operation or enforcement of this Act to answer questions in relation to those matters;
 - (s) give directions reasonably required in connection with the exercise of a power conferred by any of the above paragraphs or otherwise in connection with the administration, operation or enforcement of this Act;
 - (t) require a person holding or required to hold a permit, licence or other authority under this Act, or acting in reliance of a permit, licence or other authority under this Act, to produce immediately the permit, licence or authority for inspection.
- (2) Without limiting subsection (1), an authorised officer may exercise a power under this section for the purpose of determining whether a management agreement is being, or has been, complied with.
- (3) An authorised officer must not exercise a power conferred by subsection (1) or (2) in respect of residential premises unless the authorised officer is acting —
 - (a) on the authority of a warrant issued by a magistrate; or
 - (b) in a case where the authorised officer believes, on reasonable grounds, that a Category 1 or Category 2 animal may be present on the premises.
- (4) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.
- (5) An authorised officer may only use force to enter any place or vehicle—
 - (a) on the authority of a warrant issued by a magistrate; or
 - (b) if the authorised officer believes, on reasonable grounds, that a Category 1 or Category 2 animal may be present in the place or vehicle.
- (6) A magistrate must not issue a warrant under subsection (1)(k) or (l) unless satisfied that there are reasonable grounds to believe that circumstances require the relevant action to be taken.
- (7) A magistrate must not issue a warrant under subsection (5) unless satisfied that there are reasonable grounds to believe—
 - (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
 - (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
 - (c) that other circumstances require such action to be taken.
- (8) An application for the issue of a warrant under this section—
 - (a) may be made either personally or by telephone; and
 - (b) must be made in accordance with any procedures prescribed by the regulations.

- (9) If an authorised officer digs up any land under this section, the authorised officer must, after taking such steps as the authorised officer thinks fit in the exercise of powers under this section, insofar as is reasonably practicable, take steps to ensure that the land is restored to such state as is reasonable in the circumstances.
- (10) If an authorised officer causes any damage by digging up any land under this section, the Crown is liable to pay reasonable compensation to any person who has suffered loss on account of that damage.
- (11) If any animal or plant is surrendered under subsection (1)(o) or seized or removed under subsection (1)(p), the animal or plant may be destroyed or disposed of in such manner as the Chief Executive approves if the Chief Executive believes on reasonable grounds that such action should be taken.
- (12) An authorised officer may require an occupier of any land or a person apparently in charge of any vehicle, plant, equipment or other thing to give to the authorised officer or a person assisting the authorised officer such assistance as is reasonably required by the authorised officer for the effective exercise of powers conferred by this Act.
- (13) If a person gives assistance to an authorised officer as required under subsection (12), the person must, if the person so requires, be reimbursed in accordance with the regulations for any reasonable costs and expenses incurred in giving the assistance.
- (14) An authorised officer must, in taking action under this section, have regard to any request made by indigenous peoples that the authorised officer (or authorised officers generally) not enter a specified area.
- (15) If—
 - (a) an authorised officer seizes or takes possession of an animal under this section; and
 - (b) a permit authorising the keeping of the animal is subsequently issued to a person,the reasonable costs and expenses in keeping the animal pending its return may be recovered by the Chief Executive from the person to whom the permit has been issued (and, if the Chief Executive so directs, the animal may be retained by an authorised officer until those costs and expenses are paid).
- (16) An authorised officer may, if the authorised officer thinks fit, determine not to seize something that the authorised officer suspects has been used in, or may constitute evidence of, a contravention of this Act pending the outcome of any proceedings or other process under this Act (and a decision not to exercise a power of seizure does not prevent the institution of proceedings under this Act).
- (17) In this section—

Category 1 or Category 2 animal means an animal assigned to such a category under Part 9.

205—Provisions relating to seizure

- (1) If a thing has been seized under section 204(1)(o) or (p) the following provisions apply:
- (a) the thing must be held pending proceedings for an offence against this Act related to the thing seized, unless the Chief Executive, on application, authorises its release to the person from whom it was seized, or to any person who had legal title to it at the time of its seizure, subject to such conditions as the Chief Executive thinks fit (including conditions as to the giving of security for satisfaction of an order under paragraph (b)(ii));
 - (b) if proceedings for an offence against this Act relating to the thing are instituted within the prescribed period after its seizure and the defendant is convicted or found guilty of the offence, the court may—
 - (i) order that it be forfeited to the Crown; or
 - (ii) where it has been released pursuant to paragraph (a)—order that it be forfeited to the Crown or that the person to whom it was released or the defendant pay to the Crown an amount equal to its market value at the time of its seizure, as the court thinks fit;
 - (c) if—
 - (i) proceedings are not instituted for an offence against this Act relating to the thing within the prescribed period after its seizure; or
 - (ii) proceedings have been so instituted and—
 - (A) the defendant is found not guilty of the offence; or
 - (B) the defendant is convicted or found guilty of the offence but no order for forfeiture is made under paragraph (b),then the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Crown (if necessary, by action in a court of competent jurisdiction) the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure, unless possession of the thing is (or would be) contrary to another provision of this Act;
 - (d) if—
 - (i) possession of the thing by the person from whom the thing was seized is (or would be) contrary to another provision of this Act; or
 - (ii) a thing is not liable for forfeiture under a preceding paragraph and the Chief Executive has, after taking reasonable steps in the circumstances, been unable to return the thing to the person from whom it was received,the Chief Executive may deal with or dispose of the thing in such manner as the Chief Executive thinks fit.
- (2) Subsection (1) does not limit the operation of section 204(11).

- (3) In subsection (1)—

the prescribed period means 12 months or such longer period as the ERD Court may, on application by the Minister, allow.

206—Hindering etc persons engaged in the administration of this Act

- (1) A person who—

- (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration or enforcement of this Act; or
- (b) fails to answer a question put by an authorised officer to the best of the person's knowledge, information or belief; or
- (c) produces a document or record that the person knows is false or misleading in a material particular; or
- (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
- (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (f) falsely represents, by words or conduct, that the person is an authorised officer,

is guilty of an offence.

Maximum penalty:

- (a) in the case of an offence against paragraph (a) or (e)—\$5 000;
- (b) in any other case—\$10 000.

- (2) A person (other than an authorised officer) who, without the permission of the Chief Executive, removes, destroys or interferes with any marker, peg or other item or equipment placed under section 204(1) by an authorised officer is guilty of an offence.

Maximum penalty: \$5 000.

Division 2—Civil remedies

Subdivision 1—Orders issued by landscape boards

207—Protection orders

- (1) A regional landscape board or an authorised officer may issue a protection order under this Subdivision for the purpose of securing compliance with—

- (a) the requirements of section 8; or
- (b) a requirement under section 110; or
- (c) the requirements of Part 8 Division 6; or
- (d) a requirement under section 192; or
- (e) a management agreement; or
- (f) any other requirement imposed by or under this Act, or the repealed Act, and prescribed by the regulations for the purposes of this section.

- (2) A protection order—
- (a) must be in the form of a written notice served on the person to whom the notice is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must state the grounds on which it is made with reasonable particularity; and
 - (d) may impose any requirement reasonably required for the purpose for which the order is issued including one or more of the following:
 - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a regional landscape board or an authorised officer;
 - (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
 - (iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times, or in specified circumstances;
 - (iv) a requirement that the person enter into a bond in such sum and subject to such terms and conditions specified in the order, or enter into some other arrangement specified in the order (which may include payment of a sum of money into an approved account), to ensure that money is available to address the costs of any damage, or threatened damage, to specified natural resources;
 - (v) a requirement that the person take action to prevent or minimise any damage to specified natural resources, or to control any specified activity;
 - (vi) a requirement that the person comply with any specified code or standard prepared or published by a body or authority referred to in the notice;
 - (vii) a requirement that the person undertake specified tests or monitoring;
 - (viii) a requirement that the person furnish to the Minister specified results or reports;
 - (ix) a requirement that the person appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and
 - (e) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.
- (3) An authorised officer may, if of the opinion that urgent action is required for the protection of a particular natural resource, issue an emergency protection order imposing requirements of a kind referred to in subsection (2)(d) as reasonably required for the protection of the natural resource.
- (4) An emergency protection order may be issued orally but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.

- (5) If an emergency protection order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity (and in any event within 2 business days) by written notice given to the person to whom it applies.
- (6) A regional landscape board or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other protection order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no liability to a penalty under this Act for compliance with the requirement.
- (7) A regional landscape board or an authorised officer may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.
- (8) A person to whom a protection order is issued must comply with the order.

Maximum penalty:

- (a) if the order was issued in relation to a domestic activity for the purpose of securing compliance with section 8—\$2 500;
- (b) in any other case—\$70 000.

Expiation fee:

- (a) if the order was issued in relation to a domestic activity for the purpose of securing compliance with section 8 in relation to a domestic activity—\$250;
- (b) in any other case—\$750.

- (9) A person must not hinder or obstruct a person complying with a protection order.

Maximum penalty: \$10 000.

- (10) A person is not obliged to provide information in response to a requirement imposed by a protection order if to do so might incriminate the person or make the person liable to a penalty (including through the taking of further action under this Act).

208—Action on non-compliance with a protection order

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

- (b) the amount together with any interest charge so payable is until paid a charge in favour of the Crown on any land owned by the person in relation to which the protection order is registered under this Subdivision.
- (6) In this section—
 - relevant authority* means—
 - (a) a regional landscape board; or
 - (b) the Chief Executive.

209—Reparation orders

- (1) If a regional landscape board or an authorised officer is satisfied that a person has caused harm to any natural resource by contravention of—
 - (a) the requirements of section 8; or
 - (b) a requirement under section 110; or
 - (c) the requirements of Part 8 Division 6; or
 - (d) a requirement under section 192; or
 - (e) a management agreement; or
 - (f) any other requirement imposed by or under this Act or the repealed Act and prescribed by the regulations for the purposes of this section,the regional landscape board or authorised officer may issue a reparation order requiring the person—
 - (g) to take specified action within a specified period to make good any resulting damage to the natural resource; or
 - (h) to make a payment or payments into an approved account to enable action to be taken to address any resulting damage to the natural resource,or both.
- (2) A reparation order—
 - (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must state the grounds on which it is made with reasonable particularity; and
 - (d) may include requirements for action to be taken to prevent or mitigate further harm to any natural resource, or for a plan of action to be prepared to the satisfaction of the regional landscape board or authorised officer; and
 - (e) may include requirements for specified tests or monitoring; and
 - (f) may include requirements for furnishing to the regional landscape board or authorised officer specified results or reports; and
 - (g) may include requirements that the person to whom it is issued appoint or engage a person with specified qualifications to prepare a plan or report or to undertake tests or monitoring required by the order; and

- (h) in the case of an order requiring payment into an approved account, may provide that payments must occur in accordance with a scheme approved by the Minister (either at the time of the making of the order or at a later time when the extent or impact of any action has been assessed or finally determined); and
 - (i) must state that the person may, within 21 days, appeal to the ERD Court against the order or any subsequent variation of the order.
- (3) An authorised officer may, if of the opinion that urgent action is required to prevent or mitigate further harm, issue an emergency reparation order containing requirements of a kind referred to in subsection (2), other than a requirement for payment into an approved account.
- (4) An emergency reparation order may be issued orally, but, in that event, the person to whom it is issued must be advised forthwith of the person's right to appeal to the ERD Court against the order.
- (5) If an emergency reparation order is issued orally, the authorised officer who issued it must confirm it in writing at the earliest opportunity by written notice given to the person to whom it applies.
- (6) A regional landscape board or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other reparation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.
- (7) A regional landscape board or an authorised officer may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.
- (8) A person to whom a reparation order is issued must comply with the order.
Maximum penalty: \$70 000.
Expiation fee: \$750.

210—Action on non-compliance with a reparation order

- (1) If the requirements of a reparation order are not complied with, a relevant authority may take any action required by the order.
- (2) Action taken by a relevant authority under subsection (1) may be taken on the relevant authority's behalf by an authorised officer, a member of the Department, or another person authorised by the relevant authority for the purpose.
- (3) A person taking action under this section may enter any relevant land at any reasonable time.
- (4) The reasonable costs and expenses incurred by a relevant authority in taking action under this section may be recovered by the relevant authority as a debt from the person who failed to comply with the requirements of the reparation order.

- (5) If an amount is recoverable from a person by a relevant authority under this section—
- (a) the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Crown on any land owned by the person in relation to which the reparation order is registered under this Subdivision.
- (6) In this section—
- relevant authority** means—
- (a) a regional landscape board; or
 - (b) the Chief Executive.

211—Reparation authorisations

- (1) If a relevant authority is satisfied that a person has caused harm to any natural resource by contravention of—
- (a) the requirements of section 8; or
 - (b) a requirement under section 110; or
 - (c) the requirements of Part 8 Division 6; or
 - (d) a requirement under section 192; or
 - (e) a management agreement; or
 - (f) any other requirement imposed by or under this Act or the repealed Act and prescribed by the regulations for the purposes of this section,
- the relevant authority may (whether or not a reparation order has been issued to the person) issue a reparation authorisation under which authorised officers or other persons authorised by the relevant authority for the purpose may take specified action on the relevant authority's behalf to make good any resulting damage to the natural resource.
- (2) A reparation authorisation—
- (a) must be in the form of a written notice; and
 - (b) must specify the person alleged to have caused the harm (whether by name or a description sufficient to identify the person); and
 - (c) must state the grounds on which it is made with reasonable particularity; and
 - (d) may include authorisation for action to be taken to prevent or mitigate further harm to any natural resource.
- (3) A relevant authority must, as soon as practicable after issuing a reparation authorisation, serve a copy of the authorisation on the person alleged to have caused the harm.

- (4) A relevant authority may, by notice in writing, vary or revoke a reparation authorisation and must, as soon as practicable after doing so, serve a copy of the notice on the person alleged to have caused the harm.
- (5) The copy of the authorisation must be accompanied by a written notice stating that the person may, within 21 days, appeal to the ERD Court against the issuing of the reparation authorisation.
- (6) If a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:
 - (a) the relevant authority that issued the authorisation must issue the person with an instrument of authority;
 - (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
 - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
 - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.
- (7) A person taking action under a reparation authorisation may enter any relevant land at any reasonable time.
- (8) The reasonable costs and expenses incurred by a relevant authority in taking action under a reparation authorisation may be recovered by the relevant authority as a debt from the person who caused the relevant harm.
- (9) If an amount is recoverable from a person by a relevant authority under this section—
 - (a) the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Crown on any land owned by the person in relation to which the reparation authorisation is registered under this Subdivision.
- (10) In this section—

relevant authority means—

 - (a) a regional landscape board; or
 - (b) the Chief Executive.

212—Related matter

A person cannot claim compensation from—

- (a) the Crown; or
- (b) a regional landscape board; or
- (c) the Chief Executive; or

- (d) an authorised officer; or
- (e) a person acting under the authority of a regional landscape board, the Chief Executive or an authorised officer,

in respect of a requirement imposed by or under this Subdivision, or on account of any act or omission undertaken or made in good faith in the exercise (or purported exercise) of a power under this Subdivision.

213—Registration

- (1) If—

- (a) a regional landscape board or person issues an order or authorisation under this Subdivision; and
- (b) the order or authorisation is issued in relation to an activity carried out on land, or requires a person to take action on or in relation to land,

the relevant authority may apply to the Registrar-General for the registration of the order or authorisation in relation to that land.

- (2) An application under this section must—

- (a) define the land to which it relates; and
- (b) comply with any requirement imposed by the Registrar-General for the purposes of this section.

- (3) The Registrar-General must, on due application under subsection (2), register the order or authorisation in relation to the land by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as the Registrar-General thinks fit.
- (4) The relevant authority must, in accordance with the regulations, furnish to the Registrar-General notice on any variation to an order or authorisation registered under this section.
- (5) An order or authorisation registered under this section (as varied from time to time) is binding on each owner and occupier from time to time of the land.
- (6) The Registrar-General must, on application by the relevant authority, cancel the registration of an order or authorisation in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as the Registrar-General thinks fit.
- (7) The relevant authority must apply to the Registrar-General for cancellation of the registration of an order or authorisation under this section in relation to land—
 - (a) on revocation of the order or authorisation; or
 - (b) in relation to—
 - (i) an order—
 - (A) on full compliance with the requirements of the order;
 - (B) if action has been taken under this Subdivision to carry out the requirements of the order—on payment of any amount recoverable under this Subdivision in relation to the action so taken; or

- (ii) an authorisation—on payment of any amount recoverable under this Subdivision in relation to the action taken in pursuance of the authorisation.
- (8) An owner or occupier of the relevant land must be notified, in the manner prescribed by the regulations, if—
 - (a) an order or authorisation is registered under subsection (3); or
 - (b) a notice of the variation of an order or authorisation is registered under subsection (4); or
 - (c) the cancellation of the registration of an order or authorisation is given effect to under subsection (7).
- (9) In this section—
relevant authority means—
 - (a) in relation to an order or authorisation issued by a regional landscape board—the regional landscape board;
 - (b) in relation to an order or authorisation issued by the Chief Executive or an authorised officer—the Chief Executive.

214—Effect of charge

A charge imposed on land under this Subdivision with respect to an order or authorisation registered under this Subdivision has priority over—

- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- (b) any other charge on the land other than a charge registered prior to registration under this Subdivision of the relevant order or authorisation in relation to the land.

Subdivision 2—Orders made by ERD Court

215—Orders made by ERD Court

- (1) Applications may be made to the ERD Court for 1 or more of the following orders:
 - (a) if a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act—an order restraining the person, or an associate of the person, from engaging in the conduct and, if the Court considers it appropriate to do so, requiring the person, or an associate of the person, to take such action as may appear appropriate to the Court in the circumstances (including an order to rectify the consequences of any contravention, or to ensure that a further contravention does not occur);
 - (b) if a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act—an order requiring the person to take that action;

- (c) if a person has suffered injury, loss (including economic loss or loss of property) or damage to property as a result of a contravention of this Act, or incurred costs and expenses in taking action to prevent or mitigate such injury, loss or damage—an order against the person who committed the contravention for payment of compensation for the injury, loss or damage, or for payment of the reasonable costs and expenses incurred in taking that action;
 - (d) if a person has engaged in conduct in contravention of this Act—an order that the person pay into the Landscape Administration Fund an amount, determined by the Court to be appropriate in the circumstances, on account of any financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the contravention;
 - (e) if the Court considers it appropriate to do so—an order against a person who has contravened this Act for payment (for the credit of the Consolidated Account) of an amount in the nature of exemplary damages determined by the Court.
- (2) The power of the ERD Court to make an order restraining a person from engaging in conduct of a particular kind may be exercised—
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an order is not made, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of damage if the person engages in conduct of that kind.
- (3) The power conferred by subsection (1) may only be exercised by a Judge of the ERD Court.
- (4) In assessing an amount to be ordered in the nature of exemplary damages, the ERD Court must have regard to—
 - (a) any damage to a water resource or any other part of the environment or detriment to the public interest resulting from the contravention; and
 - (b) any financial saving or other benefit that the respondent, or an associate of the respondent, stood to gain by committing the contravention; and
 - (c) any other matter it considers relevant.
- (5) An application under this section may be made—
 - (a) by the Minister or the Chief Executive; or
 - (b) by a regional landscape board; or
 - (c) by any person whose interests are affected by the subject matter of the application; or
 - (d) by any other person with the permission of the ERD Court.

- (6) Before the ERD Court may grant permission for the purposes of subsection (5)(d), the Court must be satisfied that—
 - (a) the proceedings on the application would not be an abuse of the process of the Court; and
 - (b) it is not unlikely that the requirements for the making of an order under subsection (1) on the application would be satisfied; and
 - (c) it is in the public interest that the proceedings should be brought.
- (7) If an application is made by a person other than the Minister—
 - (a) the applicant must serve a copy of the application on the Minister within 3 days after filing the application with the ERD Court; and
 - (b) the ERD Court must, on application by the Minister, join the Minister as a party to the proceedings.
- (8) An application under this section may be made in a representative capacity (but, if so, the consent of all persons on whose behalf the application is made must be obtained).
- (9) An application may be made in the absence of the respondent, (or an associate of the respondent), and, if the ERD Court is satisfied on the application that the respondent has a case to answer, it may grant permission to the applicant to serve a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.
- (10) An application under this section must, in the first instance, be referred to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.
- (11) If, on an application under this section or before the determination of the proceedings commenced by the application, the ERD Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.
- (12) An interim order—
 - (a) may be made in the absence of the respondent or any other party; and
 - (b) may be made whether or not the proceedings have been referred to a conference; and
 - (c) will be made subject to such conditions as the Court thinks fit; and
 - (d) will not operate after the proceedings in which it is made are finally determined.
- (13) The ERD Court may order an applicant in proceedings under this section—
 - (a) to provide security for the payment of costs that may be awarded against the applicant if the application is subsequently dismissed;
 - (b) to give an undertaking as to the payment of any amount that may be awarded against the applicant under subsection (14).

- (14) If, on an application under this section alleging a contravention of this Act, the ERD Court is satisfied—
- (a) that the respondent has not contravened this Act; and
 - (b) that the respondent has suffered loss or damage as a result of the actions of the applicant; and
 - (c) that in the circumstances it is appropriate to make an order under this provision,
- the Court may, on the application of the respondent (and in addition to any order as to costs), require the applicant to pay to the respondent an amount, determined by the Court, to compensate the respondent for the loss or damage suffered by the respondent.
- (15) The ERD Court may, if it considers it appropriate to do so, either on its own initiative or on the application of a party, vary or revoke an order previously made under this section.
- (16) Proceedings under this section based on a contravention of this Act may be commenced at any time within 3 years after the date of the alleged contravention or, with the authorisation of the Attorney-General, at any later time.
- (17) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorise the commencement of proceedings under this section must be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.
- (18) The ERD Court may, in any proceedings under this section, make such orders in relation to the costs of the proceedings as it thinks just and reasonable.
- (19) Without limiting the generality of subsection (18), in determining whether to make any order in relation to costs the ERD Court may have regard to the following matters (so far as they are relevant):
- (a) whether the applicant is pursuing a personal interest only in bringing the proceedings or is furthering a wider group interest or the public interest;
 - (b) whether or not the proceedings raise significant issues relating to the administration of this Act.
- (20) In this section—
- (a) a reference to a contravention of this Act will be taken to include a reference to a contravention of a management agreement; and
 - (b) a reference to a failure to take action required by this Act will be taken to include a reference to a failure to comply with a management agreement.

Part 11—Appeals

216—Right of appeal

- (1) The following rights of appeal lie to the ERD Court:
- (a) an owner of land who is dissatisfied with—

- (i) a review of a notice by the Chief Executive under section 99(4) or (10) may appeal to the Court against the decision of the Chief Executive; or
 - (ii) a decision of a relevant authority to vary an action plan under subsection (17) of section 99, or on an application under that subsection, may appeal to the Court against the decision;
- (b) without limiting any other paragraph, in respect of the operation of Part 8—
 - (i) a person who is subject to a restriction under section 109(5) may appeal to the Court against the restriction;
 - (ii) an applicant for a water management authorisation, a forest water licence, a well driller's licence or a permit under Part 8 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 Part 8 Division 4);
 - (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;
 - (iv) an applicant for the transfer of a water allocation attached to a forest water licence may appeal to the Court against a refusal to grant the application;
 - (v) the holder of a water management authorisation, licence or permit under Part 8 may, if authorised to do so by a specific provision of that Part, appeal to the Court against the variation, suspension or cancellation of the authorisation or licence or the variation, suspension or revocation of the permit;
 - (vi) a person who is subject to a direction by the Minister or other authority under Part 8 may appeal to the Court against the direction;
 - (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;
- (c) a person who is dissatisfied with—
 - (i) an action order issued to the person under section 193 may appeal to the Court against the decision to issue the order; or
 - (ii) a decision of a relevant authority to vary an action plan, may appeal to the Court against the decision;

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- (d) a person who has applied for a permit under Part 9 Division 2 Subdivision 2 may appeal to the Court against a decision of the relevant authority to refuse the application, or to impose particular conditions, and a person who is the holder of such a permit may appeal to the Court against a decision of the relevant authority to vary or revoke the permit, or a condition of the permit, or to impose a new condition;
 - (e) a person to whom an order has been issued under Part 10 Division 2 Subdivision 1 may appeal to the Court against the order or any variation of the order and a person who has been served with a reparation authorisation under section 211 may appeal to the Court against the issuing of the authorisation;
 - (f) a person who is subject to a direction by the Minister or other authority under this Act in prescribed circumstances may appeal to the Court against the direction;
 - (g) a person who is expressly given a right of appeal by another provision of this Act or by the regulations may appeal to the Court in pursuance of that right.
- (2) The Crown in right of the State of Victoria has a right of appeal to the ERD Court against a decision to grant a water management authorisation or to issue a permit under Part 8 on the ground that the decision is contrary to the Border Groundwaters Agreement approved by the *Groundwater (Border Agreement) Act 1985*.
 - (3) Subject to this section, an appeal must be made—
 - (a) in the case of an appeal against an order under section 193 or variation of such an order—within 14 days after the order or variation was served; or
 - (b) in the case of an appeal against an order or reparation authorisation under Part 10 Division 2 or variation of such an order or authorisation—within 21 days after the order or authorisation or variation is served; or
 - (c) in the case of an appeal in any circumstance prescribed by the regulations—within the period prescribed by the regulations; or
 - (d) in any other case—within 6 weeks of the decision, direction or restriction appealed against.
 - (4) The ERD Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an appeal be made within the period fixed by this section.
 - (5) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993*.

217—Operation and implementation of decisions or orders subject to appeal

- (1) Subject to subsection (2), the making of an appeal to the ERD Court does not affect the operation of any decision, order, direction or restriction to which the appeal relates or prevent the taking of action to implement the decision, order, direction or restriction.
- (2) The ERD Court, or the authority that has made or issued a decision, order, direction or restriction may, on its own initiative or on application by a party to an appeal, suspend the operation of any decision, order, direction or restriction until the determination of an appeal.

- (3) A suspension under subsection (2) may be made subject to specified conditions, and may be varied or revoked by the ERD Court or relevant authority that granted the suspension at any time.

218—Powers of Court on determination of appeals

The ERD Court may, on hearing an appeal—

- (a) confirm, vary or reverse any decision, order, direction or restriction appealed against, or substitute any decision, order, direction or restriction that should have been made in the first instance;
- (b) remit the subject matter of the appeal to any person or body under this Act for further consideration;
- (c) order or direct a person or body to take such action as the Court thinks fit, or to refrain (either temporarily or permanently) from such action or activity as the Court thinks fit;
- (d) make any consequential or ancillary order or direction, or impose any condition, that it considers necessary or expedient.

Part 12—Management agreements

219—Management agreements

- (1) The Minister may enter into an agreement (a *management agreement*) relating to—
- (a) the protection, conservation, management, enhancement, restoration or rehabilitation of any natural resources;
 - (b) any other matter associated with furthering the objects of this Act,
- with the owner of any land.
- (2) Without limiting the operation of subsection (1), a management agreement may, with respect to the land to which it relates—
- (a) require specified work or work of a specified kind be carried out on the land, or authorise the performance of work on the land;
 - (b) restrict the nature of any work that may be carried out on the land;
 - (c) prohibit or restrict specified activities or activities of a specified kind on the land;
 - (d) provide for the care, control, management or operation of any infrastructure or works;
 - (e) provide for the management of any matter in accordance with a particular management plan (which may then be varied from time to time by agreement between the Minister and the owner of the land);
 - (f) provide for the adoption or implementation of natural resources protection measures or improvement programs;
 - (g) provide for the testing or monitoring of any natural resources;
 - (h) provide for financial, technical or other professional advice or assistance to the owner of land with respect to any relevant matter;

- (i) provide for a remission or exemption in respect of a levy under Part 5;
 - (j) provide for remission of rates or taxes in respect of the land;
 - (k) provide for the Minister to pay to the owner of the land an amount as an incentive to enter into the agreement.
- (3) The Minister must not enter into a management agreement that provides for the remission of any council rates under subsection (2)(j) unless the Minister has given the relevant council notice of the proposal to provide for the remission and given consideration to any submission made by the council within a period (of at least 21 days) specified by the Minister.
- (4) A term of management agreement under subsection (2)(i) or (j) has effect despite any other Act or law to the contrary.
- (5) The Registrar-General must, on the application of a party to a management agreement, note the agreement against the relevant instrument of title or, in the case of land not under the provisions of the *Real Property Act 1886*, against the land.
- (6) A management agreement has no force or effect under this Act until a note is made under subsection (5).
- (7) Where a note has been entered under subsection (5), the agreement is binding on each owner of the land from time to time whether or not the owner was the person with whom the agreement was made and despite the provisions of the *Real Property Act 1886*, and on any occupier of the land.
- (8) The Registrar-General must, if satisfied on the application of the Minister or the owner of the land that an agreement in relation to which a note has been made under this section has been rescinded or amended, enter a note of the rescission or amendment against the instrument of title, or against the land (but must otherwise ensure that the note is not removed once made).
- (9) Except to the extent that the agreement provides for a remission or exemption under subsection (2)(i) or (j), a management agreement does not affect the obligations of an owner or occupier of land under any other Act.
- (10) The existence of a management agreement may be taken into account when assessing an application for a licence, permit or other authorisation under this Act.
- (11) A management agreement cannot derogate from the operation of a Mining Act or from the exercise of a right under a tenement granted under a Mining Act.

Part 13—Miscellaneous

220—Avoidance of duplication of procedures etc

- (1) The purpose of this section is to provide for the avoidance of unnecessary duplication of procedures and compliance requirements under the Commonwealth Act and this Act where an activity requires authorisation under this Act and approval under the Commonwealth Act.
- (2) Despite any other provision of this Act, an authority under this Act may—
 - (a) accept a Commonwealth Act document as an application, notice or other document for the purposes of this Act if (subject to subsection (5)) the document complies with the requirements of this Act; and

- (b) direct that a procedure taken under the Commonwealth Act in relation to a Commonwealth Act document that has been accepted by the authority under paragraph (a) will be taken to have fulfilled the requirement for a procedure in relation to the relevant document under this Act if the requirements of this Act in relation to the procedure have been complied with; and
 - (c) instead of the authority, or some other person, preparing a plan, report, statement, assessment or other document under this Act, adopt or accept the whole or part of a document (whether a plan, report, statement, assessment or other document of the same kind or not) used, or to be used, for the purposes of the Commonwealth Act as the document required under this Act if (subject to subsection (5)) the document has been prepared in compliance with this Act and complies with the requirements of this Act.
- (3) To avoid doubt, where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which authorisation is required under this Act, the authority may, when considering an application for, or for the variation of, a water licence, permit or other instrument, use information and other material provided to the Commonwealth Minister under the Commonwealth Act for the purpose of deciding whether to give his or her approval to the controlled action under that Act.
- (4) Where a controlled action under the Commonwealth Act is an activity or part of an activity, or includes an activity, for which authorisation is required under this Act, the authority—
 - (a) must, if the Commonwealth Minister has given the Minister's approval to the controlled action, consider whether the conditions (if any) to be attached to the licence, permit or other instrument should be consistent with the conditions (if any) attached to the Commonwealth Minister's approval under the Commonwealth Act;
 - (b) may attach a condition to a licence, permit or other instrument that requires compliance with all or some of the conditions attached to the Commonwealth Minister's approval under the Commonwealth Act.
- (5) A document accepted or adopted under subsection (2)—
 - (a) may be in a form that does not comply with the requirements of this Act; and
 - (b) may include information or other material that is irrelevant for the purposes of this Act.
- (6) Once a document is accepted or adopted under subsection (2) or a direction has been given in relation to a procedure under subsection (2)(b), the document or procedure will not be invalid or ineffective for the purposes of this Act because a court, tribunal or other authority has decided that it is invalid or ineffective for the purposes of the Commonwealth Act.
- (7) In this section—

assessment report means—

 - (a) an assessment report as defined in the Commonwealth Act by reference to section 84(3), 95, 100 or 105 of that Act; or
 - (b) a report under section 121 of the Commonwealth Act;

the authority means—

- (a) in reference to a water licence—the Minister;
- (b) in reference to a permit—the relevant authority under section 103;
- (c) in reference to any other instrument brought within the ambit of this definition by the regulations—a person or body prescribed by the regulations;

Commonwealth Act means the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth;

Commonwealth Act document means—

- (a) a referral under section 68, 69 or 71 of the Commonwealth Act; or
- (b) information given by a person to the Minister under the Commonwealth Act under section 86 of that Act; or
- (c) information and invitation published by a proponent under section 93 of the Commonwealth Act; or
- (d) guidelines prepared under section 97 or 102 of the Commonwealth Act; or
- (e) a draft report prepared under section 98 of the Commonwealth Act; or
- (f) a finalised report prepared under section 99 of the Commonwealth Act; or
- (g) a draft statement prepared under section 103 of the Commonwealth Act; or
- (h) a finalised statement prepared under section 104 of the Commonwealth Act; or
- (i) an assessment report.

221—Native title

- (1) Nothing done under this Act will be taken to affect native title in any land or water.
- (2) However, subsection (1) does not apply if the effect is valid under a law of the State or the *Native Title Act 1993* of the Commonwealth.

222—Service of notices or other documents

- (1) If this Act requires or authorises a notice or other document to be served on, or given to, a person, the notice or document may—
 - (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
 - (c) be sent by post to the person or an agent of the person at the person's or agent's last known address; or
 - (d) if the notice or document is to be served on the owner of land, the land is unoccupied, and the person seeking to serve the notice or document has taken reasonable steps to effect service under the other paragraphs of this subsection but has been unsuccessful—be served by fixing it to some conspicuous part of the land; or
 - (e) if the notice or document is to be served on the occupier of land—be sent by post to the occupier at the address of the land; or

- (f) be served on the person by fixing it to, or leaving it on, a vessel or craft that the person is apparently in charge of, or expected to board at some stage, if the person giving or serving the notice or document has reasonable grounds to believe that service in this manner will bring the notice or document to the attention of the person to be served; or
 - (g) be sent to an email address known to be used by the person (in which case the notice or other document will be taken to have been served or given at the time of transmission); or
 - (h) be served or given in some other manner prescribed by the regulations.
- (2) Without limiting subsection (1), a notice or document to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth may be served or given in accordance with that Act.
 - (3) Subject to the regulations, a notice or document required or authorised to be given to an owner of land may, if it is to be served personally, be served on the owner, one of any joint owners, or the agent of the owner.
 - (4) This section does not affect any provision for service prescribed by the *Native Title (South Australia) Act 1994*.

223—Publication of notices by Minister

If the Minister is authorised to publish a notice under this Act in such manner as the Minister considers appropriate, the Minister should give consideration to the extent to which a particular form of publication may be effective in bringing the notice to the attention of persons who are most likely to be directly affected by the notice or will have a particular interest in the notice (without requiring personal service).

224—Money due to Minister

Money that is due to the Minister or other authority under this Act in respect of the Minister's or the authority's costs in carrying out the requirements of a notice served on the owner or occupier of land may be recovered by the Minister or other authority by selling the land in accordance with section 86 and for the purposes of applying that section the money due will be taken to be a levy and an authority other than the Minister to which the money is due will be taken to be the Minister.

225—Compulsory acquisition of land

- (1) The Minister may, after taking into account any recommendation of the relevant regional landscape board, acquire land under this section where the Minister considers that the acquisition of the land is reasonably necessary to further the objects of this Act.
- (2) The *Land Acquisition Act 1969* applies to the acquisition of land pursuant to this section.
- (3) Nothing in this section limits or affects—
 - (a) the ability of the Minister to acquire land by agreement; or
 - (b) the operation of any other section of this Act.

226—Compensation

- (1) A regional landscape board is liable to pay compensation—
 - (a) to a person who has the right to take water from a watercourse or lake whether pursuant to a water management authorisation or not, for loss or damage resulting from the effect on the exercise of the right by that person of the board stopping, reducing or diverting the flow of water in the watercourse or in a watercourse that flows into the lake;
 - (b) to the owner of land that the board, or a person authorised by the board, has entered, or entered and occupied, for loss or damage caused by the entry or occupation of the land.
- (2) If the exercise of rights under or in respect of a water management authorisation or a permit has the effect of stopping, reducing or diverting the flow of water in a watercourse, a regional landscape board that allocated water under this Act or approved the transfer of any water management authorisation or any interest in any water management authorisation (as a delegate of the Minister) or granted the permit is not responsible for the purposes of subsection (1)(a) for stopping, reducing or diverting the flow of water in the watercourse.
- (3) The Minister is liable to pay compensation to the owner of land for—
 - (a) the value of a dam, embankment, wall or other obstruction or object removed by the owner in compliance with a notice under section 111(1); and
 - (b) the costs of removal incurred by the owner.
- (4) For the purposes of subsection (3), the value of a dam, embankment, wall or other obstruction or object will be taken to be—
 - (a) the amount by which the dam, embankment, wall or other obstruction or object increased the value of the land; or
 - (b) the cost, at the time of removal, of replacing the dam, embankment, wall or other obstruction or object,whichever is the lesser.
- (5) The Minister is liable to pay compensation to the occupier of land for the loss of water (if any) held by a dam, embankment, wall or other obstruction or object when it is removed in compliance with a notice under section 111(1).
- (6) A claim for compensation under this section against a regional landscape board must be made by written notice served on the board—
 - (a) in the case of compensation under subsection (1)(a)—within 6 months after the loss or damage first occurred;
 - (b) in the case of compensation under subsection (1)(b)—within 3 months after the board, or a person authorised by the board, entered the land or ceased to occupy the land.
- (7) A claim for compensation under this section against the Minister must be made by written notice served on the Minister within 6 months after the removal of the dam, embankment, wall or other obstruction or object.

- (8) If the claimant and the regional landscape board or the Minister cannot reach agreement within 3 months after the notice is served on the board or the Minister, the claimant may apply to the ERD Court for determination of the amount of compensation payable.
- (9) Compensation is not payable under subsection (1)(b) in respect of the entry or occupation of land pursuant to an easement.
- (10) Compensation is not payable under subsection (1), (3) or (5) to the Crown or a public authority.

227—Immunity from liability

- (1) Despite any other Act or law to the contrary, an owner of land, the Minister or another authority or any other person who—
 - (a) destroys an animal or plant; or
 - (b) captures or removes an animal from land; or
 - (c) takes any other action that is a prescribed measure for the control of animals or plants; or
 - (d) after an animal has been removed from land, sells or otherwise disposes of the animal,pursuant to this Act, is not subject to any criminal or civil liability in relation to that action.
- (2) The immunity provided by subsection (1) to an owner of land, the Minister, an authority or other person extends to a person who acts as an agent of the owner, Minister, authority or other person.

228—Vicarious liability

For the purposes of this Act, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

229—False or misleading information

A person who furnishes information to the Minister or another authority under this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$20 000.

230—Interference with works or other property

- (1) A person must not interfere with any property of the Crown used in, or in connection with, the administration of this Act without the permission of the Minister.

Maximum penalty:

- (a) where the offender is a body corporate—\$10 000;
- (b) where the offender is a natural person—\$5 000.

Expiation fee: \$500.

- (2) If a meter is used for the purposes of this Act to measure the quantity of water taken from a water resource, a person (including the owner of the meter) must not interfere with the meter without the permission of the Minister.

Maximum penalty:

- (a) where the offender is a body corporate—\$10 000;
- (b) where the offender is a natural person—\$5 000.

Expiation fee: \$500.

- (3) A person must not interfere with any infrastructure or other property that is vested in or is under the care, control and management of a regional landscape board or a person acting on behalf of such a board without the board's permission.

Maximum penalty:

- (a) where the offender is a body corporate—\$10 000;
- (b) where the offender is a natural person—\$5 000.

Expiation fee: \$500.

- (4) The Minister's or a regional landscape board's permission under this section may be conditional or unconditional and if conditional it is an offence to contravene or fail to comply with the condition.

Maximum penalty:

- (a) where the offender is a body corporate—\$10 000;
- (b) where the offender is a natural person—\$5 000.

Expiation fee: \$500.

231—Criminal jurisdiction of Court

An offence against any section of this Act prescribed by the regulations for the purposes of this section lies within the criminal jurisdiction of the ERD Court.

232—Proceedings for offences

- (1) Proceedings for an offence against this Act—
- (a) may only be commenced by—
 - (i) the Minister; or
 - (ii) the Director of Public Prosecutions; or
 - (iii) the Chief Executive; or
 - (iv) a person acting with the authorisation in writing of the Minister; and
 - (b) must be commenced within 5 years after the date on which the offence is alleged to have been committed.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

233—General defence

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 234.

234—Offences by bodies corporate

- (1) If a body corporate is guilty of a prescribed offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the member or the manager (as the case may be) proves that they could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each member of the governing body, and the manager, of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—
 - (a) the member or manager (as the case may be) knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
 - (b) the member or manager (as the case may be) was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
 - (c) the member or manager (as the case may be) failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is—
 - (a) an offence against section 10, section 31, section 79, section 109, section 119, section 120, section 163, section 186(2) or (3), section 190, section 193(8), section 195, section 196, section 197, section 199, section 201, section 206, section 207, section 209, section 229 or section 230; or
 - (b) an offence against section 104(7) that relates to the breach of a prescribed condition of a water management authorisation; or
 - (c) an offence against section 187 or 188 that relates to a Category 3 animal or plant; or
 - (d) an offence against section 191 that relates to a Category 3 animal or plant.
- (4) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.
- (5) The regulations may make provision in relation to the criminal liability of a member of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.

- (6) In this section—

prescribed offence means—

- (a) an offence against section 99(12), section 107, section 108 or section 193(4); or
- (b) an offence against section 191 that relates to a Category 1 or Category 2 animal or plant.

235—Additional orders on conviction

If a person is convicted of an offence against this Act, the court by which the conviction is recorded may, in addition to any penalty that it may impose, and to any other order that it may make under this or any other Act, make 1 or both of the following orders:

- (a) an order requiring the person to take any specified action (including an order to rectify the consequences of any contravention of this Act, or to ensure that a further contravention does not occur);
- (b) an order that the person pay to the Crown an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

236—Continuing offence

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
 - (a) is liable, subject to any determination of a court, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
 - (b) is, if the act or omission continues after the conviction, subject to any determination of a court, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

237—Constitution of Environment, Resources and Development Court

The following provisions apply in respect of the constitution of the ERD Court when exercising jurisdiction under this Act:

- (a) the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Presiding Member of the Court so determines, be constituted of a Judge and 1 commissioner;

- (b) the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;
- (c) the Court may not be constituted of or include a commissioner unless—
 - (i) in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
 - (ii) in any other case—at least 1 commissioner,is a commissioner who has been specifically designated by the Governor as a person who has expertise in fields that are relevant to the jurisdiction conferred on the Court by this Act.

238—Evidentiary

- (1) If, in criminal or civil proceedings under this Act relating to the taking of water from a prescribed watercourse, lake or well without authority, it is proved that at the time at which the water is alleged to have been taken the watercourse, lake or well was connected by pipes or channels to land occupied by the defendant, it must be presumed (in the absence of proof to the contrary)—
 - (a) that the defendant took water from the watercourse, lake or well;
 - (b) that the defendant took the water for a purpose other than for domestic purposes or for watering stock.
- (2) An allegation in criminal or civil proceedings under this Act that on a particular date or during a particular period—
 - (a) the defendant, respondent or any other person was, or was not, the holder of a licence or permit under this Act; or
 - (b) a particular person was, or was not, the owner or occupier of any specified land or the owner of any specified vehicle, vessel or aircraft; or
 - (c) a specified watercourse, lake or well or a specified area was, or was not, a prescribed watercourse, lake or well or a surface water prescribed area; or
 - (d) specified infrastructure—
 - (i) was, or was not, stormwater infrastructure;
 - (ii) was, or was not, stormwater infrastructure forming part of a surface water prescribed area; or
 - (e) the defendant took or used a specified quantity of water; or
 - (f) an animal was an animal of a specified class, or a plant was a plant of a specified class, under a provision of this Act; or
 - (g) a person had failed to carry out the requirements of a notice under Part 9; or
 - (h) a particular person was an authorised officer,must, in the absence of proof to the contrary, be accepted as proved.

- (3) A document that purports to have been certified by the Minister, a regional landscape board or an authorised officer to be an accurate copy of a licence or permit granted or issued under this Act must, in the absence of proof to the contrary, be accepted in criminal or civil proceedings under this Act as an accurate copy of that licence or permit.
- (4) If in proceedings before a court or other tribunal it is proved that—
 - (a) a meter used to measure the quantity of water taken from a prescribed water resource has been adjusted or modified in a manner that affects the accuracy of the meter; or
 - (b) a pipe has been installed to bypass a meter referred to in paragraph (a); or
 - (c) any other pipe or fitting has been interfered with,it must be presumed (in the absence of proof to the contrary) that the occupier of the land on which the meter, pipe or other fitting is situated, or a person acting on the occupier's behalf, was the person who—
 - (d) adjusted or modified the meter; or
 - (e) installed the pipe bypassing the meter; or
 - (f) interfered with the pipe or other fitting.
- (5) A document purporting to be a regional landscape plan, a water allocation plan, a landscapes affecting activities control policy or a water affecting activities control policy, prepared and approved under this Act must in proceedings before a court or other tribunal, be presumed in the absence of proof to the contrary, to be a plan or policy (as the case may be) prepared, approved and for the time being in force under this Act.
- (6) If in any proceedings under Part 10 Division 2 or in proceedings for an offence against this Act it appears that an alleged fact has been determined by the use of an electronic, sonic, optical, mechanical or other device by an authorised officer or a person assisting an authorised officer, the alleged fact must be accepted as proved in the absence of proof to the contrary.

239—Determination of costs and expenses

- (1) A reference in this Act to the costs of an authority under this Act in taking action or performing work includes a reference to expenses incurred in taking the action or performing the work.
- (2) The costs and expenses of an authority under this Act in taking action or performing work must be determined by reference to the costs and expenses that would have been incurred if an independent contractor had been engaged to take the action or perform the work.

240—Minister may apply assumptions and other information

- (1) Subject to this section, the Minister may, in assessing or determining any matter that the Minister considers to be relevant to—
 - (a) the imposition or calculation of any levy under Part 5; or
 - (b) a condition or proposed condition with respect to a permit or licence under Part 8; or

- (c) any notice or other requirement that may be issued or imposed under this Act;
or
 - (d) any plan, policy or report under this Act,
apply any assumptions, or adopt or apply any information or criteria, determined by
the Minister to be reasonable in the circumstances (and the Minister's determination in
relation to the particular matter will then have effect for the purposes of this Act).
- (2) If the regulations so provide, no appeal will lie against any determination of a
prescribed kind based on any assumption, information or criteria of a kind specified
by the regulations.
- (3) This section only applies with respect to a matter that relates to the River Murray.

241—Landscape Scheme Register

- (1) The Minister must keep a register (the *Landscape Scheme Register*) of—
- (a) water management authorisations granted or issued under this Act; and
 - (b) forest water licences granted under this Act; and
 - (c) permits granted under this Act; and
 - (d) action plans imposed under section 99; and
 - (e) other prescribed matters,
- in such form and containing such information as the Minister thinks fit.
- (2) 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 4 entitlements under
Part 8.
- (3) The part established under subsection (2)—
- (a) will be known as *The Water Register*; and
 - (b) will be subject to the operation of Schedule 4.
- (4) Subject to this section, the register must be made available for public inspection.
- (5) The Minister is not required to make available for public inspection any part of the
register that, in the opinion of the Minister, should be kept confidential for safety or
security reasons.
- (6) 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.
- (7) No fee may be imposed for the inspection of the register but the Minister may fix fees
for the supply of copies of the register or for extracts from the register.
- (8) Information on the register may be made available on conditions determined or
approved by the Minister.
- (9) Without limiting a preceding subsection, any part of the register may be kept in the
form of a computer record.

242—Confidentiality

A person engaged in the administration of this Act who, in the course of carrying out official duties, acquires information on the income, assets, liabilities or other private business affairs of a person must not disclose that information to any other person except in the performance of those official duties or as required by law or authorised by the Minister.

Maximum penalty: \$7 500

243—Damage caused by non-compliance with a notice etc

(1) If—

- (a) a person fails to comply with—
 - (i) a requirement under section 99 or section 193; or
 - (ii) an order under Part 10 Division 2 Subdivision 1; and
- (b) damage is caused to the land of another person as a result of that non-compliance,

that other person may recover damages from the person who has failed to so comply.

(2) If a person fails to comply with a notice or other requirement under this Act to make good damage caused to the land of another person, that other person may recover the cost of making good the damage as a debt from the person who has failed to comply.

244—Recovery of technical costs associated with contraventions

(1) If, in the course of investigating a contravention of this Act, a relevant authority has incurred costs and expenses in taking samples or in conducting tests, examinations or analyses the following provisions apply:

- (a) if a person is convicted of an offence in respect of the contravention—the court must, on application by a relevant authority, order the person to pay to the relevant authority the reasonable costs and expenses incurred by the relevant authority;
- (b) if an order has been issued under Part 10 Division 2 Subdivision 1 to a person in respect of the contravention—a relevant authority may, by notice in writing served on the person, require the person to pay to the relevant authority an amount specified in the notice as being the reasonable costs and expenses incurred by the relevant authority (and such an amount may be recovered as a debt by the relevant authority).

(2) In this section—

relevant authority means—

- (a) the Minister; or
- (b) the Chief Executive; or
- (c) a regional landscape board; or
- (d) any other person or body prescribed by the regulations.

245—Delegation by Chief Executive

- (1) The Chief Executive may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Chief Executive under this Act.
- (2) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the ability of the Chief Executive to act in any matter; and
 - (c) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) A person to whom functions or powers have been delegated under subsection (1) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to perform those functions or exercise those powers must disclose the nature of the interest in writing to the Chief Executive.
Maximum penalty: \$20 000.
- (5) It is a defence to a charge for an offence against subsection (4) to prove that the defendant was not, at the time of the alleged offence, aware of their interest in the matter.

246—Incorporation of codes and standards

- (1) A notice given by the Minister or by any other person or body involved in the administration or enforcement of this Act, or a regulation made under this Act, may—
 - (a) be of general or limited application;
 - (b) apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the notice or regulation as in force from time to time or as in force at a specified time.
- (2) If a code, standard or other document is applied, adopted or incorporated in a notice or regulation—
 - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Department; and
 - (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document apparently certified by or on behalf of the Minister as a true copy of the code, standard or other document.
- (3) Any regulation adopting a code, standard or other document, or an amendment to a code, standard or other document, may contain such incidental, supplementary or transitional provisions as appear to the Governor to be necessary.

247—Exemption from Act

- (1) The Governor may, by regulation—
 - (a) exempt, or empower the Minister to exempt, a person, or a person of a class, from the operation of any provision of this Act;
 - (b) declare that this Act, or any provision of this Act, does not apply, or applies with prescribed variations, to, or in relation to—
 - (i) a circumstance or situation (or circumstance or situation of a prescribed class); or
 - (ii) a water resource (or a water resource of a class); or
 - (iii) a place or area within the State,specified in the regulation.
- (2) A regulation under subsection (1) may operate subject to such limitations and conditions as may be specified in the regulation.

248—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made with respect to any of the matters specified in Schedule 1.
- (3) A regulation under this Act—
 - (a) may make different provision according to the matters or circumstances to which they are expressed to apply;
 - (b) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other person or body prescribed by the regulations;
 - (c) may, in relation to fees or charges, prescribe differential fees or charges, or provide for fees or charges to be determined according to prescribed factors.

249—Review of Act

- (1) The Minister must, as soon as practicable after the expiry of 3 years from the commencement of this section, appoint an independent person who has, in the opinion of the Minister, extensive knowledge, skills and experience in relation to the management of natural resources, to conduct a review of the operation and effectiveness of this Act since that commencement.
- (2) A report on the review must be submitted to the Minister within 6 months of the commencement of the review.
- (3) The Minister must, within 12 sitting days after receiving the report, cause a copy of the report to be laid before both Houses of Parliament.

Schedule 1—Regulations

- 1 The keeping of records, statistics and other information by any person or body that performs a function under this Act and the provision of reports based on that information to the Minister or to any other prescribed person or body.
- 2 The keeping of records, statistics and other information by the holders of licences or permits under this Act, or by any other prescribed person or body.
- 3 The provision of reports, statements, documents or other forms of information to any person or body that performs a function under this Act.
- 4 The giving of notice before any prescribed class of activity or procedure is commenced, the notification of the occurrence of any prescribed class of event, or the giving of a notice to a person or body in any prescribed circumstances.
- 5 The transfer of any licence or water allocation under this Act.
- 6 The fixing, payment or recovery of—
 - (a) rental for water meters;
 - (b) other charges with respect to the use of any infrastructure connected with the operation of this Act.
- 7 The assessment of the quality of water or of the state or condition of other natural resources or of other components of any landscape.
- 8 The prohibition or regulation of—
 - (a) the use of water or other natural resources; or
 - (b) activities on or in water, or involving other natural resources; or
 - (c) activities on land under the care, control or management of the Minister, a regional landscape board, or any other prescribed person or body.
- 9 The methods that may, or must, be used in the destruction or control of any animal or plant.
- 10 The prohibition or regulation of the sale, possession or use of any substance, or the employment of any method, for, or in relation to—
 - (a) the destruction or control of any animal or plant; or
 - (b) the management or protection of any natural resource.
- 11 The issue of flood management, including through the registration of flood maps in the General Registry Office.
- 12 The preparation and content of regional landscape plans, water allocation plans, landscapes affecting activities control policies and water affecting activities control policies.
- 13 The form or content of any notice imposing a levy under this Act, or the information that must accompany any such notice.
- 14 Fixing fees and charges to be paid—
 - (a) for the installation, maintenance, use or testing of water meters or other infrastructure; or
 - (b) for any service provided by the Minister or a regional landscape board; or

- (c) in relation to the registration or discharge of instruments on the Landscape Scheme Register; or
 - (d) in relation to any other matter connected with the administration or operation of this Act.
- 15 The regulation of the payment, recovery, waiving or reduction of fees or charges.
- 16 The procedures associated with any process under this Act.
- 17 The payment of money into, or the use of money standing to the credit of, a fund under this Act.
- 18 Fixing expiation fees, not exceeding \$750, for alleged offences against the regulations.
- 19 Evidence in proceedings for an offence against the regulations.
- 20 The imposition of penalties, not exceeding \$15 000, for a contravention of, or failure to comply with, a regulation.

Schedule 2—Activities control policies

1—Preliminary

- (1) In this Schedule—
- policy*** means—
- (a) a landscapes affecting activities control policy; or
 - (b) a water affecting activities control policy;
- (2) ***prescribed authority*** means a regional landscape board and includes, in relation to Green Adelaide, the Chief Executive.
- (3) For the purposes of this Schedule, the Chief Executive may, with the approval of the Minister, perform or discharge any function or duty of the Green Adelaide Board under this Schedule.

2—Review of policies

- (1) A prescribed authority must review any policy applying in relation to its region on a comprehensive basis at least once in every 10 years.
- (2) A prescribed authority may also review any aspect of a policy applying in relation to its region at any time.
- (3) In undertaking a review under subclause (1) or (2), the prescribed authority will undertake such consultation as the prescribed authority determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this clause.
- (4) The consultation referred to in subclause (3) must comply with any requirements prescribed by the regulations.
- (5) At the conclusion of a review under subclause (1), the prescribed authority must—
- (a) report to the Minister on the outcome of the review; and
 - (b) make a public statement about the outcome of the review in such manner, and to such extent, as the prescribed authority thinks appropriate.

3—Preparation of a policy or amendment

- (1) A prescribed authority proposing to create or amend a policy must undertake such consultation as the prescribed authority determines to be reasonable after taking into account any guidelines specified by the Minister for the purposes of this clause.
- (2) The consultation referred to in subclause (1) must—
 - (a) in the case of a proposal to create a water affecting activities control policy—provide for a period of public consultation for at least 2 months from the time that a draft of the policy is released to the public; and
 - (b) comply with any other requirements prescribed by the regulations.
- (3) In connection with subclauses (1) and (2), consultation on any proposed amendment to a policy may be undertaken as part of a review of the policy under clause 2.
- (4) A prescribed authority must, at the time that it furnishes a proposal to the Minister to approve a policy, or an amendment to a policy, provide a report on the consultation undertaken by the prescribed authority for the purposes of this clause (and this report may be provided as part of the report to the Minister under clause 2).
- (5) A report under subclause (4) must provide information about any matters raised during consultation and comply with any requirements prescribed by the regulations.
- (6) A prescribed authority may, at the end of the processes referred to above, propose any amendments to the policy as the prescribed authority thinks fit (and is not required to repeat the processes on account of any change to its original proposal or proposals).

4—Approval of Minister

- (1) Subject to this Act, a policy, or an amendment of a policy, does not have effect unless or until it has been approved by the Minister.
- (2) The Minister may, on receiving a proposal to approve a policy, or the amendment of a policy, (a *policy proposal*)—
 - (a) approve the policy proposal with or without amendment; or
 - (b) refer the policy proposal back to the prescribed authority for further consideration.
- (3) The Minister must consult with the prescribed authority before making an amendment under subclause (2)(a).
- (4) If the Minister refers a policy proposal back to the prescribed authority, the prescribed authority must take any further action specified by the Minister to reconsider the policy proposal (and the prescribed authority may take such other action as the prescribed authority thinks fit), and then the prescribed authority must refer the policy proposal (with or without amendment) back to the Minister.
- (5) After the prescribed authority has complied with subclause (4), the Minister may—
 - (a) approve the policy proposal with or without amendment; or
 - (b) refer the policy proposal back to the prescribed authority again (in which case subclause (4) will again apply); or
 - (c) lay the policy proposal aside.

- (6) In a case where subclause (5)(b) applies, the Minister may, after the prescribed authority has complied with subclause (4)—
 - (a) approve the policy proposal with or without amendment; or
 - (b) lay the policy proposal aside.
- (7) If the Minister lays a policy proposal aside, the Minister may give directions as to what steps should be taken in the circumstances.
- (8) The preceding subclauses do not apply to the amendment of a policy if—
 - (a) the amendment is to achieve consistency with a regional landscape plan or a water allocation plan under this Act, or to achieve consistency with any other plan, policy, strategy, program or guideline prescribed by the regulations; or
 - (b) the amendment is otherwise authorised by the regulations.
- (9) A prescribed authority must ensure that up-to-date copies of any policy that relates to its region are made reasonably available to the public.

Schedule 3—Classes of wells in relation to which a permit is not required

- 1 A well that is 2.5 metres or less in depth (or such other depth as may be prescribed by regulation).
- 2 A well—
 - (a) that is not used to provide a supply of water or to drain water into, or to recharge, an underground aquifer; and
 - (b) in relation to which requirements imposed by or under a Mining Act are in force.
- 3 A well of 1 or more of the following classes if the well is not used to provide a supply of water from the well:
 - (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
 - (b) a drain that is under the control of the Commonwealth or State Government or a council;
 - (c) an excavation for or in relation to a building or for a swimming pool;
 - (d) a private mine within the meaning of the *Mining Act 1971*;
 - (e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;
 - (f) an excavation for the purposes of a toilet;
 - (g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of water pressure.
- 4 (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water or other material for scientific research.

- (2) A well comprising an excavation (not exceeding 3 metres in depth) for the purposes of conducting an underground test or extracting material for testing.
- 5 A well of a class declared by proclamation to be excluded from the operation of Part 8 Division 2 Subdivision 5.
- 6 A proclamation referred to in this Schedule may be varied or revoked by subsequent proclamation made by the Governor.

Schedule 4—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 Part 8

6—Registration of entitlements

The Minister must ensure that the following information is recorded on the register with respect to a Schedule 4 entitlement granted or issued under this Act—

- (a) the name and contact details of the holder or holders of the Schedule 4 entitlement;
- (b) the water resource to which the Schedule 4 entitlement relates, including any zone or other relevant information as to its location;
- (c) the date on which the Schedule 4 entitlement was issued and, if relevant, the date on which the Schedule 4 entitlement will expire under the terms of the Schedule 4 entitlement;
- (d) any of the following in relation to the Schedule 4 entitlement (insofar as may be relevant):
 - (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—
 - (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);
 - (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

- (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 4 entitlement;

prescribed period means, in relation to the transfer of a Schedule 4 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.

- (2) A transfer of a Schedule 4 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
 - (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 Part 8 in relation to the transfer will, by force of this clause, lapse and have no further effect.
- (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

- (1) A security interest recognised for the purposes of this Part may only relate to—
 - (a) a water licence; or
 - (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.
- (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.
- (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—
 - (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

- (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).
- (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—
 - (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.

- (5) This clause is declared to be a Corporations legislation 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.

11—Transfers

- (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

- (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

- (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—
- (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;
 - (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

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

- (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 4 entitlement to be stated in connection with an application to register the transfer under this Schedule.

17—Registration and 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.

Schedule 5—Transitional provisions

Part 30—Transitional and other provisions

Division 1—Preliminary

88—Interpretation

In this Part—

designated day means a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used;

NRM authority has the same meaning as in the *Natural Resources Management Act 2004*.

Division 2—Regions and boards

89—Establishment of regions and boards

- (1) This clause applies in relation to the first regions and boards established under this Act.
- (2) In relation to the Green Adelaide Region, from the designated day—
 - (a) the Green Adelaide Region will be taken to have been established under section 22 of the repealed Act and the area of Green Adelaide will be taken to have been excised from the NRM region in which the area was located immediately before the designated day; and
 - (b) the Green Adelaide Board will be taken to be established as a regional NRM board under the repealed Act for the Green Adelaide Region (and its members will take office under the repealed Act without any other processes applying and, in acting as a regional NRM board, all relevant provisions of the repealed Act (other than sections 23, 25 and 26, and any section prescribed under subclause (6)(d)) will apply),and, on the repeal of section 22 of the repealed Act, Green Adelaide, and the Green Adelaide Board, will continue under this Act.
- (3) In addition, the Minister may, by notice in the Gazette, assign any function of the Green Adelaide Board acting as a regional NRM Board under this clause to any other regional NRM board under the repealed Act (and any such notice will have effect according to its terms).
- (4) In connection with the operation of subclause (2), the Minister may, by notice in the Gazette, make provision for any transitional or consequential matter, including by providing that any property, assets, rights or liabilities of any regional NRM board specified in the notice will vest in or attach to—
 - (a) the Green Adelaide Board; or
 - (b) the Crown; or
 - (c) a Minister; or
 - (d) any other agency or instrumentality of the Crown; or
 - (e) with the consent of the authority or person—another authority or person,specified in the notice (and any such notice will have effect in accordance with its terms and despite the provisions of any other law or instrument).
- (5) In relation to a board within the ambit of section 15(3) of this Act and specified by the Minister by notice in the Gazette for the purposes of this clause, from the designated day—
 - (a) members of the board will continue, or will take office, as the case may be, as the members of a regional NRM board designated by the Minister for the purposes of this subclause (in relation to a NRM region designated by the Minister), and section 26(1a) of the repealed Act will not apply in relation to any such member (and its members will take office under the repealed Act without any other processes applying); and

- (b) the terms of office of the persons holding office under section 25 of the repealed Act immediately before the designated day in relation to the regional NRM board and not appointed to the board under section 15(3) of this Act (and not within the ambit of paragraph (a)) will be taken to come to an end under that Act by force of this provision,
- and, on the repeal of section 22 of the repealed Act the board, as constituted as a regional landscape board, will continue under this Act.
- (6) In connection with subclauses (2) and (5)—
 - (a) the presiding member of the regional landscape board (including Green Adelaide) will be the presiding member of the regional NRM board; and
 - (b) the term of office of a person appointed as a member of Green Adelaide, or as a member of a board under subclause (5), will be a term determined by the Minister (which may be a term which exceeds a term that would otherwise apply under section 18(2) or (3) of this Act, subject to the operation of section 18(5) or (6) of this Act); and
 - (c) the Minister may make any determination as to any other terms or conditions of appointment that will apply in relation to a member of a board; and
 - (d) any other provision of the repealed Act prescribed by the regulations will not apply in relation to Green Adelaide or a board under subclause (5); and
 - (e) the Green Adelaide Board, and any regional landscape board specified under subclause (5), will not commence full operations under the other provisions of this Act until the day designated under subclause (8).
- (7) In relation to any other board established under this Act—
 - (a) elections for the purposes of section 15(1)(b) will not be held until 2022; and
 - (b) the Minister must ensure that the elections held in 2022 are conducted so that voting closes at 5 p.m. on the last business day before the second Saturday of November 2022; and
 - (c) a person elected in an election in 2022 will take office on a day determined by the Minister; and
 - (d) until the day determined under paragraph (c), the board will be constituted by 7 members appointed by the Minister.
- (8) Subject to a preceding subclause, the first regions established under this Act will take full effect on the designated day.
- (9) Despite a preceding subclause, the Minister may, in relation to a particular regional landscape board, appoint a person as the sole member of the regional landscape board until the Minister determines to constitute the board with 7 members.
- (10) If an appointment is made under subclause (9), until the Minister determines to constitute the board with 7 members—
 - (a) the person will constitute the regional landscape board (as if that the board were constituted as a corporation sole); and
 - (b) section 22 of this Act will not apply; and

- (c) in the event of a casual vacancy in the appointment, the Minister may make another appointment under that subclause.

90—Regional NRM boards

- (1) Despite any provision in the repealed Act, the Minister may, in relation to a particular regional NRM board, by notice in the Gazette—
 - (a) appoint a person as the sole member of the board; or
 - (b) appoint 2 or more persons as the only members of the board.
- (2) If an appointment is made under subclause (1), until the designated day—
 - (a) the person or persons so appointed will constitute the regional NRM board (with the board being taken, if relevant, as being a board constituted as a corporation sole); and
 - (b) section 25, and clause 2 of Schedule 1, of the repealed Act will not apply; and
 - (c) any other section of the repealed Act prescribed by the regulations will not apply in relation to the regional NRM board; and
 - (d) in the event of a casual vacancy in the appointment, the Minister may make another appointment under that subclause; and
 - (e) the Minister may at any time remove from office a person who has been appointed by the Minister under that subclause (for any reason determined by the Minister and without adopting any process before taking action under this provision).
- (3) In addition, if or when an appointment or appointments are initially made under subclause (1), all members of the regional NRM board holding office immediately before the appointment or appointments take effect will cease to hold office by force of this provision.
- (4) Despite any provision in the repealed Act, the Minister may, by notice in the Gazette (and without adopting any other process), extend the term of a member of a regional NRM board on terms and conditions determined by the Minister (and any such notice will have effect according to its terms).

Division 3—NRM entities

91—Vesting of property etc

- (1) The Minister may, by notice in the Gazette, provide that any property, assets, rights or liabilities of any NRM authority specified in the notice will vest in or attached to—
 - (a) a regional landscape board; or
 - (b) the Crown; or
 - (c) a Minister; or
 - (d) any other agency or instrumentality of the Crown; or
 - (e) with the consent of the authority or person—any other authority or person, specified in the notice (and any such notice will have effect in accordance with its terms and despite the provisions of any other law or instrument).

- (2) If an NRM authority is dissolved on account of the repeal of the repealed Act and no other provision has been made for the vesting of all (or all remaining) assets, rights or liabilities of the NRM authority, those assets, rights and liabilities will vest in the Minister.
- (3) Nothing in this clause limits the operation of clause 89.

92—References

The Governor may, by proclamation, declare that a reference in an Act or instrument (or an instrument of a specified class) to an NRM authority (or an NRM authority of a specified class) is to be taken to be a reference to the Minister, a regional landscape board or any other person or body (or any other person or body of a specified class) specified in the proclamation.

Division 4—Plans

93—Regional NRM plans

- (1) Subject to any other provision made by or under this Part, a regional NRM plan in operation immediately before the designated day will continue to apply in relation to the area to which it relates under the repealed Act, and be taken to be a regional landscape plan under this Act, until it is replaced by a new regional landscape plan or plans under this Act.
- (2) A regional NRM plan under subclause (1) may be adopted and applied by a regional landscape board under this Act to the extent that the plan applies in relation to the board's region.

94—Business plans

A business plan prepared or adopted by a regional NRM board under the repealed Act (and having effect immediately before the designated day) may be adopted and applied by a regional landscape board to the extent that the business plan relates to the region of the regional landscape board (and any such business plan may then be adjusted by a regional landscape board as the board thinks fit).

Division 5—Levies, penalties, interest and other fees

95—Levies

- (1) In this clause—
transitional financial year means the 2020/2021 financial year, the 2021/2022 financial year or the 2022/2023 financial year.
- (2) The scheme established by Chapter 5 of the repealed Act (and accordingly the operation of that Chapter) will continue to apply in relation to the 2019/2020 financial year, subject to any modifications to that Chapter that have effect by virtue of the provision of this Part or that may be prescribed by the regulations (and, subject to any provision made by this Part or the regulations, the corresponding provisions of this Act will not apply in relation to that financial year).

- (3) In relation to a transitional financial year—
 - (a) the annual business plan of a regional landscape board does not need to be consistent with a regional landscape plan insofar as that plan is a regional NRM plan that has been applied and adopted under this Part; and
 - (b) if a transitional scheme established by the Minister under subclause (4) applies to or in respect of the annual business plan of a regional landscape board, subsections (4) to (10) of section 51 of this Act will not apply; and
 - (c) the annual business plan for a regional landscape board requires the approval of the Minister if a transitional scheme established by the Minister under subclause (4) applies to or in respect of the plan.
- (4) The Minister may, in relation to 1 or more of the transitional financial years, establish a scheme that modifies the requirements of section 51 and Part 5 of this Act so that any amounts or contributions under those provisions are adjusted—
 - (a) to take into account the constitution of new regions under this Act (to replace the regions under the repealed Act); and
 - (b) to provide for a staged implementation of the policies reflected in this Act (when compared to the policies reflected in the repealed Act); and
 - (c) to provide for any other related matter of a transitional nature.
- (5) If a scheme under subclause (4) modifies the requirements of section 51 and Part 5 in relation to amounts or contributions (or proposed amounts or contributions) by councils, the Minister must take reasonable steps to consult with the LGA in connection with the development of the scheme.
- (6) A scheme under subclause (4)—
 - (a) must be published in the Gazette (and may be varied by the Minister from time to time by a notice published by the Minister in the Gazette); and
 - (b) will have effect according to its terms (and despite any other provision of this Act or the repealed Act).

96—Outstanding levies, penalties, interest or other fees

Any—

- (a) levy or penalty declared under the repealed Act; or
- (b) interest payable under the repealed Act (including interest that may be declared on account of any default under the repealed Act); or
- (c) fee payable under the repealed Act; or
- (d) other amount or liability under the repealed Act, or the *Water Resources Act 1997*, prescribed by the regulations for the purposes of this clause,

will continue to apply, or be able to be imposed or enforced, under the repealed Act as if those Acts had not been repealed.

Division 6—Funds

97—Funds

- (1) Any money in the NRM Fund immediately before the designated day will be paid into the Landscape Administration Fund and may be applied—
 - (a) for the purposes for which it could be applied before the designated day; or
 - (b) for any purpose connected with the operation of this Act.
- (2) Subject to subclause (3)—
 - (a) any money payable to the NRM Fund under a provision of the repealed Act; or
 - (b) any money payable under, or relating to, the *Water Resources Act 1997*, will, on and from the designated day, be payable to the Landscape Administration Fund (despite any provision made by the repealed Act or the *Water Resources Act 1997*), and then applied for a purpose applying under subclause (1).
- (3) A percentage of money that would otherwise be payable to a board in relation to the 2019/2020 financial year for contributions received from constituent councils in respect of the region that constitutes the Green Adelaide Region, being a percentage determined by the Minister in respect of a share of those contributions determined by the Minister, will be payable into the Landscape Priorities Fund (and applied by the Minister under section 93 of this Act).
- (4) Section 93(6) of this Act does not apply until the Minister has prepared the State Landscape Strategy under Part 3.

Division 7—Water

98—Prescribed water resources

- (1) Any regulation in force under section 125 of the repealed Act immediately before the designated day (including such a regulation in force by virtue of the operation of clause 54(2) of Schedule 4 of that Act) will continue to have force and effect as if it were a regulation made under section 101 of this Act (and may be varied or revoked by the Governor under this Act).
- (2) A notice published by the Minister under section 125(5) of the repealed Act (and having effect immediately before the designated day) will be taken to have effect for the purposes of section 101 of this Act.

99—Water allocation plans

- (1) Subject to any other provision made by or under this Part, a water allocation plan in operation under the repealed Act immediately before the designated day will continue to apply in relation to the relevant prescribed water resource, and will be taken to be a water allocation plan under this Act (and may be amended or substituted under this Act).
- (2) A water allocation plan under subclause (1) may be adopted or applied by a regional landscape board under this Act to the extent that the plan applies in relation to the board's region.

100—Water affecting activities

- (1) A provision in a regional NRM plan under clause 93 that has effect for the purposes of section 127 of the repealed Act will continue to have effect under this Act as if section 104 of this Act included a reference to such a regional NRM plan.
- (2) The Minister may amend a water allocation plan or approve a water affecting activities control policy, by notice in the Gazette, without the application or adoption of any other procedures under this Act for amendment or approval if the Minister certifies, in the notice, that the amendment or policy (as the case may be) is making provision in relation to a water affecting activity in the same terms, or substantially the same terms, as any provision applying under subclause (1).
- (3) The Minister may, as part of a notice under subclause (2), make a consequential amendment or amendments to a regional NRM plan under subclause (1) to take into account the operation of the notice under subclause (2).

101—Continuation of authorisations, notices and other measures

- (1) An authorisation in force under section 128 of the repealed Act (and in effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding section of this Act.
- (2) A notice served on a person before the designated day under section 130, 131 or 145 of the repealed Act (and still having effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding section of this Act.
- (3) A notice in force under section 132 of the repealed Act (and still in effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding section of this Act.
- (4) A water management authorisation, forest water licence, well driller's licence or permit in force under Chapter 7 of the repealed Act (and in effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding sections of this Act (and any application or process made or commenced under the repealed Act before the designated day and not finally determined before that day, or any action or proceeding brought or capable of being brought, in relation to such an authorisation, licence or permit, may be dealt with or completed, or brought, under this Act).
- (5) An entitlement that exists under section 164N of the repealed Act immediately before the designated day will continue to have effect as if it were an entitlement under the corresponding section of this Act.
- (6) A scheme established under section 164O of the repealed Act (and still in effect immediately before the designated day) will continue to have effect as if it had been established under the corresponding section of this Act.
- (7) A notice under section 157 of this Act may be issued in relation to any act or omission that could be the subject of a notice under section 164P of the repealed Act before the designated day.
- (8) A reservation of water under Chapter 7 Part 4 of the repealed Act and in effect immediately before the designated day may continue to have effect as if it had been established under the corresponding section of this Act.

- (9) If a regulation is in force under section 169 of the repealed Act immediately before the designated day, the Governor may make a regulation in the same, or substantially the same, terms under section 163 of this Act without the requirement for the Minister to take any step, or to consider any matter, referred to in section 163(5).
- (10) A declaration under section 169B of the repealed Act, or any other provision made by the Minister under that section, will continue to have effect as if had been made under the corresponding section of this Act (and any such declaration may be varied or revoked under this Act).

102—Bundled water allocation plans and water licences

- (1) Until the designated day for a prescribed water resource—
 - (a) a water licence granted in respect of the water resource need not make express provision for a water access entitlement in the manner contemplated by section 121(2) of this Act; and
 - (b) a water licence granted in respect of the water resource may include a quantity of water determined under the provisions of the relevant water allocation plan or section 155 of this Act; and
 - (c) the holder of a water licence granted in respect of the water resource is entitled to obtain an allocation equal to the relevant amount provided in the licence (subject to the operation of any other provision of this clause); and
 - (d) the holder of a water licence granted in respect of the water resource—
 - (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
 - (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,but the licence may be subject to conditions that relate to how water is taken or the purposes for which water is taken; and
 - (e) a water levy under section 76 of this Act may be declared with respect to the right to take water, or with respect to the water taken, or both, rather than with respect to an allocation of water under the terms of a water access entitlement or the allocation of water under the terms of a water access entitlement (see section 76(5) of this Act); and
 - (f) a water levy declared with respect to the right to take water will be a Category A levy for the purposes of section 77 of this Act and a water levy declared with respect to water taken will be a Category B levy for the purposes of section 77 of this Act.
- (2) Until the designated day for a prescribed water resource, section 104(5) will not apply in respect of the water resource.
- (3) For the purposes of this clause, different designated days may be appointed for different prescribed water resources.

- (4) A reference in this clause to a water licence granted in respect of a water resource will be taken to include a water licence in force under Chapter 7 of the repealed Act that continues to have effect under the provisions of this Part.
- (5) This clause does not apply in relation to—
 - (a) the River Murray prescribed watercourse; or
 - (b) the Southern Basins and the Musgrave Prescribed Wells Areas; or
 - (c) any other prescribed water resource prescribed by the regulations for the purposes of this subclause.

103—Security interests

- (1) The Minister may, by notice in the Gazette, constitute a mortgage or charge over a water entitlement registered under this Act immediately before the designated day to a security interest registered on The Water Register under Schedule 4 of this Act.
- (2) A notice under subclause (1) may be expressed to apply to specified classes of interests.
- (3) In this clause—

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

Division 8—Miscellaneous

104—Ministerial policies

A policy applying under section 10(1)(b) of the repealed Act (and in effect immediately before the designated day) will continue to have effect as if it were a policy under section 9(1)(d) of this Act.

105—State NRM Plan

- (1) The *State Natural Resources Management Plan*, as in force immediately before the designated day, will continue in force and effect and will be taken to be the State Landscape Strategy until the Minister prepares the State Landscape Strategy required under Part 3.
- (2) The Minister may amend the State Landscape Strategy, as applying under subclause (1), at any time, and to such extent, as the Minister thinks fit (and without adopting or applying any process that would otherwise apply under this Act).
- (3) Despite any other provision of this Act, a plan under this Act does not need to be consistent with the State Landscape Strategy, as applying under subclause (1) (or as amended under subclause (2)).

106—Minister may make provision for assignment of responsibilities and modifications of plans

- (1) The Minister may assign responsibilities in relation to any plan or policy, or other functions, under this Part, or any other provision of this Act, to a particular regional landscape board, or to a designated entity under section 52, to address any situation that is relevant to the adoption, application, operation or approval of any plan or policy under this Act.

- (2) Without limiting subclause (1) (or any other provision of this Part), the Minister may, by notice in the Gazette, modify 1 or more regional NRM plans or water allocation plans—
- (a) to address a situation where the boundaries of an NRM region under the repealed Act do not correspond with the boundaries of a landscape management region under this Act; or
 - (b) to address any other situation that is, in the opinion of the Minister—
 - (i) relevant to the transition to regional landscape boards and landscape management regions; or
 - (ii) relevant to the fact that regional NRM plans and water allocation plans under the repealed Act are to have effect as regional landscape plans and water allocation plans under this Act.

107—Adopting acts or decisions

- (1) A prescribed authority may, as the prescribed authority thinks fit—
- (a) adopt any decision or determination of an NRM authority under the repealed Act (including in connection with a matter provided under this Part); and
 - (b) deal with any matter arising under the repealed Act that may be, or may become, relevant to the operation of this Act; and
 - (c) adopt or continue any process commenced under the repealed Act in connection with the operation of this Part or for the purposes of this Act; and
 - (d) take any other step or make any other determination authorised by the regulations, or that is reasonably necessary to promote or ensure a smooth transition on account of the repeal of the *Natural Resources Management Act 2004* and its substitution by this Act.
- (2) In this clause—
- prescribed authority** means—
- (a) a regional landscape board; or
 - (b) the Chief Executive (including the Chief Executive acting on behalf of the Green Adelaide Board).

108—Registration authorities

- (1) The Registrar-General or another authority required or authorised by a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner a vesting under this Part.
- (2) No fee is payable in respect of a vesting under this Part.

109—General saving provision

Nothing done under this Part—

- (a) constitutes a breach of, or default under, an Act or other law; or
- (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
- (d) constitutes a civil or criminal wrong; or
- (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

110—Continuation of other plans, notices, permits and orders

- (1) A requirement to prepare an action plan—
 - (a) imposed by the Minister under section 123 of the repealed Act before the designated day; or
 - (b) imposed by an authorised officer under section 183 of the repealed Act before the designated day,will operate and have effect, and may be enforced, under the repealed Act as if this Act had not been enacted.
- (2) An action plan under section 123 or 183 of the repealed Act will continue to operate and have effect, and must be implemented, under the repealed Act as if this Act had not been enacted.
- (3) An approved proposal under section 186 of the repealed Act (and in effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding section of this Act.
- (4) A permit issued under section 188 of the repealed Act (and in effect immediately before the designated day) will continue to have effect under the corresponding section of this Act.
- (5) An order or authorisation issued under Chapter 9 Part 1 Division 1 of the repealed Act (and still having effect immediately before the designated day) will continue to have effect as if it had been issued under the corresponding section of this Act.
- (6) Any action commenced under section 194 or 196 of the repealed Act (and still being undertaken immediately before the designated day) may continue under the repealed Act as if this Act had not been enacted.
- (7) A registration under section 199 of the repealed Act (and in effect immediately before the designated day) will continue to have effect under the corresponding section of this Act.
- (8) If an authorised officer is holding an animal under the repealed Act immediately before the designated day, the authorised officer may continue to hold that animal, and may take any action in relation to that animal, as if this Act had not been enacted.

111—Authorised officers

- (1) A person who was an authorised officer under the repealed Act immediately before the designated day will be taken to have been appointed as an authorised officer under this Act.

- (2) Subject to subclause (3), any condition applying under the repealed Act with respect to an authorised officer immediately before the designated day will apply as a condition under this Act.
- (3) The Minister may, by instrument in writing, vary or revoke a condition that would otherwise apply by virtue of the operation of subclause (2), or apply new conditions.

112—Constitution of Environment, Resources and Development Court

A commissioner of the ERD Court who, before the designated day, had been designated by the Governor under the repealed Act as a person who has expertise in a field that is relevant to the jurisdiction conferred on the Court by the repealed Act will be taken to be a commissioner who has been specifically designated by the Governor under this Act as a person who has expertise in a field that is relevant to the jurisdiction conferred on the Court by this Act.

113—References to Planning and Design Code

A reference in this Act to the Planning and Design Code will be taken to include a reference to a Development Plan under the *Development Act 1993*.

114—NRM Register and The Water Register

- (1) The NRM Register under the repealed Act (as constituted immediately before the designated day) continues as the Landscape Scheme Register under this Act.
- (2) The Water Register (as constituted immediately before the designated day) continues under this Act.

115—Other provisions

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

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Landscape South Australia Act 2019* repealed the following:

Natural Resources Management Act 2004

Legislation amended by principal Act

The *Landscape South Australia Act 2019* amended the following:

Adelaide Park Lands Act 2005

Crown Land Management Act 2009

Development Act 1993

Dog and Cat Management Act 1995

Dog Fence Act 1946

Environment Protection Act 1993

Farm Debt Mediation Act 2018

Fire and Emergency Services Act 2005

Groundwater (Border Agreement) Act 1985

Ground Water (Qualco-Sunlands) Control Act 2000

Irrigation Act 2009

Local Government Act 1999

Marine Parks Act 2007

Mining Act 1971

National Parks and Wildlife Act 1972

Native Vegetation Act 1991

Parliamentary Committees Act 1991

Pastoral Land Management and Conservation Act 1989

Petroleum and Geothermal Energy Act 2000
Renmark Irrigation Trust Act 2009
Residential Parks Act 2007
Residential Tenancies Act 1995
River Murray Act 2003
Safe Drinking Water Act 2011
South Eastern Water Conservation and Drainage Act 1992
Subordinate Legislation Act 1978
Water Industry Act 2012

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2019	33	<i>Landscape South Australia Act 2019</i>	21.11.2019	19.12.2019 (<i>Gazette 19.12.2019 p4378</i>) except ss 28, 29, 36 to 39, 41, 51, 66, 69, 71, 76, 88, 89, 93(3), 102, Sch 2 (cll 1, 3 & 4), Sch 5 (cl 95(3) to (6))—9.4.2020 (<i>Gazette 9.4.2020 p701</i>) and except ss 8 to 10, 25 to 27, 30 to 33, 40, 42 to 50, 52 to 65, 67, 68, 70, 72 to 75, 77 to 87, 90 to 92, 93(1), (2), (4) to (8), 94 to 101, 103 to 222, 224 to 241, 243, 244, 249, Sch 2 (cl 2), Sch 3, Sch 4 (cll 1 to 5, 6(a) to (d) & (g), 7, 16 to 20) & Sch 5 (cll 1 to 87)—1.7.2020 (<i>Gazette 25.6.2020 p3502</i>) and except ss 15(4), (5) & 16—1.1.2021 (<i>Gazette 26.11.2020 p5371</i>) and except s 17, Sch 4 (cll 6(e) & (f), 8 to 15) & Sch 5 (cl 89(2) to (6))—21.11.2021 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2021	13	<i>Landscape South Australia (Miscellaneous) Amendment Act 2021</i>	13.5.2021	13.5.2021 except s 4—1.7.2020: s 2
2021	45	<i>Unclaimed Money Act 2021</i>	25.11.2021	Sch 1 (cll 8 & 9)—uncommenced

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	13.5.2021
Pt 5		
s 88		
s 88(6)	amended by 13/2021 s 4(1)	1.7.2020

s 88(7)	substituted by 13/2021 s 4(2)	1.7.2020
Sch 4		
cl 10	<i>deleted by 13/2021 s 5</i>	13.5.2021
Sch 5		
Pts 1—29	<i>omitted under Legislation Revision and Publication Act 2002</i>	13.5.2021

Historical versions

1.7.2020 (electronic only)

1.1.2021 (electronic only)

13.5.2021