

South Australia

Local Government (Stormwater Management) Amendment Act 2007

An Act to amend the *Local Government Act 1999*; and to make related amendments to the *Natural Resources Management Act 2004*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Local Government Act 1999*

- 4 Insertion of Schedule 1A
Schedule 1A—Implementation of Stormwater Management Agreement
 - Division 1—Preliminary
 - 1 Interpretation
 - 2 Approval of Stormwater Management Agreement and statement of objects
 - 3 Interaction with other Acts
 - Division 2—Stormwater Management Authority
 - 4 Establishment of Stormwater Management Authority
 - 5 Functions of Authority
 - 6 Board of Authority
 - 7 Terms and conditions of office
 - 8 Remuneration
 - 9 Validity of acts
 - 10 Proceedings of board
 - 11 Delegation
 - 12 Use of facilities
 - Division 3—Stormwater Management Plans
 - 13 Preparation of stormwater management plans by councils
 - 14 Authority may require preparation of stormwater management plan
 - 15 Approval of stormwater management plans
 - Division 4—Orders
 - 16 Authority may issue order
 - Division 5—Stormwater Management Fund
 - 17 Establishment of Stormwater Management Fund
 - 18 Payments out of Fund
 - 19 Accounts and audit
 - 20 Annual reports

Division 6—Miscellaneous

- 21 Special powers in relation to land
- 22 Entry and occupation of land other than council land
- 23 Vesting of infrastructure etc
- 24 Immunity from liability
- 25 Assessment of reasonable costs and expenses
- 26 Evidentiary
- 27 Regulations

Schedule 1—Related amendments to *Natural Resources Management Act 2004*

- 1 Amendment of section 3—Interpretation
 - 2 Amendment of section 89—Amendment of plans without formal procedures
 - 3 Amendment of section 124—Right to take water subject to certain requirements
 - 4 Amendment of section 125—Declaration of prescribed water resources
 - 5 Amendment of section 128—Certain uses of water authorised
 - 6 Amendment of section 146—Licences
 - 7 Amendment of section 223—Evidentiary
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Local Government (Stormwater Management) Amendment Act 2007*.

2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Local Government Act 1999*

4—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Implementation of Stormwater Management Agreement

Division 1—Preliminary

1—Interpretation

- (1) In this Schedule—

approved stormwater management plan means a stormwater management plan that has been approved by the Authority in accordance with clause 15;

Authority—means the Stormwater Management Authority established under clause 4;

Fund means the Stormwater Management Fund established under Division 5;

infrastructure includes associated devices and works;

Metropolitan Adelaide has the same meaning as in the *Development Act 1993*;

metropolitan council means a council whose area is wholly or partly within Metropolitan Adelaide;

public authority means—

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

regional NRM board means a regional NRM board within the meaning of the *Natural Resources Management Act 2004*;

Stormwater Management Agreement means the Agreement on Stormwater Management entered into by the State of South Australia and the LGA on 14 March 2006 and applying throughout the State;

stormwater management plan—see Division 3.

- (2) A reference to the ***Minister*** in a provision of this Schedule is a reference to—

- (a) if the Governor has, by notice in the Gazette, assigned the functions of the Minister for the purposes of that provision to a Minister specified in the notice—the Minister so specified; or

- (b) in any other case—the Minister responsible for the administration of this Act.

2—Approval of Stormwater Management Agreement and statement of objects

- (1) The Stormwater Management Agreement is approved.
- (2) The objects of this Schedule are as follows:
 - (a) to ensure the proper operation of the Stormwater Management Agreement—
 - (i) by the creation of the Stormwater Management Authority referred to in the Agreement; and
 - (ii) by putting in place administrative and funding arrangements, and conferring powers, necessary for the proper discharge of State and local government responsibilities relating to stormwater management as stated in the Agreement;
 - (b) to ensure that environmental objectives and issues of sustainability are given due consideration in the discharge of State and local government responsibilities relating to stormwater management as stated in the Agreement.

3—Interaction with other Acts

This Schedule is in addition to and does not limit or derogate from the provisions of any other Act.

Division 2—Stormwater Management Authority

4—Establishment of Stormwater Management Authority

- (1) The *Stormwater Management Authority* is established.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property; and
 - (c) is capable of acquiring or incurring any other rights or liabilities and of suing and being sued in its corporate name.
- (3) The Authority may borrow money or accept other forms of financial accommodation but only in accordance with the written approval of the Treasurer.

5—Functions of Authority

The Authority has the following functions:

- (a) to liaise with relevant public authorities with a view to ensuring the proper functioning of the State's stormwater management system;
- (b) to facilitate and co-ordinate stormwater management planning by councils;
- (c) to formulate policies and provide information to councils in relation to stormwater management planning (including policies and information promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes);
- (d) to facilitate programs by councils promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes;
- (e) to undertake functions in accordance with Division 3 in relation to stormwater management plans;
- (f) to administer the Fund in accordance with Division 5;
- (g) to ensure that relevant public authorities co-operate in an appropriate fashion in relation to stormwater management planning and the construction and maintenance of stormwater management works;
- (h) to undertake stormwater management works in circumstances provided for by this Schedule;
- (i) to provide advice to the Minister in relation to the State's stormwater management system.

6—Board of Authority

- (1) The board of the Authority will consist of 7 members appointed by the Governor of whom—
 - (a) 1 is to be a representative of a northern metropolitan council appointed on the nomination of the LGA; and
 - (b) 1 is to be a representative of a southern metropolitan council appointed on the nomination of the LGA; and
 - (c) 1 is to be a representative of a council other than a metropolitan council appointed on the nomination of the LGA; and
 - (d) 3 are to be members appointed on the nomination of the Minister; and

- (e) 1 is to be appointed from a panel of 3 persons nominated by the LGA (and this member is to be appointed as the presiding member of the board).
- (2) A person nominated under subclause (1)(a), (b), (c) or (d) must have appropriate qualifications or experience in public administration, water resources, stormwater management, environmental management or infrastructure development.
- (3) At least 1 member of the board must be a woman and at least 1 member must be a man.
- (4) The Minister may grant a member of the board leave of absence from the board and appoint a suitable person to act as a member of the board during that period of absence (provided that if the member being granted leave was appointed on the nomination of the LGA, the person appointed to act as a member in his or her absence must also be appointed on the nomination of the LGA).
- (5) In this clause—
northern metropolitan council means a metropolitan council whose area is wholly or partly north of the River Torrens;
southern metropolitan council means a metropolitan council whose area is wholly or partly south of the River Torrens.

7—Terms and conditions of office

- (1) A member of the board will be appointed on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) The Governor may remove a member of the board from office—
 - (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out official duties satisfactorily.
- (3) The office of a member of the 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 to the Minister; or
 - (d) is removed from office under subclause (2).

8—Remuneration

A member of the board (other than a member who has been appointed as an officer or employee of a public authority) is entitled to remuneration, allowances and expenses determined by the Minister.

9—Validity of acts

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

10—Proceedings of board

- (1) A quorum of the board consists of 5 members.
- (2) The member appointed as the presiding member of the board will preside at meetings of the board or, in the absence of that member, a member chosen by those present will preside.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting of the board is a decision of the board, provided that at least 4 of the members present vote in favour of the decision.
- (4) Each member present at a meeting of the board has 1 vote on any question arising for decision.
- (5) A conference by telephone or other electronic means between the members of the board will, for the purposes of this clause, be taken to be a meeting of the board at which the participating members are present if—
 - (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
 - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all members of the board in accordance with procedures determined by the board; and
 - (b) a majority of the members express concurrence in the proposed resolution by letter, facsimile transmission, email or other written communication setting out the terms of the resolution.
- (7) The board must have accurate minutes kept of its meetings.
- (8) Subject to this Schedule, the board may determine its own procedures.

11—Delegation

- (1) The Authority may delegate a function or power—
 - (a) to a specified person, committee or other body; or
 - (b) to a person occupying a specified office or position.
- (2) However, the Authority may not delegate—
 - (a) power to issue an order under clause 16; or
 - (b) power to make a recommendation to the Minister under clause 23.
- (3) A delegation—
 - (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
 - (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
 - (c) is revocable at will and does not prevent the Authority from acting in a matter.

12—Use of facilities

The Authority 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) an agency or instrumentality of the Crown; or
- (c) a council; or
- (d) the LGA.

Division 3—Stormwater Management Plans

13—Preparation of stormwater management plans by councils

- (1) The Authority must issue guidelines for the preparation of stormwater management plans by councils.
- (2) The guidelines—
 - (a) must set out objectives to be reflected in stormwater management plans; and
 - (b) must set out appropriate public consultation processes to be followed by councils in the preparation of stormwater management plans; and
 - (c) must be approved by the Natural Resources Management Council established under the *Natural Resources Management Act 2004*; and
 - (d) once approved, must be published in the Gazette.

- (3) The objectives set out in the guidelines must—
 - (a) be consistent with the objectives of the Stormwater Management Agreement; and
 - (b) include—
 - (i) environmental objectives; and
 - (ii) objectives addressing issues of sustainability, that are consistent with the objects of the *Environment Protection Act 1993*, the *Natural Resources Management Act 2004* and other relevant legislation aimed at protection or enhancement of the environment, the maintenance of biodiversity and the sustainable management of natural resources.
- (4) A stormwater management plan prepared by a council or group of councils must—
 - (a) comply with the guidelines issued by the Authority; and
 - (b) be prepared in consultation with the relevant regional NRM board or boards; and
 - (c) be prepared in accordance with any other procedures or requirements prescribed by the regulations.
- (5) A regional NRM board must consider any stormwater management plan prepared by a council or group of councils in respect of an area that falls within the region of the board and must, by notice in writing given as expeditiously as practicable, advise the Authority whether, in the opinion of the board, the stormwater management plan contains appropriate provisions.

14—Authority may require preparation of stormwater management plan

- (1) The Authority may, of its own motion or at the request of a regional NRM board, by notice in the Gazette require a specified council, or specified councils, to prepare a stormwater management plan.
- (2) A notice under subclause (1) must specify—
 - (a) the areas in respect of which the stormwater management plan is to be prepared (whether described as hydrological catchment areas, towns, regions or otherwise); and
 - (b) the time within which the plan is to be prepared.
- (3) A notice under subclause (1) may be varied or revoked by the Authority by subsequent notice in the Gazette.
- (4) A stormwater management plan required to be prepared by a council or councils in accordance with this clause is only taken to have been so prepared when approved by the Authority in accordance with clause 15.

15—Approval of stormwater management plans

- (1) The Authority may approve a stormwater management plan prepared by a council or councils.
- (2) However, the Authority must not approve a stormwater management plan unless it has received advice in respect of the plan from the relevant regional NRM board or boards in accordance with clause 13(5).
- (3) The Authority must publish notice in the Gazette of the approval of a stormwater management plan.

Division 4—Orders

16—Authority may issue order

- (1) If—
 - (a) a council fails to comply with a notice under clause 14(1); or
 - (b) a council fails to comply with an approved stormwater management plan prepared by the council (or prepared by the council and another council or other councils); or
 - (c) the Authority is satisfied that action by a council is necessary to provide for the management of stormwater by the provision of infrastructure or the performance of any work or to preserve and maintain the proper functioning of any stormwater infrastructure that the council has the care, control and management of,the Authority may serve on the council an order under this clause.
- (2) The Authority must not serve an order on a council under subclause (1)(c) unless the Authority has (not less than 5 days before serving the order) given the council written notice of its intention to serve the order.
- (3) An order issued by the Authority—
 - (a) must be in the form of a written notice; and
 - (b) must specify the council to whom it is issued; and
 - (c) must—
 - (i) in the case of an order issued under subclause (1)(a)—specify the notice and set out the particulars of the alleged failure; or
 - (ii) in the case of an order issued under subclause (1)(b)—specify the plan and set out particulars of the alleged failure; or
 - (iii) in the case of an order issued under subclause (1)(c)—specify the action that, in the opinion of the Authority, should be undertaken by the council; and

- (d) may impose any requirement reasonably required for the purpose for which the order is issued.
- (4) If a council to whom an order is issued fails to comply with the order, the Authority may—
 - (a) take any action required by the order; and
 - (b) apply monies from the Fund to cover the costs and expenses incurred by the Authority in taking the action or recover such costs and expenses (or any portion of them) from the council as a debt, as the Authority thinks fit.
- (5) However, the Authority must, before taking any action under subclause (4), give the council a reasonable opportunity to make submissions to the Authority in relation to the matter.
- (6) If costs and expenses are to be recovered from a council as a debt, the Authority and the council may enter into an agreement for the debt to be repaid over a period of time, subject to the payment by the council of interest on the debt (at a rate agreed by the Authority and the council).

Division 5—Stormwater Management Fund

17—Establishment of Stormwater Management Fund

- (1) The Stormwater Management Fund is established.
- (2) The Fund must be kept as directed or approved by the Treasurer.
- (3) The Fund is to consist of the following money:
 - (a) any money appropriated by Parliament for the purposes of the Fund;
 - (b) any money contributed to the Fund by regional NRM boards;
 - (c) any money received from the Local Government Disaster Fund;
 - (d) any money paid into the Fund at the direction or with the approval of the Minister or the Treasurer;
 - (e) any money received by way of grant, gift or bequest or any other contribution for the purposes of the Fund;
 - (f) any income from investment of money belonging to the Fund;
 - (g) any money paid into the Fund under any other Act.
- (4) The Authority may, with the approval of the Treasurer, invest any of the money belonging to the Fund that is not immediately required for the purposes of the Fund in such manner as is approved by the Treasurer.

18—Payments out of Fund

- (1) The Authority may apply any part of the Fund (without further appropriation than this subclause) for any of the following purposes:
 - (a) the preparation of stormwater management plans;
 - (b) the carrying out of works or the acquisition of land (including by a council or some other entity) in accordance with an approved stormwater management plan or otherwise for the purpose of stormwater management;
 - (c) community education and awareness programmes related to stormwater management;
 - (d) projects or measures relating to water quality or pollution abatement;
 - (e) investigations, research, pilot programmes or other projects relating to stormwater management;
 - (f) payment of the operational costs or expenses of the Authority;
 - (g) the making of any payment required or authorised by or under this Schedule or any other Act or law.
- (2) If the Authority is satisfied that a council has failed to comply with an order under clause 16, the Authority may refuse to make, or may cancel or suspend, a payment that would otherwise have been made to the council from the Fund in respect of the matter to which the order relates.

19—Accounts and audit

- (1) The Authority must cause proper accounts to be kept of money paid to and from the Fund.
- (2) The Auditor-General may, at any time, and must at least once in each year, audit the accounts of the Fund.

20—Annual reports

- (1) The Authority must, within 3 months after the end of each financial year deliver to the Minister and to the President of the LGA a report on the operation of the Fund during that financial year.
- (2) The report must include an assessment by the Authority of the adequacy of the Fund to meet claims on the Fund under this Schedule and the Stormwater Management Agreement.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days after his or her receipt of the report.
- (4) A report required under this clause may be incorporated into the annual report of the Authority required under section 33 of the *Public Corporations Act 1993*.

Division 6—Miscellaneous

21—Special powers in relation to land

- (1) Without limiting any other provision of this Act, the Authority may, for the purpose of taking action required by an order in accordance with clause 16 and a council may, for the purpose of taking action consistent with the provisions of an approved stormwater management plan or required by an order under clause 16—
 - (a) enter and occupy any land; and
 - (b) construct, maintain or remove any infrastructure; and
 - (c) excavate any land; and
 - (d) 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
 - (e) 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
 - (f) hold water in a watercourse or lake or by any other means; and
 - (g) 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
 - (h) 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
 - (i) undertake any other form of work (including work undertaken for the purposes of stormwater management or flood mitigation); and
 - (j) undertake any testing, monitoring or evaluation; and
 - (k) undertake any other activity of a prescribed kind.
- (2) A council or the Authority must not exercise a power under subclause (1)(b), (c), (h) or (i) in relation to private land with the intention that any infrastructure 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 and the council or the Authority (as the case may be) is acting with the agreement of the owner; or

- (b) the council or the Authority (as the case may be) has first acquired an easement or other appropriate interest over the relevant land by agreement with the owner or in accordance with the *Land Acquisition Act 1969* and any other applicable laws.
- (3) Subclause (2) does not limit or affect the ability of a council or the Authority to acquire land by agreement for the purpose of constructing any infrastructure or performing any work.
- (4) In this clause—
lake and *watercourse* have the same meaning as in section 31 of the *Natural Resources Management Act 2004*.

22—Entry and occupation of land other than council land

- (1) This clause does not apply to or in relation to land the use, or the care, control and management, of which is vested in a council.
- (2) The Authority or a council must give reasonable notice of an intention to enter, or to enter and occupy, land in accordance with clause 21 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 his or her consent; or
 - (b) in an emergency, in which case the Authority or council must give such notice (if any) as it considers is reasonable in the circumstances.
- (4) If the Authority or a council enters or occupies land to which this clause applies, the Authority or council (as the case may be)—
 - (a) must cause as little harm and inconvenience as practicable; and
 - (b) must not occupy the land for any longer than is reasonably necessary; and
 - (c) must leave the land as nearly as possible in the condition in which it found the land; and
 - (d) must co-operate as far as practicable with any owner or occupier of the land.

23—Vesting of infrastructure etc

- (1) Subject to this clause, the Minister may, by notice in the Gazette made on the recommendation of the Authority, vest in a public authority the care, control and management of any stormwater infrastructure.

- (2) Subject to this clause, the Minister may, by notice in the Gazette made on the recommendation of the Authority, vest in a public authority the care, control and management of any public land that is specified in an approved stormwater management plan as being land that should be under the care, control and management of the public authority.
- (3) The Minister must, before publishing a notice vesting the care, control and management of infrastructure or land in a public authority under subclause (1) or (2), give the public authority a reasonable opportunity to make submissions to the Minister in relation to the proposed notice.
- (4) If the care, control and management of infrastructure or land is vested in a public authority under subclause (1) or (2), the public authority is responsible for the maintenance and repair of the infrastructure or the maintenance of the land.
- (5) A public authority is not liable to pay compensation to another public authority in respect of a notice under this clause.
- (6) Subject to this clause, the Minister may, by subsequent notice made on the recommendation of the Authority, vary or revoke a notice under this clause.
- (7) In this clause—

public land means land vested in, or under the care control and management of, a public authority.

24—Immunity from liability

- (1) No civil liability attaches to a member of the Authority or an officer or employee of a council for an act or omission in the exercise or performance, or purported exercise or performance, of powers or functions under this Schedule.
- (2) An action that would, but for subclause (1), lie against a person lies instead against—
 - (a) in the case of a member of the Authority—the Authority; or
 - (b) in the case of an officer or employee of a council—the council.
- (3) This clause does not prejudice rights of action of the Crown, the Authority or a council in respect of an act or omission not in good faith.
- (4) No liability attaches to the Crown, the Authority or a council in respect of the preparation or approval of a stormwater management plan in accordance with this Schedule.

25—Assessment of reasonable costs and expenses

For the purposes of this Schedule, the reasonable costs and expenses that have been or would be incurred by the Authority in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by independent contractors engaged for that purpose.

26—Evidentiary

- (1) In any proceedings, a certificate executed by the Authority or the Minister certifying as to a matter relating to—
 - (a) an order of the Authority under clause 16; or
 - (b) a notice under clause 23; or
 - (c) a delegation or authority under this Schedule,constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (2) In any proceedings against a council for the recovery of reasonable costs and expenses incurred by the Authority under this Schedule, a certificate executed by the Authority detailing the costs and expenses, the purpose for which they were incurred and (if relevant) the proportion payable by the council constitutes proof, in the absence of proof to the contrary, of the matters so certified.
- (3) An apparently genuine document purporting to be an authorisation, order or other document, or a copy of an authorisation, order or other document, issued or executed by the Minister, the Treasurer or the Authority under this Schedule will be accepted as such in the absence of proof to the contrary.

27—Regulations

Without limiting section 303, regulations may be made—

- (a) empowering the Authority to require the provision of reports, statements, documents or other forms of information for the purposes of carrying out its functions under this Schedule or otherwise in connection with the administration or operation of this Schedule;
- (b) requiring the Authority to disclose information or provide records to the Minister or the Treasurer or otherwise providing for Ministerial supervision of the operations of the Authority;
- (c) imposing performance obligations on the Authority or requiring the preparation of a charter or performance statements in relation to the operations of the Authority;
- (d) setting out the duties and liabilities of the board of the Authority and members of the board of the Authority;

- (e) making any provision in relation to the financial arrangements or corporate governance of the Authority;
- (f) prescribing penalties (not exceeding a fine of \$20 000) for contravention of a regulation made in accordance with this clause.

Schedule 1—Related amendments to *Natural Resources Management Act 2004*

1—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *State NRM Plan* insert:

stormwater infrastructure means infrastructure established for the purposes of stormwater management;
- (2) Section 3(1), definition of *surface water*—after paragraph (b) insert:
 - (c) water of the kind referred to in paragraph (a) that is contained in any stormwater infrastructure;
- (3) Section 3(1), definition of *surface water prescribed area*—after "section 125" insert:

(including, if relevant, any stormwater infrastructure within that area)
- (4) Section 3(1), definition of *to take*—after paragraph (b) insert:
 - (ba) 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;

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

Section 89(1)(b)—after "this Act" insert:

, 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)

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

- (1) Section 124—after subsection (2) insert:
 - (2a) 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 NRM plan under section 89(1)(b), a person who has lawful access to any stormwater infrastructure may take water from the infrastructure for any purpose.
- (2) Section 124—after subsection (6) insert:
 - (6a) Subsection (3) 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.

4—Amendment of section 125—Declaration of prescribed water resources

Section 125—after subsection (4) insert:

- (4a) 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).

5—Amendment of section 128—Certain uses of water authorised

Section 128(3)—after "surface water prescribed area" insert:

(including as to particular stormwater infrastructure (or a part of stormwater infrastructure) or stormwater infrastructure of a particular class)

6—Amendment of section 146—Licences

Section 146(1)(a)—after "surface water prescribed area" insert:

or the part of the surface water prescribed area

7—Amendment of section 223—Evidentiary

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

- (ca) 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