

South Australia

## **Natural Resources Management Act 2004**

An Act to promote sustainable and integrated management of the State's natural resources; to make provision for the protection of the State's natural resources; to repeal the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*, the *Soil Conservation and Land Care Act 1989* and the *Water Resources Act 1997*; and for other purposes.

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## Legislative history

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The Parliament of South Australia enacts as follows:

## Chapter 1—Preliminary

### 1—Short title

This Act may be cited as the *Natural Resources Management Act 2004*.

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

**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 to be a State authorised officer or a regional authorised officer under Chapter 3 Part 6;

**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;
- (b) part of a channel;

**Chief Officer** means the Chief Officer under Chapter 3 Part 5 (and includes a person acting in that office from time to time);

**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—

- (a) in relation to a regional NRM board, or the region of a regional NRM board, a council whose area, or part of whose area, comprises or is included in the region of the regional NRM board;

- (b) in relation to an NRM group, or the area of an NRM group, a council whose area, or part of whose area, comprises or is included in the area of the NRM group;

**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 Chapter 7, 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 169B;

**delivery capacity entitlement** means a delivery capacity entitlement issued under Chapter 7 Part 3 Division 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 the Minister in the administration of this Act;

**designated commercial forest** means a commercial forest within a declared forestry area;

**designated Minister**—see subsection (9);

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

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

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***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 more than 0.4 of a hectare of land; or
- (b) 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;

***employing authority*** means—

- (a) unless paragraph (b) applies—the Chief Executive of the Department;
- (b) if the Governor thinks fit, a person, or a person holding or acting in an office or position, designated by proclamation made for the purposes of this definition;

***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 an NRM plan; or
- (b) by a Development Plan under the *Development Act 1993*;

***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 Chapter 7 Part 5A;

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

**general statutory duty** means the duty under Chapter 2 Part 2;

**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;
- (b) dams or reservoirs;
- (c) embankments, walls, channels or other works or earthworks;
- (d) bridges and culverts;
- (e) buildings or structures;
- (f) roads;
- (g) pipes, machinery or other plant or equipment;
- (h) any device;
- (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;
  - (ii) any other program or initiative associated with the management of a natural resource;
- (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 Chapter 7 Part 3 Division 6;

**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; or
- (b) a body of water designated as a lake—
  - (i) by an NRM plan; or
  - (ii) by a Development Plan under the *Development Act 1993*;

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**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;

**LGA** means the Local Government Association of South Australia;

**licensed well driller** means a person who holds a licence under Chapter 7 to drill wells;

**management agreement** means an agreement under Chapter 11;

**Mining Act** means any of the following:

- (a) the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum 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) soil;
- (b) water resources;
- (c) geological features and landscapes;
- (d) native vegetation, native animals and other native organisms;
- (e) ecosystems;

**NRM authority** means a regional NRM board or an NRM group;

**NRM Council** means the Natural Resources Management Council established under Chapter 3 Part 2;

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***NRM Fund*** means the Natural Resources Management Fund established under Chapter 5 Part 2 Division 1;

***NRM group*** means a body established under Chapter 3 Part 4 and includes a body appointed under that Part to be an NRM group under this Act;

***NRM plan*** means a plan under Chapter 4;

***NRM region*** or ***region*** means a Natural Resources Management Region established under Chapter 3 Part 3 Division 1;

***NRM Register*** means the register established under section 226;

***NRM water levy*** means—

- (a) a water levy; or
- (b) a special purpose water levy;

***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-NRM levy*** means a levy declared under section 97;

***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 himself or herself (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) the South Australian Farmers Federation Incorporated; and
- (c) the Conservation Council of South Australia;

***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 125;

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***prescribed watercourse*** means a watercourse declared to be a prescribed watercourse under section 125;

***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 125;

***private land*** means land that is not—

- (a) dedicated land within the meaning of the *Crown Lands Act 1929*; 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;

***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 authorised officer*** means a person appointed as a regional authorised officer under Chapter 3 Part 6;

***regional local government association*** means a regional association established by the local government sector (whether under section 43 of the *Local Government Act 1999* or under the *Associations Incorporation Act 1985*, or in some other manner recognised by the regulations for the purposes of this definition);

***regional NRM board*** means a body established under Chapter 3 Part 3 and includes a body appointed under that Part to be a regional NRM board under this Act;

***regional NRM levy*** means a levy imposed by a council under section 95;

***regional NRM plan*** means a plan prepared by a regional NRM board under Chapter 4 Part 2;

***repealed Act*** means an Act repealed under Schedule 4 Part 17;

***residential premises*** means a building occupied as a place of residence and includes the curtilage of such a building;

***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 3A entitlement** means—

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

**security interest** means a mortgage or charge over, or other arrangement of a kind prescribed by the regulations in respect of, a water management authorisation 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;
- (b) receive for sale;
- (c) have in possession for sale;
- (d) cause or permit to be sold or offered for sale;
- (e) send, forward or deliver for sale;
- (f) dispose of by any method for valuable consideration;
- (g) dispose of to an agent for sale on consignment;
- (h) sell for the purposes of resale;

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

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

**special purpose water levy** means a levy declared under section 103;

**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 authorised officer** means a person appointed as a State authorised officer under Chapter 3 Part 6;

**State NRM Plan** means the plan prepared by the NRM Council under Chapter 4 Part 1;

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

**surface water** means—

- (a) water flowing over land (except in a watercourse)—

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- (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;
  - (b) water of the kind referred to in paragraph (a) that has been collected in a dam or reservoir;
  - (c) water of the kind referred to in paragraph (a) that is contained in any stormwater infrastructure;

***surface water prescribed area*** means a part of the State declared to be a surface water prescribed area under section 125 (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;
- (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;
- (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;
- (c) to divert the flow of water in a watercourse from the watercourse;
- (d) to release water from a lake;
- (e) to permit water to flow under natural pressure from a well;
- (f) to permit stock to drink from a watercourse, a natural or artificial lake, a dam or reservoir;
- (g) to cause, permit or suffer any activity referred to in a preceding paragraph;

***underground water*** means—

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

***vehicle*** includes any—

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

***water access entitlement***—see section 146(2);

***water allocation***—

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

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- (b) in respect of water taken pursuant to an authorisation under section 128 means the maximum quantity of water that can be taken and used pursuant to the authorisation;
  - (c) in respect of a forest water licence means the water allocation attached to the licence;

**water allocation plan** means a water allocation plan prepared by a regional NRM board under Chapter 4 Part 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;
- (b) a lake through which water flows;
- (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;
- (d) part of a watercourse;
- (e) an estuary through which water flows;
- (f) any other natural resource, or class of natural resource, designated as a watercourse for the purposes of this Act by an NRM plan;

**water levy** means a levy declared under section 101;

**water licence** means a licence granted by the Minister under section 146;

**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 226(1a) and (1b);

**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 Chapter 7 Part 3 Division 3;

**well** means—

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

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**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 an NRM plan; or
- (b) by a Development Plan under the *Development Act 1993*,

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 and 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) 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 and economic value of land;
- (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 and economic value of a water resource.

(3) 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—

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- (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.
- (4) 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;
- (b) estuarine habitats adjacent to an estuary.
- (5) A reference in this Act to varying a water management authorisation (in any of its forms) includes a reference to varying the conditions attached to the particular water management authorisation.
- (6) The conditions of an authorisation or permit under this Act may be varied by the addition, substitution or deletion of 1 or more conditions.
- (7) 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*.
- (8) A regulation, NRM plan or Development Plan 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).
- (9) For the purposes of this Act, a **designated Minister** is a Minister who is primarily responsible for any of the following:
- (a) regional affairs;
- (b) primary industries;
- (c) the environment;
- (d) mineral resources;
- (e) local government;
- (f) urban or regional planning;
- (g) aboriginal affairs;
- (h) economic development;
- (i) tourism;
- (j) the River Murray,
- as designated by the Premier from time to time for the purposes of this provision.
- (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

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- (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 per cent 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 above paragraphs.
- (11) For the purposes of subsection (10), a **beneficiary** of a trust includes an object of a discretionary trust.
- (12) The Governor may, from time to time as the Governor thinks fit, vary or revoke a proclamation made for the purposes of the definition of **employing authority**, or make a new proclamation for the purposes of that definition.

#### 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*;
  - (e) the *Pulp and Paper Mills Agreement Act 1958*;
  - (f) the *Pulp and Paper Mill (Hundred of Gambier) Indenture Act 1961*;
  - (g) the *Pulp and Paper Mill (Hundreds of Mayurra and Hindmarsh) Act 1964*.
- (3) Chapter 2 Part 2 and Chapter 6 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.

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- (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 NRM Plan and other relevant NRM plans under this Act.

## Chapter 2—Objects of Act and general statutory duties

### Part 1—Objects

#### 7—Objects

- (1) The objects of this Act include to assist in the achievement of ecologically sustainable development in the State by establishing an integrated scheme to promote the use and management of natural resources in a manner that—
  - (a) recognises and protects the intrinsic values of natural resources; and
  - (b) seeks to protect biological diversity and, insofar as is reasonably practicable, to support and encourage the restoration or rehabilitation of ecological systems and processes that have been lost or degraded; and
  - (c) provides for the protection and management of catchments and the sustainable use of land and water resources and, insofar as is reasonably practicable, seeks to enhance and restore or rehabilitate land and water resources that have been degraded; and
  - (d) seeks to support sustainable primary and other economic production systems with particular reference to the value of agriculture and mining activities to the economy of the State; and
  - (e) 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
  - (f) promotes educational initiatives and provides support mechanisms to increase the capacity of people to be involved in the management of natural resources.
- (2) For the purposes of subsection (1), ecologically sustainable development comprises the use, conservation, development and enhancement of natural resources in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being while—
  - (a) sustaining the potential of natural resources to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguarding the life-supporting capacities of natural resources; and
  - (c) avoiding, remedying or mitigating any adverse effects of activities on natural resources.
- (3) The following principles should be taken into account in connection with achieving ecologically sustainable development for the purposes of this Act:
  - (a) decision-making processes should effectively integrate both long term and short term economic, environmental, social and equity considerations;
  - (b) if there are threats of serious or irreversible damage to natural resources, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

- (c) decision-making processes should be guided by the need to evaluate carefully the risks of any situation or proposal that may adversely affect the environment and to avoid, wherever practicable, causing any serious or irreversible damage to the environment;
- (d) the present generation should ensure that the health, diversity and productivity of the natural environment is maintained or enhanced for the benefit of future generations;
- (e) a consideration should be the conservation of biological diversity and ecological integrity;
- (f) environmental factors should be taken into account when valuing or assessing assets or services, costs associated with protecting or restoring the natural environment should be allocated or shared equitably and in a manner that encourages the responsible use of natural resources, and people who obtain benefits from the natural environment, or who adversely affect or consume natural resources, should bear an appropriate share of the costs that flow from their activities;
- (g) if the management of natural resources 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;
- (h) consideration should be given to Aboriginal heritage, and to the interests of the traditional owners of any land or other natural resources;
- (i) consideration should be given to other heritage issues, and to the interests of the community in relation to conserving heritage items and places;
- (j) the involvement of the public in providing information and contributing to processes that improve decision-making should be encouraged;
- (k) the responsibility to achieve ecologically sustainable development should be seen as a shared responsibility between the public sector, the private sector, and the community more generally;
- (l) the local government sector is to be recognised as a key participant in natural resource management, especially on account of its close connections to the community and its role in regional and local planning.

## **8—Administration of Act to achieve objects**

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.

## **Part 2—General statutory duties**

### **9—General statutory duties**

- (1) A person must act reasonably in relation to the management of natural resources within the State.

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- (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, and the potential impact of a failure to comply with the relevant duty; and
  - (b) any environmental, social, economic or practical implications, including 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; and
  - (f) the significance of the natural resources, including in relation to the environment 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; and
  - (h) any pre-existing circumstance, and the state or condition of the natural resources.
- (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 NRM plan; 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 Chapter 6; and
  - (b) compliance with the subsection may be enforced by the issuing of a protection order under Chapter 9 Part 1; and
  - (c) a reparation order or reparation authorisation may be issued under Chapter 9 Part 1; and
  - (d) an order may be made by the ERD Court under Chapter 9 Part 2 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 he or she has acted in a manner consistent with any best practice methods or standards in the relevant industry or sphere of activity that are recognised as being acceptable for the purposes of subsection (1) by the relevant regional NRM board, then, to the extent of the consistency, no action can be taken against the person in connection with the operation of this section.

**Natural Resources Management Act 2004—1.1.2013 to 16.6.2013**

Chapter 2—Objects of Act and general statutory duties

Part 2—General statutory duties

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- (8) To avoid doubt, a person cannot, in relation to the operation of this section, be held responsible for any condition or circumstance existing before the commencement of this section.

## Chapter 3—Administration

### Part 1—The Minister

#### 10—Functions of Minister

- (1) The functions of the Minister under this Act are—
- (a) to keep the state and condition of the natural resources of the State under review; and
  - (b) to develop or co-ordinate policies relating to natural resources management, to promote sound management programs and practices for the use, development or protection of the natural resources of the State, and to develop and apply policies relating to the control of animals and plants to protect public health and safety, the natural environment, and primary production within the State; and
  - (c) in relation to the application of this Act with respect to the Murray-Darling Basin, and as far as reasonably practicable—
    - (i) to act to integrate the administration of this Act with the administration of the *River Murray Act 2003*; and
    - (ii) to promote the integration or co-ordination of policies, programs, plans and projects under this Act with relevant activities undertaken under the *River Murray Act 2003*; and
  - (d) to conduct and support research into the preservation, protection, management, enhancement, restoration or rehabilitation of the State's natural resources; and
  - (e) to compile, maintain and update information in relation to the State's natural resources; and
  - (f) to promote public awareness of the importance of the State's natural resources and to encourage the conservation of those resources; and
  - (g) to promote the pursuit of the objects of this Act by State and local government bodies, the private sector and the public, and to promote the application of the various principles and duties prescribed by this Act; and
  - (h) 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
  - (i) to ensure that appropriate consideration is given to NRM plans when decisions are being made with respect to the allocation of resources; 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)(e) 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 (see subsection (2)(c)) 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;
  - (b) must not disclose that information to another person without the consent of the person who provided it.
- (4) Without limiting any other power of the Minister, the Minister may direct an NRM authority or authorities to observe policies and comply with standards specified by the Minister in relation to the gathering, recording and keeping of information.
- (5) If the Minister gives a direction to an NRM authority under this Act (other than a direction that, in the opinion of the NRM authority, is of minor significance taking into account its function and powers), the NRM authority must cause a statement of the fact that the direction was given to be published in its next annual report.
- (6) The Minister must, in acting in the administration of this Act, seek to act fairly and reasonably and recognise the need to enhance and support sustainable primary and other economic production systems.

## **11—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—
  - (a) the function of making recommendations to the Governor; or
  - (b) the Minister's functions or powers under Chapter 5.
- (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 his or her interest in the matter.

## **Part 2—The NRM Council**

### **Division 1—Establishment of NRM Council**

#### **12—Establishment of NRM Council**

- (1) The *Natural Resources Management Council* is established.
- (2) The NRM Council is subject to the general direction and control of the Minister (but the Minister cannot give any direction with respect to any advice or recommendation that the NRM Council might give or make or with respect to the contents of any report).

### **Division 2—The Council's membership**

#### **13—Composition of NRM Council**

- (1) The NRM Council consists of 9 members appointed by the Governor on the nomination of the Minister, being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the NRM Council to carry out its functions effectively.
- (2) Of those members:
  - (a) 1 (who will be the presiding member) must be a person who has, in the opinion of the Minister, extensive experience in the management of natural resources and been actively involved in community affairs; and
  - (b) 1 must be nominated from a panel of 3 persons submitted by the LGA; and
  - (c) 1 must be nominated from a panel of 3 persons submitted by the Conservation Council of South Australia; and
  - (d) 1 must be nominated from a panel of 3 persons submitted by the South Australian Farmers Federation Incorporated; and
  - (e) 1 must be nominated after the Minister has consulted with bodies that, in the opinion of the Minister, are suitable to represent the interests of Aboriginal people for the purposes of this Act.
- (3) If the Minister does not receive a submission from a body under subsection (2)(b), (c), or (d) within 2 months after requesting the submission of 3 names by that body, the Minister may, by notice in writing, request the relevant body to make a nomination within a time (being not less than 1 month) allowed in the notice and if a nomination is not made within that time, then the Minister may proceed to nominate a person determined by the Minister in lieu of a person submitted by that body.
- (4) Before nominating the remaining members of the NRM Council, the Minister must place a notice in a newspaper circulating generally throughout the State inviting expressions of interest for appointment to the NRM Council within a period specified by the Minister, and then take into account any expressions of interest received within the relevant time.

- (5) For the purposes of subsections (1) and (2), the Minister should (as far as is reasonably practicable in the circumstances)—
- (a) give consideration to nominating persons so as to provide a range of knowledge, skills and practical experience across the following areas:
    - (i) primary production or pastoral land management (on the basis of practical experience in these areas);
    - (ii) soil conservation and land management;
    - (iii) conservation and biodiversity management;
    - (iv) water resources management;
    - (v) business administration;
    - (vi) local government or local government administration;
    - (vii) urban and regional planning;
    - (viii) Aboriginal interests in the land and water, and Aboriginal heritage;
    - (ix) coast, estuarine and marine management;
    - (x) fisheries or aquaculture;
    - (xi) pest animal and plant control;
    - (xii) natural and social science; and
  - (b) endeavour to nominate persons who are able to demonstrate an interest in ensuring the sustainable use and conservation of natural resources and in participating in community affairs; and
  - (c) endeavour to include a range of persons from across the State.
- (6) In addition, the Minister must, before finalising his or her nominations for the purposes of this section, consult with the designated Ministers.
- (7) At least 2 members of the NRM Council must be women and at least 2 members must be men.
- (8) The Governor may, on the nomination of the Minister, appoint a suitable person to be the deputy of a member of the NRM Council.
- (9) A deputy may act as a member of the NRM Council during any period of absence of the member in relation to whom the deputy has been appointed.
- (10) The Minister may, by instrument in writing, authorise a person or persons to attend any meeting of the NRM Council in order to represent the interests of the Commonwealth, the State or local government.
- (11) A person who holds an authorisation under subsection (10) is entitled—
- (a) to receive notice of any meeting of the NRM Council; and
  - (b) to have access to papers provided to members of the NRM Council for the purposes of any meeting; and
  - (c) to attend, and participate in, any meeting of the NRM Council (but has no entitlement to vote).

## **14—Conditions of membership**

- (1) A member of the NRM Council will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment subject to the qualification that a person cannot serve as a member of the NRM Council for more than 6 consecutive years.
- (2) The Governor may remove a member of the NRM Council 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 neglect of duty; or
  - (d) for dishonourable conduct.
- (3) The office of a member of the NRM Council 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 Governor under subsection (2).

## **15—Allowances and expenses**

A member of the NRM Council is entitled to fees, allowances and expenses approved by the Governor.

## **16—Validity of acts**

An act or proceeding of the NRM Council is not invalid by reason only of a vacancy in its membership, a defect in the appointment of a member or a situation where all of the requirements of section 13(5) are not satisfied.

## **Division 3—Functions of NRM Council**

### **17—Functions of NRM Council**

- (1) The functions of the NRM Council are—
  - (a) to provide advice to the Minister on the administration and operation of this Act; and
  - (b) to audit, monitor and evaluate the state and condition of natural resources across the State, and to evaluate and report on—
    - (i) the performance of the NRM authorities established under this Act; and
    - (ii) the integration of natural resources management practices on account of this Act; and

- (c) to prepare, and to keep under review, the State NRM Plan, and to keep under review the extent to which—
    - (i) regional NRM plans; and
    - (ii) policies and practices adopted or applied by NRM authorities, are consistent with the State NRM Plan; and
  - (d) to monitor and evaluate the effectiveness of—
    - (i) this Act; and
    - (ii) the State NRM Plan; and
    - (iii) other natural resources management policies initiated by the Government,and to provide reports to the Minister, and to other relevant persons and bodies, in relation to these matters; and
  - (e) as far as reasonably practicable and appropriate—
    - (i) to promote the implementation of integrated natural resources management practices and principles under other Acts; and
    - (ii) to contribute to the adoption of sound natural resources management policies under the Planning Strategy under the *Development Act 1993*; and
    - (iii) to ensure that natural resources management issues are considered when reports on the state of the environment are being prepared at State level; and
  - (f) to assist in the coordination of natural resources management initiatives across 2 or more regions and to resolve any issues that may arise between regional NRM boards; and
  - (g) to convene forums on a State-wide basis to discuss natural resources management issues, and to promote public awareness of sound natural resources management practices; and
  - (h) at the request of the Minister, or on its own initiative, to advise the Minister on any matter relevant to the condition of natural resources within the State, or on the management of those resources, to conduct any inquiry or audit, or to provide any other advice or report that may be appropriate in the circumstances; and
  - (i) such other functions assigned to the Council by the Minister or by or under this or any other Act.
- (2) If the Minister assigns a function to the NRM Council under subsection (1)(i) (other than a function that is not, in the opinion of the NRM Council, a significant extension to its current functions), the NRM Council must cause a statement of the fact of the assignment to be published in its next annual report.

- (3) In performing its functions, the NRM Council should seek to work collaboratively with—
- (a) other State agencies, agencies of the Commonwealth, and agencies of the other States and Territories, that have functions that are relevant to those of the Council; and
  - (b) local government; and
  - (c) relevant industry, environment and community groups and organisations.

## 18—Committees

- (1) The NRM Council—
- (a) must establish the committees required by the regulations; and
  - (b) may establish such other committees as the Council thinks fit, to advise or assist the Council.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the NRM Council.
- (3) The procedures to be observed in relation to the conduct of business of a committee will be—
- (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the NRM Council; or
  - (c) insofar as the procedure is not prescribed by regulation or determined by the NRM Council—as determined by the committee.

## 19—Power of delegation

- (1) The NRM Council 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 Council under this or any other 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 NRM Council 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.

## Division 4—Related matters

### 20—Annual report

- (1) The NRM Council must, on or before 30 November in each year, provide to the Minister a report on its activities for the financial year ending on the preceding 30 June (and need not provide a report under the *Public Sector Act 2009*).

- (2) The report must be accompanied by annual reports of regional NRM boards and NRM groups provided under this Act and include any other report or information provided to the NRM Council under this Act for inclusion in its annual report.
- (3) The Minister must cause a copy of a report provided to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.
- (4) The Chief Executive of the Department must ensure that a copy of any report within the ambit of subsection (3) is published on the Department's website within 5 business days after being laid before both Houses of Parliament under that subsection.
- (5) In addition, if the Minister fails to lay an annual report of the NRM Council before both Houses of Parliament by 31 December in any year, the Minister must—
  - (a) ensure that a copy of the report is furnished to the Natural Resources Committee of the Parliament by that date; and
  - (b) until the report is laid before both Houses of Parliament, furnish to any Member of Parliament, on request, a copy of the report.

## **21—Use of facilities**

The NRM Council 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.

## **Part 3—NRM regions and boards**

### **Division 1—Establishment of regions**

#### **22—Establishment of regions**

- (1) The Governor may, by proclamation made on the recommendation of the Minister, divide the State into *Natural Resources 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 give particular attention to water catchment areas and biogeographical regions; and
  - (b) take into account relevant economic, social, cultural and local government boundaries or areas.
- (3) The Governor may, by subsequent proclamation made on the recommendation of the Minister—
  - (a) vary the boundaries of any NRM region;
  - (b) abolish an NRM 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 NRM boards or the alteration or revision of any plan under this Act (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 a proclamation is made under subsection (3)—
  - (a) 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; and
  - (b) consult with the NRM Council.
- (6) Wherever an NRM region is established under this section, or the boundaries of an NRM region are varied under this section, the Minister must furnish a report on the matter to the Natural Resources Committee of the Parliament.

## **Division 2—Establishment of regional NRM boards**

### **23—Establishment of boards**

- (1) The Minister must, by notice in the Gazette, establish a regional NRM board for each NRM region.
- (2) A notice under subsection (1) must—
  - (a) identify the region in relation to which the regional NRM board is established; and
  - (b) assign a distinctive name to the regional NRM board; and
  - (c) set out functions of the regional NRM 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 NRM board under subsection (2)(c));
  - (b) abolish a regional NRM board (on the basis that the relevant region is being abolished under Division 1).
- (4) A notice relating to a regional NRM 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 NRM authority; 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;

- (b) by making provision with respect to any relevant regional NRM plan,  
(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)—
  - (a) 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; and
  - (b) consult with the NRM Council.
- (6) If the Minister assigns a function to a regional NRM board under subsection (2)(c), the Minister must furnish a report on the matter to the Natural Resources Committee of the Parliament.
- (7) The Minister must, before varying the functions of a regional NRM board under subsection (3), consult with the Natural Resources Committee of the Parliament.

## **24—Corporate nature**

- (1) A regional NRM 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 NRM board, it will be presumed, in the absence of proof to the contrary, that the common seal of the regional NRM board was duly fixed to the document.
- (3) A regional NRM board is subject to the direction and control of the Minister.

## **Division 3—Membership**

### **25—Composition of boards**

- (1) A regional NRM board consists of up to 9 members appointed by the Governor on the nomination of the Minister, being persons who collectively have, in the opinion of the Minister, after taking into account any recommendation of the NRM Council, knowledge, skills and experience necessary to enable the board to carry out its functions effectively.
- (2) Before nominating a person or persons under subsection (1), the Minister—
  - (a) must place a notice in a newspaper circulating generally throughout the region inviting expressions of interest for appointment to the relevant board within a period specified in the notice, and then take into account any recommendation of the NRM Council after the NRM Council has been given an opportunity to consider any expressions of interest received within the relevant time; and

- (b) must give to—
- (i) each peak body; and
  - (ii) such other bodies representing the interests of persons involved in natural resources management, or Aboriginal people, as the Minister considers to be appropriate in the circumstances,
- 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.
- (3) The Chief Executive of the Department must ensure that a copy of a notice under paragraph (a) of subsection (2) is published on the Department's website within 2 business days after being published under that paragraph.
- (4) For the purposes of subsection (1), the Minister must (as far as is reasonably practicable in the circumstances)—
- (a) give consideration to nominating persons so as to provide a range of knowledge, skills and experience across the following areas:
    - (i) community affairs at the regional level;
    - (ii) primary production or pastoral land management;
    - (iii) soil conservation and land management;
    - (iv) conservation and biodiversity management;
    - (v) water resources management;
    - (vi) business administration;
    - (vii) local government or local government administration;
    - (viii) urban or regional planning;
    - (ix) Aboriginal interest in the land and water, and Aboriginal heritage;
    - (x) pest animal and plant control;
    - (xi) natural and social science;
    - (xii) if relevant—coast, estuarine and marine management, fisheries or aquaculture; and
  - (b) nominate persons who are able to demonstrate an interest in ensuring the sustainable use and conservation of natural resources and an awareness of natural resource issues across the relevant region; and
  - (c) ensure—
    - (i) that a majority of the members of the board reside within the relevant region; and
    - (ii) that a majority of the members of the board are engaged in an activity related to the management of land.
- (5) In addition, the Minister must, before finalising his or her nominations for the purposes of this section, consult with the designated Ministers.

- (6) At least 1 member of a regional NRM board must be a woman and at least 1 member must be a man.
- (7) At least 1 member of a regional NRM board must be a member or officer of a council at the time of his or her 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; and
    - (ii) is willing and available to be a member of the board.
- (8) The Governor must appoint a suitable member of a regional NRM board to be the presiding member of the board.
- (9) The Governor may appoint a suitable person to be the deputy of a member of a regional NRM board.
- (10) A deputy may act as a member of a regional NRM board during any period of absence of the member in relation to whom the deputy has been appointed.
- (11) The Minister may, by instrument in writing, authorise a person or persons to attend any meeting of a regional NRM board in order to represent the interests of the Commonwealth, the State or local government.
- (12) A person who holds an authorisation under subsection (11) is entitled—
  - (a) to receive notice of any meeting of the board; and
  - (b) to have access to papers provided to members of the board for the purposes of any meetings; and
  - (c) to attend, and participate in, any meeting of the board (but has no entitlement to vote).

## **26—Conditions of membership**

- (1) A member of a regional NRM board will hold office on conditions determined by the Governor for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment subject to the qualification that a person cannot serve as a member of a particular regional NRM board for more than 6 consecutive years.
- (2) The Governor may remove a member of a regional NRM 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 neglect of duty; 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, after consultation with the NRM Council, that the board should be reconstituted for that reason.

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- (3) The office of a member of a regional NRM 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 (2).

## **27—Allowances and expenses**

A member of a regional NRM board is entitled to fees, allowances and expenses approved by the Governor.

## **28—Validity of acts**

An act or proceeding of a regional NRM board is not invalid by reason only of a vacancy in its membership, a defect in the appointment of a member or a situation where all of the requirements of section 25(4) are not satisfied.

## **28A—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of a regional NRM 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 primary producers in the region generally, or a substantial section of those persons or primary producers; 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.

## **Division 4—Functions of boards**

### **29—Functions of boards**

- (1) The functions of a regional NRM board are—
- (a) to undertake an active role with respect to the management of natural resources within its region; and
  - (b) —
    - (i) to prepare a regional NRM plan in accordance with this Act; and
    - (ii) to implement that plan; and
    - (iii) to keep the plan under review to ensure that the objects of this Act are being achieved; 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 resolve any issues that may arise between any NRM groups that are relevant to the management of natural resources within its region; and
  - (ea) to undertake an active role in ensuring—
    - (i) that any Development Plan under the *Development Act 1993* that applies within its region promotes the objects of this Act; and
    - (ii) insofar as is reasonably practicable, that those Development Plans and the board's regional NRM plan form a coherent set of policies, and, in so doing, when a Development Plan amendment under the *Development Act 1993* that is relevant to the activities of the board is under consideration under that Act, to work with—
      - (iii) in the case of a Development Plan amendment proposed by a council—the council; or
      - (iv) in the case of a Development Plan amendment proposed by a Minister—that Minister's department; and
  - (f) at the request of the Minister or the NRM Council, or on its own initiative, to provide advice on any matter relevant to the condition of natural resources within its region, or on the management of those resources, to conduct any inquiry or audit, or to provide any other advice or report that may be appropriate in the circumstances; and
  - (g) 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 NRM board may act with respect to a particular matter despite the fact that the matter may not fall within the scope of its regional NRM plan.
- (3) However, if a regional NRM board acts with respect to a particular matter in the circumstances described in subsection (2), the board must furnish a report on the matter to the Natural Resources Committee of the Parliament (unless the matter is not, in the opinion of the board, significant).
- (4) In performing its functions, a regional NRM board should (as far as is reasonably practicable) seek to work collaboratively with—
- (a) the other regional NRM boards whose regions adjoin the region of the board; and
  - (b) other State agencies, agencies of the Commonwealth, and agencies of the other States and Territories, that have functions that are relevant to those of the board; and

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- (c) NRM groups with areas that fall (wholly or partially) within the region of the board; and
  - (d) the constituent councils for the region, and other councils as may be relevant; and
  - (e) relevant industry, environment and community groups and organisations; and
  - (f) persons who own or occupy land within the region of the board (insofar as may be relevant).
- (5) A regional NRM board will, with respect to the performance of its functions, report to the Minister.
- (6) If the Minister assigns a function to a regional NRM board under subsection (1)—
- (a) the Minister must furnish a report on the matter to the Natural Resources Committee of the Parliament; and
  - (b) the regional NRM board must cause a statement of the fact of the assignment to be published in its next annual report.

## **Division 5—Powers of boards**

### **30—General powers**

- (1) A regional NRM 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 NRM 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 or 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 NRM 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 NRM board, limit or regulate the powers of the board in any other respect.

- (5) Subject to any direction of the Minister, a regional NRM board may, as the board thinks fit, undertake activities outside its region.
- (6) However, if a regional NRM board acts outside its region, the board must furnish a report on the matter to the Natural Resources Committee of the Parliament (unless the matter is not, in the opinion of the board, significant).
- (7) Money received by a regional NRM 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 without further appropriation by Parliament.
- (8) In this section—  
*project* includes any form of work, scheme, undertaking or other activity.

### **31—Special powers to carry out works**

- (1) Without limiting any other provision of this Act, a regional NRM 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 NRM 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 NRM 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.

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- (3) Subsection (2) does not limit or affect the ability of a regional NRM board to acquire land by agreement for the purpose of constructing any infrastructure or performing any work.
- (4) In this section—  
*lake* includes an artificial lake, dam or reservoir.

### 32—Entry and occupation of land

- (1) This section does not apply to, or in relation to, land the use, or the care, control and management, of which is vested in a regional NRM board.
- (2) For the purpose of carrying out an investigation or survey, or carrying out any work in an emergency, a regional NRM board, or a person authorised by a regional NRM board, may enter and occupy any land.
- (3) A regional NRM board or a person authorised by a regional NRM board must give reasonable notice of his or her intention to enter, or to enter and occupy, land to the occupier of the land.
- (4) The period of the notice must be at least 2 business days except—
- where the occupier has given his or her consent; or
  - in an emergency, in which case the person proposing to enter must give such notice (if any) as he or she considers is reasonable in the circumstances.
- (5) A regional NRM board or other person acting under this section may not enter residential premises except with the consent of the occupier.
- (6) A regional NRM board or other person entering or occupying land under this section—
- must cause as little harm and inconvenience as practicable; and
  - must not occupy the land for any longer than is reasonably necessary; and
  - must leave the land as nearly as possible in the condition in which he, she or it found the land; and
  - must co-operate as far as practicable with any owner or occupier of the land.
- (7) A person must not, without reasonable excuse, obstruct or hinder a person exercising powers under this section.  
Maximum penalty: \$10 000.
- (8) A person may use force to enter land (other than residential premises) under this section—
- on the authority of a warrant issued by a magistrate; or
  - if the person believes, on reasonable grounds, that the circumstances require immediate entry on to the land.
- (9) A magistrate must not issue a warrant under subsection (8) unless satisfied, on information given on oath, that the warrant is reasonably required in the circumstances.
- (10) An application for a warrant under subsection (8)—
- may be made either personally or by telephone; and

- (b) must be made in accordance with any procedures prescribed by the regulations.

### **33—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 NRM 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 NRM 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 NRM 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 NRM 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 NRM 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 NRM 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.

## **Division 6—Staff**

### **34—Staff**

- (1) The staffing arrangements for a regional NRM board will be approved by the Minister.
- (2) Any staff under subsection (1) will be—
  - (a) if appointments have been made under subsection (3)—the persons holding those appointments; or
  - (b) Public Service employees assigned to work with the regional NRM board.

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- (3) The employing authority may, after consultation with a regional NRM board, employ a person to perform functions in connection with the operations or activities of the board.
  - (4) The terms and conditions of employment of a person under subsection (3) will be determined by the employing authority after consultation with the board and after obtaining the approval of the Commissioner for Public Sector Employment.
  - (5) A person employed under subsection (3) 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*).
  - (6) The employing authority may direct a person employed under subsection (3) to perform functions in connection with the operations of a public sector agency specified by the employing authority (and the person must comply with that direction).
  - (7) The employing authority is, in acting under this section, subject to direction by the Minister.
  - (8) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
  - (9) The employing authority may delegate a power or function under this section.
  - (10) A delegation under subsection (9)—
    - (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 unconditional or subject to conditions; 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 power of the employing authority to act personally in any matter; and
    - (f) may be revoked at any time by the employing authority.
  - (11) 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.
  - (12) A regional NRM board must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment 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).
  - (13) A regional NRM board does not have the power to employ any person.
  - (14) In this section—

***public sector agency*** has the same meaning as in the *Public Sector Act 2009*.

## **Division 7—Committees and delegations**

### **35—Committees**

- (1) A regional NRM board—
  - (a) must establish the committees required by the regulations; and
  - (b) may establish such other committees as the board thinks fit,to advise or assist the board.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the regional NRM board.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the regional NRM board; or
  - (c) insofar as the procedure is not prescribed by regulation or determined by the regional NRM board—as determined by the committee.
- (4) A regional NRM board must, in acting under this section, comply with any guidelines issued by the Minister for the purposes of this section.

### **36—Power of delegation**

- (1) A regional NRM 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) with the approval of the Minister—to a committee established by 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 member of the staff of the board; or
  - (f) to an NRM group; or
  - (g) 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 NRM 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.

## **Division 8—Accounts, audit and reports**

### **37—Accounts and audit**

- (1) A regional NRM 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).

### **38—Annual reports**

- (1) A regional NRM board must, on or before 31 October in every year, provide to the NRM Council a report on its activities for the financial year ending on the preceding 30 June (and 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 NRM board has succeeded in implementing its regional NRM plan; and
  - (b) include the audited accounts and financial statements of the regional NRM board (together with any relevant accounts and financial information that relate to any NRM groups within its region); and
  - (c) be accompanied by the annual reports of the NRM groups within its region; and
  - (d) include other information required by or under this Act or the regulations.

### **39—Specific reports**

- (1) The Minister or the NRM Council may, by written notice to a regional NRM board, require the board to provide to the Minister or the NRM Council, within a period stated in the notice or at stated intervals, any report or reports relating to the performance, exercise or discharge of its functions, powers or responsibilities, as the Minister or the NRM Council (as the case may be) thinks fit.
- (2) If a requirement is imposed under subsection (1), the regional NRM board must cause a statement of the fact of the imposition of the requirement to be published in its next annual report.

## **Division 9—Appointment of administrator**

### **40—Appointment of administrator**

- (1) The Minister may appoint an administrator of a regional NRM board, or remove or replace an administrator previously appointed under this section.
- (2) Before appointing an administrator of a regional NRM board, the Minister must be satisfied that the board—
  - (a) has persistently failed properly to perform its functions; or
  - (b) has contravened, or failed to comply with, a provision of this Act; or
  - (c) has been guilty of serious financial mismanagement.

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Chapter 3—Administration

Part 3—NRM regions and boards

Division 9—Appointment of administrator

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- (3) The function of an administrator is to reorganise the management and operations of the regional NRM board to the extent necessary to enable it to perform its functions and exercise its powers efficiently on a continuing basis in accordance with this Act.
- (4) An administrator has, while the appointment remains in force, full and exclusive power to perform the functions and exercise the powers of the regional NRM board.
- (5) An administrator must comply with any directions that the Minister may give from time to time.
- (6) If an administrator has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to act as administrator under this section, the administrator must disclose the nature of the interest to the Minister before acting.  
Maximum penalty: \$20 000.
- (7) The remuneration of an administrator will be fixed by the Minister and is payable from the regional NRM board's funds.
- (8) An administrator may, by instrument in writing, delegate a function or power of the administrator under this Act.
- (9) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the ability of the administrator to act in any matter; and
  - (c) is revocable at will.
- (10) A person to whom functions or powers have been delegated under subsection (8) who has a direct or indirect personal or pecuniary interest in any matter in relation to which the person proposes to exercise those functions or powers must disclose the nature of the interest in writing to the administrator.  
Maximum penalty: \$20 000.
- (11) It is a defence to a charge of an offence against subsection (6) or (10) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (12) The members of a regional NRM board are suspended from office while an administrator holds office under this section.
- (13) The Minister must consult with the NRM Council before the Minister appoints an administrator under this section.

## **Division 10—Related matters**

### **41—Use of facilities**

A regional NRM 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.

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#### **42—Board's power to provide financial assistance etc**

- (1) A regional NRM board may provide financial or any other form of assistance—
  - (a) to councils, persons carrying on business, community or volunteer groups or any other persons if the council, person or group is engaged in an activity, whether in the board's region or not, that will improve the state of any natural resources, or that relates in any other way to the management of natural resources, taking into account the provisions of the board's regional NRM plan; or
  - (b) to assist persons who have been detrimentally affected as a result of the board's implementation of its regional NRM plan; or
  - (c) in any other circumstances as the board thinks fit.
- (2) A regional NRM board may require a person who wishes to obtain financial or other assistance under subsection (1) to make a written submission to the board setting out—
  - (a) the nature of the assistance requested (and, in the case of financial assistance, the amount requested); and
  - (b) the purpose or purposes for which and the manner in which the assistance will be used; and
  - (c) the reasons why, in the applicant's opinion, the granting of the assistance by the board is justified.
- (3) A regional NRM board may make copies of submissions received by it under subsection (2) available for inspection and purchase by members of the public.
- (4) A regional NRM board may provide financial or other assistance on such conditions as the board thinks fit.
- (5) A regional NRM board must ensure that a report on any financial assistance provided under this section is included in its annual report.

#### **43—Assignment of responsibility for infrastructure to another person or body**

- (1) A regional NRM board may assign any responsibility for the care, control or management of infrastructure—
  - (a) to an NRM group; or
  - (b) to an owner or occupier of land on which the infrastructure is situated if the relevant owner or occupier agrees to the assignment; or
  - (c) with the approval of the Minister, to a third party.
- (2) A regional NRM board must, before seeking the approval of the Minister under subsection (1)(c), give notice of the proposed assignment to any owner or occupier of the land and give consideration to any submission that he or she 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)(b) or (c) 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 NRM 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 NRM 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).

#### **44—Appointment of body to act as a board**

- (1) The Governor may, by regulations made on the recommendation of the Minister, appoint a body specified in the regulations to be a regional NRM board under this Act.
- (2) The regulation must—
  - (a) identify the NRM region in relation to which the body is appointed; and
  - (b) set out the functions of the body (if any) that are in addition to the functions prescribed by this Act.
- (3) The Governor may, by subsequent regulation made on the recommendation of the Minister, vary or revoke a regulation under this section.
- (4) A regulation revoking a regulation may provide that the assets, rights and liabilities of the body that relate to its functions under this Act will vest in or attach to—
  - (a) the Crown; or
  - (b) a Minister; or
  - (c) with the agreement of the council or council subsidiary, a council or council subsidiary; or
  - (d) any other agency or instrumentality of the Crown; or
  - (e) any other person or body.
- (5) Division 4, Division 5, Division 6, Division 7 and Division 8, and the other provisions of this Division, and any other provisions of this Act prescribed by the regulations, apply to and in relation to a body appointed under this section as if it were a regional NRM board, subject to such exclusions or modifications as may be prescribed by the regulations.
- (6) A body appointed under this section is subject to direction by the Minister in performing its functions and exercising its powers under this Act.
- (7) If a body appointed under this section has been established by or under another Act and there is a conflict between a function of the body under that Act and a function of the body when acting as a regional NRM board under this Act, the body must perform its function under its originating Act in preference to its function under this Act.

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- (8) If a body must perform a function under subsection (7) in preference to a function under this Act, the Chief Officer may, after consultation with the Minister, perform the relevant function under this Act as if the Chief Officer were constituted as a regional NRM board.

## **Part 4—NRM groups**

### **Division 1—Establishment of areas**

#### **45—Establishment of areas**

- (1) A regional NRM board may, by notice in the Gazette, designate an area within its region as an area within which an NRM group will operate.
- (2) The relevant regional NRM board may, by subsequent notice in the Gazette—
- (a) vary the boundaries of an area established under this section;
  - (b) abolish an area established under this section.
- (3) If a regional NRM board takes action under subsection (2), the board may, with the approval of the Minister, by notice in the Gazette, make provision for the transfer, appointment or adjustment of property, assets, rights, liabilities or expenses as between any specified NRM authorities (and any such notice will have effect according to its terms and despite any other Act, law, agreement or arrangement).
- (4) Subsection (3) does not limit or derogate from the powers of the Minister under another section of this Act.
- (5) A regional NRM board must, before publishing a notice under subsection (1) or (2), give any constituent council for the area, and the South Australian Farmers Federation Incorporated and the Conservation Council of South Australia, notice of the board's intention to publish a notice under the subsection and give consideration to any submission made by the relevant body within a period (being at least 21 days) specified in the notice.
- (6) Two or more regional NRM boards may jointly establish an area under this section (on the basis that the area of the group will include parts of the areas of each of the boards).
- (7) A regional NRM board must, in connection with the operation of this section—
- (a) consult with the Minister before taking action under this section; and
  - (b) comply with any guidelines prepared by the Minister.

### **Division 2—Establishment of NRM groups**

#### **46—Establishment of groups**

- (1) The relevant regional NRM board or boards must, by notice in the Gazette, establish an NRM group for each area established under Division 1.
- (2) A notice under subsection (1) must—
- (a) identify the area in relation to which the NRM group is established; and
  - (b) assign a distinctive name to the NRM group.

- (3) The relevant regional NRM board or boards may, in a notice under subsection (1), limit or restrict the functions or powers of an NRM group under this Act (and any such provision will have effect according to its terms).
- (4) The relevant regional NRM board or boards may, by subsequent notice in the Gazette—
  - (a) vary a notice under this section (including by making a variation to any provision of the notice that applies under subsection (3));
  - (b) abolish an NRM group (on the basis that the relevant area is being abolished under Division 1).
- (5) Subject to subsection (6)(b), a notice relating to an NRM group under subsection (4) may provide that the property, assets, rights or liabilities of the local NRM group will vest in or attach to—
  - (a) the Crown; or
  - (b) a Minister; or
  - (c) another NRM authority; or
  - (d) any other agency or instrumentality of the Crown; or
  - (e) with the agreement of the relevant person or body, a person or body specified in the notice,(and any such notice will have effect according to its terms and despite any other Act, law, agreement or arrangement).
- (6) A regional NRM board must, in connection with the operation of this section—
  - (a) consult with the Minister before taking action under this section; and
  - (b) in the case of proposed action under subsection (5), not proceed without the specific approval of the Minister; and
  - (c) comply with any guidelines prepared by the Minister.

#### **47—Corporate nature and responsibility at regional level**

- (1) An NRM group—
  - (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 an NRM group, it will be presumed, in the absence of proof to the contrary, that the common seal of the NRM group was duly fixed to the document.
- (3) If the area of an NRM group lies wholly within the region of 1 regional NRM board—
  - (a) that board will be responsible for the NRM group; and

- (b) the NRM group is subject to direction by that board.
- (4) If the area of an NRM group includes parts of the regions of 2 or more regional NRM boards—
  - (a) after taking into account the recommendations of the relevant boards, the Minister will approve or, if necessary, determine, the extent to which each board will be responsible for the activities of the NRM group (and for any associated financial issues); and
  - (b) the NRM group is subject to direction by each board to the extent to which the board is responsible for the activities of the NRM group; and
  - (c) the relevant boards must consult with each other to ensure that there is a reasonable degree of co-ordination and co-operation between the boards with respect to the activities of the NRM group.

### **Division 3—Membership**

#### **48—Composition of NRM groups**

- (1) An NRM group consists of up to 7 members appointed by the relevant regional NRM board or boards, being persons who collectively have, in the opinion of the board or boards, knowledge, skills and experience determined by the board or boards to enable the NRM group to carry out its functions effectively.
- (2) The relevant regional NRM board or boards must, before making an appointment under subsection (1)—
  - (a) place a notice in a newspaper circulating generally throughout the relevant region inviting expressions of interest for appointment to the NRM group within a period prescribed by the regulations, and then take into account any such expressions received within the relevant time; and
  - (b) consult with—
    - (i) any constituent council for its region that is also a constituent council for the area of the NRM group; and
    - (ii) the South Australian Farmers Federation Incorporated; and
    - (iii) the Conservation Council of South Australia.
- (3) The Chief Executive of the Department must ensure that a copy of a notice under paragraph (a) of subsection (2) is published on the Department's website within 2 business days after being published under that paragraph.
- (4) The relevant regional NRM board or boards must ensure—
  - (a) that a majority of the members of an NRM group reside within the relevant NRM region or regions; and
  - (b) that a majority of the members of an NRM group are engaged in an activity related to the management of land.
- (5) At least 1 member of an NRM group must be a woman and at least 1 member must be a man.

- (6) The relevant regional NRM board or boards must appoint a suitable member of an NRM group to be the presiding member of the group.
- (7) The relevant regional NRM board or boards may appoint a suitable person to be the deputy of a member of an NRM group.
- (8) A deputy may act as a member of an NRM group during any period of absence of the member in relation to whom the deputy has been appointed.
- (9) A regional NRM board must, in connection with the operation of this section—
  - (a) consult with the Minister before taking action under this section; and
  - (b) comply with any guidelines prepared by the Minister.

#### **49—Conditions of membership**

- (1) A member of an NRM group will hold office on conditions determined by the Minister for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of office, be eligible for reappointment subject to the qualification that a person cannot act as a member of a particular NRM group for more than 9 consecutive years.
- (2) The relevant regional NRM board or boards may remove a member of an NRM group 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 neglect of duty; or
  - (d) for dishonourable conduct; or
  - (e) if irregularities have occurred in the conduct of the NRM group's affairs or the NRM group has failed to carry out its functions satisfactorily and the board or boards consider that the NRM group should be reconstituted for that reason.
- (3) The office of a member of an NRM group 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 relevant regional NRM board or boards; 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 under subsection (2).

#### **50—Allowances and expenses**

A member of an NRM group is entitled to fees, allowances and expenses determined by the Minister after consultation with the Commissioner for Public Sector Employment.

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**51—Validity of acts**

An act or proceeding of an NRM group is not invalid by reason only of a vacancy in its membership, a defect in the appointment of a member or a situation where all of the requirements of section 48(4) are not satisfied.

**51A—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of an NRM group 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 area for which the board is established generally or primary producers in the area generally, or a substantial section of those persons or primary producers; 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.

**Division 4—Functions of NRM groups****52—Functions of groups**

- (1) The functions of an NRM group are—
  - (a) to be actively involved in the development and implementation of any relevant regional NRM plan at the local level (to the extent specified or envisaged by that plan or specified by the relevant board or boards); and
  - (b) to develop, implement or participate in programs associated with natural resources management at the local level; and
  - (c) to promote public awareness of the importance of integrated and sustainable natural resources management within its area and to undertake or support educational initiatives with respect to natural resources management; and
  - (d) to provide advice to regional NRM boards, and other bodies and agencies, with respect to the assessment of various activities, proposals, situations or circumstances within its area; and
  - (e) such other functions prescribed by the regulations or assigned to the NRM group by a regional NRM board, or by or under this or any other Act.
- (2) In performing its functions, an NRM group should seek to work collaboratively with—
  - (a) any other NRM groups whose areas adjoin its area; and
  - (b) other State agencies and, if relevant, agencies of the Commonwealth, and agencies of the other States and Territories; and
  - (c) the constituent councils for the area of the NRM group, and other councils as may be relevant; and
  - (d) relevant industry, environment and community groups and organisations; and

- (e) persons who own or occupy land within the area of the NRM group (insofar as may be relevant).
- (3) An NRM group will, with respect to the performance of its functions, report to the regional NRM board or boards that have responsibility for the NRM group.

## **Division 5—Powers of NRM groups**

### **53—General powers**

- (1) An NRM group has the power to do anything necessary, expedient or incidental to—
- (a) performing the functions of the NRM group 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)), an NRM group 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) assume the care, control or management, or undertake the maintenance or repair of, any infrastructure; and
  - (e) seek expert, technical or other advice on any matter from any person or such terms and conditions as the NRM group thinks fit; and
  - (f) carry out projects; and
  - (g) act in conjunction with any other authority or person.
- (3) An NRM group 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) A regional NRM board may, by instrument in writing given to an NRM group, limit or regulate the powers of the NRM group with respect to its activities within the region of the board.
- (5) Subject to any direction by a regional NRM board, an NRM group may undertake activities outside its area.
- (6) In this section—
- project* includes any work, scheme, undertaking or other activity.

## **Division 6—Committees and delegations**

### **54—Committees**

- (1) An NRM group—
  - (a) must establish the committees required by the regulations, or by any regional NRM board that has responsibility for the NRM group; and
  - (b) may establish such other committees as the NRM group thinks fit,  
to advise or assist the NRM group.
- (2) A committee established under subsection (1) may, but need not, consist of or include members of the NRM group.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as prescribed by regulation; or
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the NRM group; or
  - (c) insofar as the procedure is not dealt with above—as determined by the committee.
- (4) An NRM group must, in acting under this section, comply with any guidelines issued by the Minister for the purposes of this section.

### **55—Power of delegation**

- (1) An NRM group 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 NRM group under this or any other Act.
- (2) An NRM group may only make a delegation to a council or council subsidiary, or to an officer of a council or a council subsidiary, under this section with the approval of the council or council subsidiary (as the case requires).
- (3) 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 NRM group to act in any matter; and
  - (d) is revocable at will.
- (4) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **Division 7—Accounts, audit and reports**

### **56—Accounts**

- (1) The regional NRM board or boards that have responsibility for an NRM group must ensure that proper accounts are kept of the NRM group's financial affairs.

- (2) The accounts required under subsection (1) will form part of the accounts of a regional NRM board and those accounts, and any related financial information, will be incorporated into the accounts and financial statements of that board for financial reporting and auditing purposes.

### **57—Annual reports**

- (1) An NRM group must, on or before 31 October in every year, provide to the regional NRM board or boards that have responsibility for the NRM group a report on its activities for the financial year ending on the preceding 30 June (and need not provide a report under the *Public Sector Act 2009*).
- (2) The report must include any information required by or under the regulations.

### **58—Specific reports**

- (1) The Minister or a regional NRM board may, by written notice to an NRM group, require the NRM group to provide to the Minister or the regional NRM board, within a period stated in the notice or at stated intervals, any report or reports relating to the performance, exercise or discharge of its functions, powers or responsibilities, as the Minister or the regional NRM board (as the case may be) thinks fit.
- (2) If a requirement is imposed under subsection (1), the NRM group must cause a statement of the fact of the imposition of the requirement to be published in its next annual report.

## **Division 8—Related matters**

### **59—Staff**

The Minister or a regional NRM board may provide staff to assist an NRM group in the performance of its functions.

### **60—Use of facilities**

An NRM group 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.

### **61—Appointment of body to act as group**

- (1) The Governor may, by regulations made on the recommendation of the Minister, appoint a body specified in the regulations to be an NRM group under this Act.
- (2) The regulation must—
  - (a) identify the area in relation to which the body is appointed; and
  - (b) set out the functions of the body (if any) that are in addition to the functions prescribed by this Act.
- (3) The Governor may, by subsequent regulation made on the recommendation of the Minister, vary or revoke a regulation under this section.

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- (4) A regulation revoking a regulation may provide that the assets, rights and liabilities of the body that relate to its functions under this Act will vest in or attach to—
- (a) the Crown; or
  - (b) a Minister; or
  - (c) with the agreement of the council or council subsidiary, a council or council subsidiary; or
  - (d) any other agency or instrumentality of the Crown; or
  - (e) any other person or body.
- (5) Division 4, Division 5, Division 6 and Division 7, and the other provisions of this Division, and any other provisions of this Act prescribed by the regulations, apply to and in relation to a body appointed under this section as if it were an NRM group, subject to such exclusions or modifications as may be prescribed by the regulations.
- (6) A body appointed under this section is subject to direction by any relevant regional NRM board in performing its functions and exercising its powers under this Act.
- (7) If a body appointed under this section has been established by or under another Act and there is a conflict between a function of a body under that Act and a function of the body when acting as an NRM group under this Act, the body must perform its function under its originating Act in preference to its function under this Act.
- (8) The Minister should consult with the relevant regional NRM board or boards before making a recommendation to the Governor under subsection (1).

## **62—Regional NRM board may act as an NRM group**

A regional NRM board may perform any function and exercise any power of an NRM group under this Act as if it were an NRM group.

## **Part 5—The Chief Officer**

### **63—Chief Officer**

- (1) The Chief Executive of the Department will be the Chief Officer for the purposes of this Act.
- (2) The Minister may authorise a person to act as the Chief Officer—
  - (a) during a vacancy in the office of Chief Executive; or
  - (b) when the Chief Officer is absent from, or unable to discharge, official duties.

### **64—Functions of Chief Officer**

- (1) The functions of the Chief Officer are—
  - (a) to assist the Minister in the administration of this Act and to provide advice to the Minister on the enforcement of this Act; and
  - (b) to undertake responsibility for the operations of State authorised officers under this Act and to keep the operations of other authorised officers under review; and

- (c) such other functions assigned to the Chief Executive by the Minister or by or under this Act.
- (2) The Chief Officer has the power to do anything necessary, expedient or incidental to—
  - (a) performing the functions of the Chief Officer under this Act; or
  - (b) furthering the objects of this Act.

### **65—Power of delegation**

- (1) The Chief Officer 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 Officer under this Act.
- (2) A delegation under this section—
  - (a) must be made by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Chief Officer 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.

## **Part 6—Authorised officers**

### **66—State authorised officers**

- (1) The Minister may appoint a person to be a State 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 a State 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) A State authorised officer is subject to direction by the Chief Officer.
- (5) The Minister may vary or revoke an appointment at any time.

### **67—Regional authorised officers**

- (1) Subject to this section, a regional NRM board may, by instrument in writing, appoint a person to be a regional authorised officer.
- (2) The Chief Officer may, by notice in writing addressed to a regional NRM board, specify the qualifications or experience that a person must possess in order to be appointed, or to remain, a regional authorised officer.
- (3) The Chief Officer may, by notice in writing addressed to the regional authorised officer, place conditions or limitations on the ability of a regional authorised officer to exercise a power under this or any other Act.

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- (4) The Chief Officer must provide a copy of any notice under subsection (3) to the relevant regional NRM board.
  - (5) Without derogating from subsection (3), the powers conferred on a regional authorised officer under this or any other Act may be exercised within the region of the relevant regional NRM board or, if authorised or directed by the Chief Officer, in any other region subject to any conditions or limitations specified by the Chief Officer.
  - (6) An appointment under this section may be made subject to such other conditions or limitations as the relevant regional NRM board thinks fit.
  - (7) A regional authorised officer is subject to direction by the regional NRM board.
  - (8) A regional NRM board must, at the direction of the Chief Officer, appoint one or more regional authorised officers, or additional regional authorised officers (as the case requires).
  - (9) A regional NRM board must, at the direction of the Chief Officer, revoke the appointment of a particular regional authorised officer, and may in any event revoke the appointment of a regional authorised officer at any time.
  - (10) A regional NRM board may only appoint an officer of a council as an authorised officer under this section with the agreement of the council.

## **68—Identity cards**

- (1) An authorised officer appointed under this Act 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 produce evidence of his or her appointment by showing a copy of his or her notice of appointment, or by showing his or her 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 his or her notice of appointment is not required to produce an identity card, and vice versa.

## **69—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) with the authority of a warrant issued by a magistrate, or in circumstances in which the authorised officer reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on, any 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;

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- (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—
- (a) the authorised officer is a State authorised officer; and
  - (b) the authorised officer—
    - (i) is acting on the authority of a warrant issued by a magistrate; or
    - (ii) is acting 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 that subsection, 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 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 Officer approves if the Chief Officer believes on reasonable grounds that such action should be taken.
- (11) 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.
- (12) If a person gives assistance to an authorised officer as required under subsection (11), 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.
- (13) 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.
- (14) An authorised officer must, before exercising powers under this section in relation to a person, insofar as is reasonably practicable, provide to the person a copy of an information sheet that sets out information about the source and extent of the authorised officer's powers under this section, and about the action that may be taken against the person if the person fails to comply with a requirement or direction of an authorised officer under this section.
- (15) For the purposes of subsection (14), an *information sheet* is a document approved by the Minister for the purposes of that subsection.
- (16) Subsection (14) does not apply in any circumstances of a prescribed class.
- (17) 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 Officer from the person to whom the permit has been issued (and, if the Chief Officer so directs, the animal may be retained by an authorised officer until those costs and expenses are paid).
- (18) 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).

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(19) In this section—

*Category 1 or Category 2 animal* means an animal assigned to such a category under Chapter 8.

## 70—Provisions relating to seizure

(1) If a thing has been seized under section 69(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 Officer, 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 Officer 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 Officer has, after taking reasonable steps in the circumstances, been unable to return the thing to the person from whom it was received,

the Chief Officer may deal with or dispose of the thing in such manner as the Chief Officer thinks fit.

(2) Subsection (1) does not limit the operation of section 69(10).

(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.

## **71—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 his or her knowledge, information or belief; or
- (c) produces a document or record that he or she 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 he or she 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 Officer, removes, destroys or interferes with any marker, peg or other item or equipment placed under section 69(1) by an authorised officer is guilty of an offence.

Maximum penalty: \$5 000.

## **72—Protection from self-incrimination**

A person is not obliged to answer a question or to produce a document or record as required under this Part if to do so might incriminate the person or make the person liable to a penalty (including in the nature of enforcement proceedings under this Act).

## **73—Offences by authorised officers**

An authorised officer, or a person assisting an authorised officer, who—

- (a) addresses offensive language to any other person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.

Maximum penalty: \$5 000.

## Chapter 4—NRM plans

### Part 1—State NRM Plan

#### 74—State NRM Plan

- (1) The NRM Council must prepare and maintain a plan to be called the *State Natural Resources Management Plan*.
- (2) The State NRM Plan is to set out principles and policies for achieving the objects of this Act throughout the State.
- (3) In connection with the operation of subsection (2), the State NRM Plan must—
  - (a) —
    - (i) assess the state and condition of the natural resources of the State; and
    - (ii) identify existing and future risks of damage to, or degradation of, the natural resources of the State; and
    - (iii) provide for monitoring and evaluating the state and condition of the natural resources of the State on an ongoing basis; and
  - (b) identify goals, set priorities and identify strategies with respect to the management of the natural resources of the State; and
  - (c) set out or adopt policies with respect to the protection of the environment and the interests of the community through the operation of this Act, including through the control of pest species of animals and plants; and
  - (d) promote the integrated management of natural resources; and
  - (e) include or address other matters prescribed by the regulations or specified by the Minister.
- (4) The State NRM Plan must take into account the provisions of the Planning Strategy and may identify changes (if any) considered by the NRM Council to be desirable to the Planning Strategy.
- (5) The State NRM Plan must also address, adopt or incorporate any plan, policy or strategy specified by the Minister.
- (6) The NRM Council must review the State NRM Plan at least once in every 5 years.
- (7) Subject to subsection (8), the NRM Council—
  - (a) may amend the State NRM Plan at any time; and
  - (b) must amend the State NRM Plan at the direction of the Minister.
- (8) The NRM Council must, in relation to any proposal to create or amend the State NRM Plan—
  - (a) prepare a draft of the proposal; and
  - (b) take reasonable steps to consult with—

- (i) any Government Department or other agency (including a Commonwealth Department or agency) that has a direct interest in the matter; and
    - (ii) each regional NRM board that has a direct interest in the matter; and
    - (iii) peak bodies,in relation to the proposal; and
  - (c) by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within a period specified by the NRM Council.
- (9) Subsection (8) does not apply in relation to an amendment that is being made at the direction, or with the concurrence, of the Minister—
- (a) in order to ensure that the State NRM Plan is consistent with any plan, policy or strategy that—
    - (i) has been prepared, adopted or applied under another Act; and
    - (ii) falls within a class prescribed by the regulations for the purposes of this provision; or
  - (b) in order to ensure that the State NRM plan is consistent with any plan, policy or strategy relevant to addressing an urgent situation that has arisen in relation to the protection of any natural resource, or specific class of natural resources, or in order to support the taking of urgent action to safeguard the ecological, environmental, social or economic value of any natural resource, or specified class of natural resources; or
  - (c) in order to remove or replace information in the State NRM Plan that has been superseded by information that is more reliable or accurate; or
  - (d) in order to make a change of form (without altering the effect of an underlying policy reflected in the State NRM Plan); or
  - (e) in order to take action which is considered or accepted by the Minister to be—
    - (i) addressing or removing irrelevant material or a duplication or inconsistency (without altering the effect of an underlying policy reflected in the State NRM Plan); or
    - (ii) correcting an error.
- (10) The State NRM Plan, and any amendment to the State NRM Plan (other than an amendment made at the direction, or with the concurrence, of the Minister), have no force or effect until adopted by the Minister.
- (11) The NRM Council must—
- (a) make reasonable provision for the publication of the State NRM Plan; and
  - (b) ensure that copies of the State NRM Plan are reasonably available for inspection (without charge) and purchase by the public at a place or places determined by the Minister; and

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- (c) ensure that public notice is given of any amendment to the State NRM Plan within a reasonable time after the amendment is made.
- (12) The State NRM Plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).
- (13) A failure of the NRM Council to comply with a requirement of this section cannot be taken to affect the validity of the State NRM plan, or any other plan or instrument under this Act.
- (14) For the purposes of this section, the *peak bodies* are—
- (a) the LGA; and
  - (b) local government bodies nominated by the LGA for the purposes of this section; and
  - (c) the South Australian Farmers Federation Incorporated; and
  - (d) the Conservation Council of South Australia; and
  - (e) any other bodies interested or involved in natural resources management recognised by the Minister as a peak body for the purposes of this section.

## Part 2—Regional plans

### Division 1—Regional NRM plans

#### 75—Regional NRM plans

- (1) A regional NRM board must prepare and maintain a plan for the purposes of its operations (a *regional NRM plan*).
- (2) The plan must be in a form determined or approved by the Minister.
- (3) A plan must—
  - (a) include information of a kind prescribed by the regulations as to—
    - (i) the natural resources within the relevant region; and
    - (ii) the state and condition of the natural resources within the relevant region, and related trends; and
    - (iii) environmental, social, economic and practical considerations relating to the use, management, conservation, protection, improvement and, if relevant, rehabilitation, of the natural resources within the relevant region; and
    - (iv) the management of pest species of animals and plants; and
    - (v) other prescribed matters; and
  - (b) include information about the issues surrounding the management of natural resources at the regional and local level, including information as to—
    - (i) methods for improving 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

- (ii) methods for the conservation, use or management of natural resources within the relevant region; and
  - (iii) action plans to ensure proper stormwater management and flood mitigation; and
  - (iv) arrangements to ensure proper management of wetlands and estuaries, and marine resources, with particular reference to the relationships between catchment, wetland, estuarine and marine systems; and
- (c) set out the board's goals in relation to natural resources management and explain how achievement of those goals will assist to achieve—
  - (i) the objects of this Act; and
  - (ii) if the plan is to apply within a part of the Murray-Darling Basin, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act; and
- (d) set out a scheme for the implementation of natural resources management programs and policies in the areas in which the board has an interest, including—
  - (i) through NRM groups; or
  - (ii) by working with, or engaging, councils or council subsidiaries, or other bodies or groups (including community groups and volunteers); and
- (e) set out the method or methods that the board will use—
  - (i) to monitor the state and condition of natural resources for the purposes of this Act, and related trends; and
  - (ii) to assess the extent to which it has succeeded in implementing the plan, with particular reference to the monitoring and evaluation of the effectiveness of natural resources management programs and policies implemented at the regional and local level; and
  - (iii) to assess the extent to which the board has succeeded in achieving its goals; and
- (f) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to promote the objects of this Act or to improve the relationship between the policies in the Development Plan and the policies reflected in the board's plan; and
- (fa) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation) to promote the objects of this Act and, insofar as the plan may apply within a part of the Murray-Darling Basin, the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act; and
- (g) identify the changes (if any) considered by the board to be necessary or desirable to—

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- (i) any activity or practice of another person or body; or
  - (ii) the manner in which, or the means by which, any other person or body performs any function or exercises any power,
- to further the objects of this Act; and
- (h) include—
    - (i) a strategic plan for the next ensuing 10 financial years; and
    - (ii) a business plan for the next ensuing 3 years, which incorporates an implementation program for the first of those years that includes—
      - (A) an assessment of the staff and physical resources that the board expects to require during the year; and
      - (B) an assessment of the infrastructure and land that the board wishes to acquire during the year; and
      - (C) information on the funding and support that is expected to be provided to NRM groups during the year, and on other areas of expenditure; and
      - (D) the source of funds necessary to meet expenditure during the year, including by the payment of an amount or the imposition of a levy under Chapter 5, and, if more than one source, the proportion of the funds to be raised from each source; and
  - (i) if the source, or one of the sources, of the board's funds is the recovery of an amount or the imposition of a levy (or proposed levy) under Chapter 5—include an assessment of the expected social impact of the imposition of any levy under that Chapter; and
  - (j) if the plan proposes an amount to be recovered by a regional NRM levy under Chapter 5 Part 1 Division 1—set out the basis of the levy that will apply under section 95(3)(a) and include an explanation as to why that particular basis has been chosen; and
  - (k) set out the matters that the board will consider when exercising its power to grant or refuse permits under Chapter 7 Part 2; and
  - (l) include such other information or material contemplated by this Act or required by the regulations.
- (4) A plan should be consistent with the State NRM Plan.
- (5) A plan, when adopted, (and amendments made to a plan when adopted) should, as far as practicable, be consistent with—
- (a) any relevant management plan under the *Coast Protection Act 1972*; and
  - (b) any relevant Development Plan under the *Development Act 1993* (subject to any proposal to amend such a plan); and
  - (c) any relevant environment protection policy under the *Environment Protection Act 1993*; and
  - (d) any relevant plan of management under the *National Parks and Wildlife Act 1972*; and

- (e) the principles of clearance of native vegetation under the *Native Vegetation Act 1991* and any guidelines relating to the management of native vegetation adopted by the Native Vegetation Council under that Act; and
  - (ea) any relevant management plan under the *Marine Parks Act 2007*; and
  - (f) any relevant policy relating to the administration or operation of a Mining Act published for the purposes of this Chapter by notice in the Gazette by the Minister for the time being administering that Act after consultation with the Minister administering this Act; and
  - (fa) if the plan relates to any part of the Arkaroola Protection Area under the *Arkaroola Protection Act 2012*—the management plan under that Act; and
  - (g) such other plans, policies, strategies or guidelines as are prescribed by the regulations.
- (6) The board must inform the Minister of the inconsistencies (if any) between the plan and plans, policies, strategies or guidelines referred to in subsection (5).
- (7) In addition, a plan must—
  - (a) address, adopt or incorporate any plan, policy or strategy specified by the Minister or the NRM Council; and
  - (b) address, and be consistent with, any intergovernmental agreement specified by the Minister.
- (8) A regional NRM board must, in preparing and reviewing its regional NRM plan, give due consideration to the plans of other boards insofar as this may be relevant to issues or activities under its plan.
- (9) 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 NRM 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.

## **Division 2—Water allocation plans**

### **76—Preparation of water allocation plans**

- (1) A regional NRM board must prepare a water allocation plan for each of the prescribed water resources in its region.
- (2) A plan prepared by a regional NRM board under subsection (1) will be taken to form part of the board's regional NRM plan (and procedures relating to the preparation and adoption of the plan may (but need not) be undertaken in conjunction with procedures for the preparation and adoption of that regional NRM plan).
- (3) A water allocation plan may relate to more than one prescribed water resource.
- (4) A water allocation plan must—
  - (a) include—

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- (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
- (ab) determine, or provide a mechanism for determining, from time to time, a consumptive pool, or consumptive pools, for the water resource; and
- (b) set out principles associated with the determination of water access entitlements and for the taking and use of water so that—
- (i) an equitable balance is achieved between environmental, social and economic needs for the water; and
  - (ii) the rate of the taking and use of the water is sustainable; and
- (c) in providing for the allocation of water 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
- (d) 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
- (e) identify and assess methods for the conservation, use and management of water in an efficient and sustainable manner; and
- (h) to the extent that the regional NRM plan does not so provide—
- (i) set out the matters that the board will consider when exercising its powers to grant or refuse permits under Chapter 7 Part 2; and
  - (ii) identify any policies reflected in a Development Plan under the *Development Act 1993* that applies within its region that should, in the opinion of the board, be reviewed under that Act in order to improve the relationship in the policies in the Development Plan and the policies reflected in the water allocation plan; and
  - (iii) identify the changes (if any) considered by the board to be necessary or desirable to any other statutory instrument, plan or policy (including subordinate legislation); and
- (i) include such other information or material contemplated by this Act or required by the regulations.
- (4a) A water allocation plan may provide for the constitution of 2 or more consumptive pools with respect to a particular part of a water resource and, in relation to each consumptive pool, assign a particular purpose to that consumptive pool.
- (4b) The basis on which a water access entitlement is to be determined may be expressed—
- (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 regional NRM board considers should apply under the water allocation plan.
- (4c) The periods specified for the purposes of a water access entitlement under subsection (4b) may be recurrent periods (such as financial years).
- (4d) A water allocation plan may—
- (a) set out appropriate policies and principles to assist in regulating the transfer of, or other dealings with, water management authorisations or water access entitlements (which policies may include provisions that provide for the 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 162 or 164D.
- (4e) A water allocation plan may provide for the variation of site use approvals or water resource works approvals of classes specified by the plan in circumstances specified by the plan.
- (5) The plan should be consistent with the other parts of the regional NRM plan.
- (6) 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.
- (7) 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 firstmentioned water resource.
- (8) 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.

- (9) 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 NRM board, have been identified as being appropriate to bring within the ambit of Part 5A Division 2 of Chapter 7 on account of their impacts on the prescribed water resource (taking into account the requirements of that Part); and
  - (c) set out policies or criteria that are to apply for the purposes of determining the extent to which a water allocation under Chapter 7 Part 5A should be varied in various cases (which may include circumstances that lead to an allocation being reduced to zero).
- (10) A water allocation plan may, for the purposes of subsection (9)—
- (a) make different provision as to any principles, methodologies or values according to any matter or circumstance specified by the regional NRM board;
  - (b) specify values (as measurements of hydrological impact) according to any number of trees, volume, area, year or other factor (as determined by the regional NRM board);
  - (c) exclude specified forests, or forests of a specified class, from a designation under subsection (9)(b) (so as to exclude them from the operation of Chapter 7 Part 5A Division 2).
- (11) A designation under subsection (9)(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.
- (12) A summary of the assessments undertaken for the purposes of subsection (9)(b) must be included in the water allocation plan.
- (13) For the purposes of subsections (9) and (10), hydrological impacts may be determined according to an assessment by the regional NRM board 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.
- (14) To avoid doubt, a water allocation plan may make provision under subsection (9) 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 125(5a).

## Division 3—Preparation and maintenance of plans

### 77—Application of Division

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

### 78—Concept statement

- (1) A regional NRM board must, in relation to a proposal to create a plan, prepare a *concept statement*.
- (2) A concept statement must—
  - (a) set out in general terms the proposed content of the plan; and
  - (b) specify matters to be investigated by the board before preparation of a draft plan; and
  - (c) set out the proposals (if any) for consultation on a draft plan (including proposals for public consultation during preparation of a draft plan) that are in addition to the requirements of this Act for consultation.
- (3) Before preparing a concept statement the board—
  - (a) must consult with any NRM group that has a direct interest in the matter; and
  - (b) must, if required by guidelines issued by the Minister for the purposes of this section, reach agreement with the Minister as to the contents of the concept statement.
- (4) The concept statement must be referred for comment to—
  - (b) any Government Department or other agency that has a direct interest in the proposed plan; and
  - (c) the NRM Council; and
  - (d) each constituent council for the region; and
  - (e) the public (by notice published in a newspaper circulating throughout the region).
- (5) The period for making comments under subsection (4) will be 6 weeks, or such longer period as the board may allow, and the board must, at the conclusion of that period, consider any relevant comments provided to the board within that period.
- (6) The board may, as a result of any comments considered under subsection (5), or in any event as it thinks fit, amend the concept statement.
- (7) However, if required by guidelines issued by the Minister for the purposes of this section, the board must reach agreement with the Minister before it makes an amendment to a concept statement under subsection (6).
- (8) The board must then ensure that the concept statement (as amended if the case requires), and the results of any relevant investigations, are made available to the public in the manner prescribed by the regulations.

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**79—Preparation of plans and consultation**

- (1) A regional NRM board must prepare a draft plan based on the concept statement and the results of the board's investigations.
- (2) The board must, during the preparation of the draft plan, take into account any relevant submissions made to the board in relation to the matter.
- (6) When the draft plan is completed, the board must—
  - (a) give a copy of it to—
    - (i) the Minister; and
    - (iii) any Government Department or other agency that has a direct interest in the proposed plan; and
    - (iv) the NRM Council; and
    - (v) the peak bodies; and
    - (vi) any NRM group that has a direct interest in the proposed plan; and
    - (vii) each constituent council for the region; and
    - (viii) if the board proposes that land should be acquired in connection with the implementation of the plan—the relevant owner or owners of land; and
    - (ix) if the draft plan has any application with respect to the operations of SA Water—SA Water; and
    - (x) such other persons or bodies as are prescribed by the regulations; and
  - (b) consult the public in relation to the plan.
- (7) The Minister may require that the board obtain the approval of the Minister before the board releases a draft plan under subsection (6).
- (8) A person or body (other than the Minister) to which a copy of a draft plan is provided under subsection (6)(a) may prepare and furnish a response to the board within the period prescribed by the regulations.
- (9) The board must consult with the public under subsection (6)(b) by inviting the public to make written submissions to the board and to attend a public meeting to be held in relation to the draft plan.
- (10) An invitation under subsection (9) must be by advertisement in—
  - (a) a newspaper circulating generally throughout the State; and
  - (b) a newspaper circulating throughout the board's region,and in such other form (if any) prescribed by the regulations or as the board thinks fit.
- (11) An advertisement required under subsection (10) must—
  - (a) identify the relevant region; and
  - (b) with respect to an invitation for submissions—state the name and address of the person to whom submissions must be sent and the time by which submissions must be received; and

- (c) with respect to an invitation to attend a public meeting—state the time and place at which the meeting will be held; and
  - (d) include an address at which copies of the plan may be inspected and purchased.
- (12) Written submissions must be made to the board by a date specified by the board (being a date that is at least 2 months after the first publication of an invitation under subsection (10)(a)).
- (13) A public meeting—
  - (a) will be held on a date specified by the board (being a date that is at least 14 days after the first publication of an invitation under subsection (10)(a)); and
  - (b) must be held at a time and place that will, in the opinion of the board, be reasonably convenient for a majority of those persons who are likely to attend the meeting.
- (14) The presiding member of the board will conduct the public meeting but if he or she is unable to attend then the board must appoint a suitable person to conduct the public meeting.
- (15) A person who has conducted a public meeting must, as soon as practicable after the meeting has concluded, submit a written report to the board summarising the comments made at the meeting by members of the public in relation to the draft plan.
- (16) The board must, after complying with the requirements of the preceding subsections, prepare a report on the matters raised during consultation on the draft plan and on any recommended alterations to the plan.
- (17) A report under subsection (16) must comply with any requirements prescribed by the regulations.
- (18) The board must furnish the report prepared under subsection (16) to the Minister.

## **80—Submission of plan to Minister**

- (1) On the receipt of a draft plan and report under section 79(18), the Minister must consult with the NRM Council, and may consult with such other persons or bodies as the Minister thinks fit.
- (2) The Minister must also, in considering a draft plan under this section, have regard to the submissions (if any) received from members of the public and to the reports of the person or persons who conducted any public meeting.
- (3) After complying with the requirements of subsections (1) and (2), the Minister may—
  - (a) adopt the plan with or without amendment; or
  - (b) refer the plan back to the board for further consideration.
- (4) The Minister must consult with the regional NRM board before making an amendment under subsection (3)(a).
- (5) If the Minister adopts the plan with amendment, the Minister must give—
  - (a) a copy of the plan as amended; or

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- (b) if it appears to the Minister that the part or parts of the plan that have been amended can conveniently be substituted in the draft plan—a copy of that part or those parts as amended,
- to the board and to each constituent council.
- (6) If the Minister refers the plan back to the board, it must prepare a new draft plan and follow the procedures as to consultation provided for by this Part in respect of the new draft.
- (7) The Minister adopts a plan by signing a certificate endorsed on the plan that the Minister has adopted the plan.
- (8) If a plan prepared under Division 1 provides that the whole or part of the funds required for implementation of the plan should comprise an amount to be raised under Chapter 5 (in this section referred to as a *levy proposal*) the Minister must, within 7 days after adopting the plan, refer the plan to the Natural Resources Committee of Parliament.
- (9) The Natural Resources Committee must, after receipt of a plan under subsection (8)—
- (a) resolve that it does not object to the levy proposal; or
  - (b) resolve to suggest amendments to the levy proposal; or
  - (c) resolve to object to the levy proposal.
- (10) If, at the expiration of 28 days from the day on which the plan was referred to the Natural Resources Committee, the Committee has not made a resolution under subsection (9), it will be conclusively presumed that the Committee does not object to the levy proposal and does not propose to suggest any amendments to it.
- (11) If an amendment is suggested under subsection (9)(b)—
- (a) the Minister may make the suggested amendment; or
  - (b) if the Minister does not make the suggested amendment, the Minister must report back to the Committee that he or she is not willing to make the amendment suggested by the Committee (in which case the Committee may resolve that it does not object to the levy proposal as originally adopted, or may resolve to object to the proposal).
- (12) The Minister must act under subsection (11) within 28 days after receiving the suggested amendment from the Committee.
- (13) If the Natural Resources Committee resolves to object to a levy proposal, the Presiding Member of the Committee must ensure that a copy of the plan is laid before the House of Assembly.
- (14) If the House of Assembly passes a resolution disallowing the levy proposal of a plan laid before it under subsection (13), the levy proposal ceases to have effect.
- (15) A resolution is not effective for the purposes of subsection (14) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the plan was laid before the House of Assembly.
- (16) If a resolution is passed under subsection (14), notice of the resolution must forthwith be published in the Gazette.

## **81—Review and amendment of plans**

- (1) A regional NRM board may initiate procedures to amend a plan at any time but in any event must review its business plan annually.
- (2) A board must, in relation to the annual review of its business plan required by subsection (1), amend the plan so that it specifies the next ensuing 3 financial years as the period to which its business plan relates.
- (3) A board may also, in connection with the annual review of its business plan required under subsection (1), propose amendments (if any) that are required for consistency with the State NRM Plan and may, as it thinks fit, propose such other amendments to the plan that the board considers to be necessary or desirable in the circumstances.
- (4) A regional NRM board must review its entire regional NRM plan at least once during each period of 5 years following adoption of the plan.
- (5) When reviewing a plan, a board must have regard to any relevant report of the NRM Council relating to the board.
- (6) Subject to subsections (7) and (9) and to Division 4, the procedures prescribed by or under this Division for the preparation and adoption of the original plan must be followed when a plan is amended under this section.
- (7) Subject to subsections (10) and (11), if the only amendments to a regional NRM plan are within the ambit of subsection (8), it is not necessary to follow the procedures referred to in subsection (6) if—
  - (a) a board—
    - (i) publishes a copy of the proposed amendments in a newspaper circulating in the board's region together with a notice inviting members of the public to provide it with written submissions in relation to the proposed amendments within a specified period (being a period of at least 21 days); and
    - (ii) in a case where an amendment proposes that funds should include an amount to be recovered by a levy under Chapter 5 Part 1 Division 1—takes reasonable steps to consult with any constituent council in relation to the proposed amendment within a specified period (being a period of at least 21 days); and
  - (b) the board forwards copies of any submissions received by it during the specified period to the Minister; and
  - (c) the Minister has regard to those submissions before adopting the amendment.
- (8) The following amendments are within the ambit of this subsection:
  - (a) amendments to the information included in a plan under section 75(3)(a);
  - (b) amendments to a plan that are within the ambit of subsection (2), or that otherwise relate to a matter included in a plan under section 75(3)(h), (i), (j) or (k) (including a proposal for the payment of an amount or the imposition of a levy under Chapter 5);

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- (c) without limiting a preceding paragraph, amendments to include new, additional or increased expenditure on a program or programs to address salinity levels at a particular place or within a particular area, and any associated amendments that relate to the imposition of a levy under Chapter 5;
  - (d) without limiting a preceding paragraph, amendments to address an urgent situation that has arisen in relation to the protection of any natural resource, or specific class of natural resources, within the region, or a part of the region, or in order to take urgent action to safeguard the ecological, environmental, social or economic value of any such natural resource or class of natural resources;
  - (e) amendments of a class prescribed by the regulations.
- (9) The regulations may modify or exclude any of the procedures referred to in subsection (6) for the purposes of considering and making amendments to a plan.
- (10) If—
- (a) an amendment proposes—
    - (i) that funds should now comprise or include an amount to be raised or recovered by a levy under Chapter 5 Part 1 Division 1 or Division 2; and
    - (ii) such a levy has not been imposed in the financial year immediately preceding the financial year in which the levy is to be imposed; or
  - (b) an amendment proposes—
    - (i) that a levy under Chapter 5 Part 1 Division 1 or Division 2 imposed in one financial year be again imposed in the next financial year; and
    - (ii) that the amount to be raised or recovered by the levy in the next financial year will be an amount that exceeds the amount raised for the last financial year adjusted to take into account increases (if any) in the CPI during the 12 months ending on 30 September in that last financial year,
- the procedures set out in section 80(8) to (16) must be followed when the plan is amended.
- (11) A regulation under subsection (8)(e) must not relate to the amendment of a water allocation plan.
- (12) The Minister may adopt an amendment to a regional NRM plan under subsection (7) with or without amendment.
- (13) If the Minister adopts an amendment with an amendment, the Minister must give a copy of the amendment as amended to the board and to each constituent council.
- (14) If the Minister adopts an amendment (with or without amendment) under subsection (7), the Minister must furnish a copy of the amendment to the Natural Resources Committee of the Parliament.

## **82—Time for implementation of plans**

- (1) Subject to this section, a plan cannot be implemented unless or until it has been adopted by the Minister.
- (2) A draft plan or amendments to a plan that have not been adopted by the Minister may be implemented by the regional NRM board with the consent of the Minister and the constituent councils and, in the case of a plan referred to in subsection (3), the consent of the Minister for the time being administering the *Water Industry Act 2012*.
- (3) The consent of the Minister for the time being administering the *Water Industry Act 2012* is required if, in the opinion of the Minister for the time being administering this Act, implementation of the plan or the amendments under subsection (2) would affect the quality or quantity of water flowing into any water infrastructure under the *Water Industry Act 2012*.
- (4) If the Minister and the Minister for the time being administering the *Water Industry Act 2012* cannot reach agreement for the purposes of subsection (3), 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).

## **83—Availability of copies of plans etc**

- (1) A regional NRM board must make—
  - (a) each plan; and
  - (b) all submissions made in respect of a draft plan in accordance with the consultation procedures under this Part; and
  - (c) such other documents as are prescribed by regulation,available for inspection and purchase by members of the public.
- (2) A board must not charge for inspection of a document referred to in subsection (1) and must not charge more than the fee prescribed by the regulations for sale of copies of a document referred to in subsection (1).

## **84—Time for preparation and review of plans**

- (1) The initial regional NRM plan prepared by a regional NRM board need not satisfy all the requirements of this Act but the board must bring it into a form that satisfies those requirements by an amendment, or series of amendments, or must substitute a comprehensive plan that satisfies those requirements as soon as practicable.
- (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 preparation of a concept statement or by the public and other consultation required by this Act, the Minister may dispense with the requirements for the concept statement and consultation in relation to the preparation and adoption of that plan.
- (3) A board should undertake the annual review of its plan within sufficient time to allow the amendments and procedures relating to amendments required by this Act to be completed before the commencement of the next financial year.

## **Division 4—Related matters**

### **85—Application of Division**

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

### **86—Validity of plans**

- (1) A plan, or a provision of a plan, is not invalid because it is inconsistent with the State NRM Plan.
- (2) A failure of a regional NRM 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.

### **87—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).

### **88—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 adopt 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 adopt 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 adopt 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 adopt the plan with the consent of the Governor.

## 89—Amendment of plans without formal procedures

- (1) A regional NRM board 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 following the procedures for amendment required by Division 3.
- (2) 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
  - (ab) to achieve greater consistency with the provisions of a management plan under the *Marine Parks Act 2007*; or
  - (b) to further the objects of the *River Murray Act 2003*, or the *Objectives for a Healthy River Murray* under that Act; or
  - (c) 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
  - (d) to achieve greater consistency with the terms or requirements of the Border Groundwater Agreement under the *Groundwater (Border Agreement) Act 1985*; or
  - (e) to achieve greater consistency with the terms or requirements of the Lake Eyre Basin Intergovernmental Agreement under the *Lake Eyre Basin (Intergovernmental Agreement) Act 2001*; or
  - (f) to achieve consistency with any other relevant intergovernmental agreement, without following procedures for amendment under Division 3 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 of the licences affected by the plan or the basis for the determination of a consumptive pool and that the Minister has consulted with the relevant regional NRM board before taking action under this subsection.
- (3) If the Minister makes an amendment under subsection (2), the Minister must furnish a report on the matter to the Natural Resources Committee of the Parliament.

## **90—Plans may confer discretionary powers**

A plan may confer discretionary powers.

## **91—Effect of declaration 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.



## Chapter 5—Financial provisions

### Part 1—NRM levies

#### Division 1—Levies in respect of land

##### 92—Contributions by constituent councils

- (1) If the regional NRM plan for a regional NRM board specifies an amount (the *base contribution amount*) to be contributed by the constituent councils for the region towards the costs of the board performing its functions under this Act in a particular financial year, the constituent councils are responsible to make a contribution based on that amount in accordance with the requirements of this Part in respect of that financial year.
- (2) Subject to this section, liability for the amount to be contributed by constituent councils will be shared between them—
  - (a) if the levy under section 95 is based on the value of rateable land—
    - (i) unless subparagraph (ii) or (iii) applies, in the proportions that the capital value of the rateable land in the relevant NRM region is distributed amongst the areas of the councils (this subparagraph applies despite the fact that an individual council uses a different basis to impose its levy—see section 95(3)(b));
    - (ii) if all of the constituent councils base their general rates on the site value of land—in the proportions that the site value of the rateable land in the relevant NRM region is distributed amongst the areas of the councils;
    - (iii) if all of the constituent councils base their general rates on the annual value of land—in the proportions that the annual value of the rateable land in the relevant NRM region is distributed amongst the areas of the councils;
  - (b) if the levy is a fixed amount on all rateable land—in proportion to the number of rateable properties situated in the area of each council (being properties that are also situated in the relevant NRM region);
  - (c) if the levy is a fixed amount that depends on the purpose for which rateable land is used—in proportion to the number of rateable properties used for each relevant purpose that are in the area of each council and are also in the relevant NRM region;
  - (d) if the levy is based on the area of rateable land—in the proportions that the area of the rateable land in the relevant NRM region is distributed amongst the areas of the councils;
  - (e) if the levy is based on the purpose for which rateable land is used and the area of rateable land—in the proportions that the area of the rateable land in the relevant NRM region that is used for each purpose is distributed amongst the areas of the councils;

- (f) if the levy is based on the location of rateable land—in proportion to the number of rateable properties situated within the location or locations in the area of each council (being properties that are also situated in the relevant NRM region).
- (3) The Minister may, in connection with the operation of subsection (2), determine that there should be differentiating factors applied with respect to the calculation of the respective shares of the constituent councils taking into account any matter prescribed by the regulations and make adjustments to the shares that the constituent councils would otherwise contribute on the basis of those factors.
- (4) The share of each council will be determined by the Minister after consultation with the council.
- (5) A council must, at the request of the Minister, supply the Minister with information in the possession of the council to enable the Minister to determine shares under subsections (2) and (3).
- (6) The Minister must, after making a determination of the share of each council taking into account all of the matters referred to above, submit the amount to be contributed by each council to the Governor for approval.
- (7) The Minister must cause notice of the determination of a council's share to be given to the council and to be published in the Gazette.
- (7a) If a piece of rateable land that is relevant to the operation of this section is divided—
- (a) by the boundaries of 2 or more NRM regions; or
  - (b) by the boundaries of 2 or more councils,
- then the whole of the land will be taken to be assigned to a particular NRM region or a particular council area (as the case requires) in accordance with a scheme set out in the regulations (and the other provisions of this Chapter will then apply accordingly so that only 1 regional NRM levy is imposed in relation to the whole of the land in accordance with the assignment and so that the whole of the levy so imposed will be payable with respect to the regional NRM board for the region to which the assignment relates).
- (8) 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.
- (9) In this section—

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

### **93—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.

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- (2) If notice of a regional NRM 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 share to be contributed by the council was not approved by the Governor 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 NRM board under this section and any interest that accrues in respect of that amount is recoverable by the board as a debt.

#### **94—Funds may be expended in subsequent years**

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

#### **95—Imposition of levy by councils**

- (1) In order to reimburse themselves for the amounts contributed (or to be contributed) to a regional NRM board under this Division, the constituent councils must impose a levy (a *regional NRM 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 NRM 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 NRM levy:
  - (a) section 154(1), (2) and (3) of that Act will not apply in relation to the levy and the basis for the levy will be chosen from the following (as set out in the relevant regional NRM 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; or
    - (v) the purpose for which rateable land is used and the area of the land; or
    - (vi) the location of rateable land;
  - (b) if the value of rateable land is the basis for the levy under paragraph (a), a council must use capital value, site value or annual value as the basis to impose the levy;
  - (c) if a fixed charge is the basis for the levy under paragraph (a), then section 152 of that Act will apply subject to any modifications prescribed by the regulations;
  - (d) if relevant, the purposes for which land is used that may be the basis for the levy under paragraph (a) will be purposes prescribed by the regulations;

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- (e) despite section 154(6) of that Act, a levy under this section may be declared more than 1 month before the commencement of a financial year to which the levy relates with the approval of the Minister;
  - (f) section 151(5) of that Act will not apply in relation to the levy;
  - (g) section 156 of that Act will apply (subject to the use of any differentiating factor under paragraph (a));
  - (h) any other section, or part of any other section, of that Act prescribed by the regulations will not apply in relation to the levy;
  - (i) 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) A council must (as far as is reasonably practicable) fix a regional NRM 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 NRM board under this Division.
- (6) A regional NRM 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*.
- (7) The amount that applies under subsection (5) will be arrived at after taking into account any rebates or remissions to be granted by the council.
- (8) A regional NRM levy is not invalid because it raises more or less than the amount that applies under subsection (5).
- (9) 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.

**96—Costs of councils**

- (1) A regional NRM 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 Part.
- (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;
  - (b) limit any calculation of costs to amounts prescribed as fair costs;
  - (c) take into account any financial benefit to a council in receiving payment of a regional NRM levy before it pays its share of the amount to be contributed to the board under this Division.
- (3) A payment under subsection (1) must be paid in accordance with the regulations.

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- (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.

### 97—Outside council areas

- (1) If the regional NRM plan for a regional NRM 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 Minister may, with the approval of the Governor, by notice in the Gazette, declare a levy under this section.
- (2) A levy declared by the Minister under this section must be set at a level that will return an amount that is as near as reasonably practicable to the amount stated in the relevant regional NRM plan as the amount to be raised by the particular levy under this section, after taking into account any remissions that may apply under this section.
- (3) A levy is not invalid because it raises more or less than the amount referred to in subsection (2).
- (4) Subject to this section, a levy will be declared with respect to land within the relevant area (to be called *rateable land* for the purposes of this section).
- (5) The regulations may exclude land, or land of a prescribed class, from the operation of this section.
- (6) A levy may be based on 1 of the following factors:
- the capital value of rateable land;
  - a fixed charge of the same amount on all rateable land within the relevant area;
  - a fixed charge of an amount that depends on the purpose for which rateable land is used;
  - the area of rateable land;
  - the purpose for which rateable land is used and the area of the land;
  - any other factor prescribed by the regulations.
- (7) The purposes for which land is used that may be the basis for the levy under subsection (6) must be prescribed by regulation.
- (8) Differential levies may be declared on any basis prescribed by the regulations.
- (9) The Minister may, in declaring a levy, fix a minimum amount payable by way of a levy under this section (despite a preceding subsection).
- (10) Subject to subsection (11), 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 section.
- (11) If a person other than the owner of rateable land has, by notice to the Minister in a manner and form determined by the Minister, assumed liability to pay a levy under this section, that person will be liable to pay the levy.

- (12) The Minister must as soon as reasonably practicable after the declaration of a levy under this section 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.
- (13) 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 Minister is prepared to accept payment in instalments, the amount of each instalment and the date on or before which it must be paid.
- (14) 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.
- (15) The Minister may—
- (a) arrange for service of a notice to be effected as part of any other notice served by a public authority or other person;
  - (b) arrange for collection of a levy to be effected by a public authority or other person.
- (16) The Governor may, by regulation—
- (a) make other provisions for the collection of the levy (including by making provision for regional NRM boards to pay to the Minister the costs incurred by the Minister with respect to the collection of a levy under this section);
  - (b) grant remissions in respect of the levy, or a part of the levy;
  - (c) provide for such other matters as the Governor thinks fit.

## **98—Contributions towards work of NRM groups**

For the purposes of this Division, any money that under a regional NRM plan is to be raised for the purposes of NRM groups established within the relevant NRM region will be taken to form part of the costs of the relevant regional NRM board performing its functions under this Act.

## **99—Application of levy**

- (1) To avoid doubt, nothing in this Division prevents any levy raised in one part of the State being applied by a regional NRM board or NRM group in another part of the State in accordance with the provisions of an NRM plan.
- (2) However, the Minister cannot, by direction or by the exercise of any other power under this Act (including the power to amend an NRM plan), require a regional NRM board to apply any levy raised in its region in another part of the State.

## Division 2—Levies in respect of water

### 100—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 105;

**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 127(3)(e) with respect to the use of water in the circumstances described in section 127(5)(i);

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

**levy** includes—

- (a) an instalment of a levy; and
  - (b) a fee payable to the Minister under section 102(5).
- (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.

### 101—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 NRM region; or
  - (b) are the holders of imported water permits; or
  - (c) are authorised under section 128 to take water from a water resource within a specified NRM region.
- (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 relevant regional NRM plan 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) A regional NRM 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—

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- (i) in respect of a levy with respect to a water licence or water allocation—be declared with respect to 1 or both of the following:
      - (A) the right to an allocation of water under the terms of a water access entitlement or IWETS;
      - (B) the allocation of water under the terms of a water access entitlement or IWETS;
    - (ii) in respect of a levy with respect to a water resource works approval—be declared with respect to 1 or both of the following:
      - (A) the potential use of the relevant works for the purposes of taking water;
      - (B) the use of the relevant works for the purposes of taking water;
    - (iii) in respect of a levy with respect to a site use approval—be declared with respect to 1 or both of the following:
      - (A) the right to use water;
      - (B) the use of water; and
  - (b) levies under subsection (1)(c) may be declared with respect to 1 or both of the following:
    - (i) the right to take water;
    - (ii) the water taken.
- (5a) Levies may be declared, applied or imposed even if water is yet to be made available under the terms of a water access entitlement or IWETS.
- (6) A levy may comprise of 1 or more components based on 1 or more of the following factors (in any combination):
- (a) a fixed charge;
  - (b) the quantity of water allocated;
  - (c) the quantity of water received or taken;
  - (d) the quantity of water passing through any works;
  - (e) the size, type or capacity of any works;
  - (f) the quantity of water used;
  - (g) the share of the water that makes up the relevant water resource;
  - (h) the area of land where water may be used, or the area of land where water is used;
  - (i) the effect that taking or using water has, or may have, on the environment, or some other effect or impact that, in the opinion of the Minister, is relevant and that is capable of being determined, measured or applied.
- (6a) A quantity of water may be determined according to a unit, percentage, volume or proportion of water.

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- (7) Without limiting subsection (6)(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.
- (8) 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.
- (9) For the purposes of subsection (6) or (7), 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.
- (11) The Minister may, in declaring a levy, fix a minimum amount payable by way of a levy under this section (despite a preceding subsection).
- (12) 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.
- (13) 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.
- (14) A notice under subsection (1)—
- (a) has effect in relation to the financial year specified in the notice; and
  - (b) subject to subsection (15), must be published in the Gazette on or before the first day of that year.
- (15) A notice under subsection (1) with respect to a watercourse, lake or well, or surface water taken from a particular area of the State, may be published in the Gazette within 1 month after the watercourse, lake or well became a prescribed watercourse, lake or well or the area became a surface water prescribed area.

### **103—Special purpose water levy**

- (1) If, in the opinion of the Minister—
- (a) it is necessary or desirable to raise money for a particular purpose related—
    - (i) to the management of a prescribed water resource; or
    - (ii) to the management of any effect that the taking or using of water may have; or
    - (iii) to the restoration or rehabilitation of any part of the natural resources of the State, on account of the taking or using of water; and

- (b) it is not fair or reasonable that all persons who have water management authorisations in relation to the water resource should contribute, or contribute to the same extent, to the amount needed for that purpose; and
  - (c) the relevant regional NRM plan has identified a levy under this section as an appropriate way to raise money for the purpose concerned,

the Minister may, by notice in the Gazette, declare a levy (a *special purpose water levy*) that is payable by those persons specified in the notice.
- (2) A special purpose water levy may be declared—
  - (a) on the basis that it will apply for a specified period corresponding to 1 or more financial years; or
  - (b) on the basis that it will apply until brought to an end by the Minister by notice in the Gazette.
- (3) A person cannot be specified in a notice under subsection (1) unless, at some time during the period of 1 month immediately preceding publication of the notice, he or she held a water management authorisation that relates to the water resource.
- (4) The Minister may only declare a special purpose water levy if a majority of the persons named in the notice have given their consent to it in writing but if a majority do consent then all of the persons named are primarily liable for the levy even though any entitlement to which a relevant water management authorisation relates has subsequently ceased or otherwise come to an end.
- (5) The consent must be in a form prescribed by regulation and must include the following information:
  - (a) the amount of the proposed levy at the time of its declaration and the amount that imposition of the levy is expected to raise during a specified period of at least 12 months; and
  - (b) the purpose for which money raised by the levy will be used; and
  - (c) the names of the persons to be specified in the notice who will be primarily liable to pay the levy; and
  - (d) if the levy is to apply for more than 1 financial year—whether the levy may or will be altered from year to year and, if so, the basis on which an alteration will be made.
- (6) The Minister must serve the form of consent on all persons to be named in the notice as being primarily liable for the levy.
- (7) For the purpose of determining whether a majority of persons have given their consent to a levy, 2 or more persons who would be primarily liable for the levy in respect of the same water management authorisation or the same land or business will be counted as 1 person.
- (8) For the purpose of determining whether consent has been given, all of the persons (if more than one) who would be primarily liable for the levy in respect of the same water management authorisation or the same land or business must give their consent.

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- (9) A form of consent that purports to have been signed by a person who will be liable to pay a special purpose water levy must, in the absence of proof to the contrary, be taken in proceedings before a court or other tribunal to have been signed by that person.
- (10) Unless the contrary intention appears, this Division applies to and in relation to a special purpose water levy as though it were a levy declared under section 101, subject to any modifications or exclusions prescribed by the regulations.
- (11) The naming of the persons who will be primarily liable for a special purpose water levy in a notice under subsection (1) does not exclude the liability for the levy under section 104 of an existing owner of land or a person who subsequently owns or occupies the land.
- (12) Liability for a special purpose water levy is in addition to liability for a levy under section 101.
- (13) Nothing in this section limits the ability of the Minister to declare differential levies under section 101 on the bases set out in that section.

#### **104—Liability for levy**

- (1) For the purposes of this section—
- (a) a Category A levy is a levy within the ambit of section 101(5)(a)(i)(A), (ii)(A) or (iii)(A); and
  - (b) a Category B levy is a levy within the ambit of section 101(5)(a)(i)(B), (ii)(B) or (iii)(B).
- (2) Subject to this section, a person who holds a water management authorisation at any time during a financial year in respect of which a levy has been declared is liable to pay to the Minister the full amount of the levy whether he or she holds the water management authorisation throughout the year or not.
- (3) Subject to subsection (6), a person who takes water pursuant to an authorisation under section 128 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;

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- (iii) if the levy is payable with respect to or on account of an increase in a water allocation—at the time of the increase;
    - (iv) in any other case—at the commencement of the financial year to which the levy relates; and
  - (b) in the case of a Category B levy—the owner of the land (if the owner is not the person primarily liable under subsection (2)) when the relevant water was taken (including under another water management authorisation); and
  - (c) in the case of a levy with respect to an authorisation under section 128—the owner of the land (if the owner is not the person primarily liable under subsection (3)) when the water was taken; and
  - (d) all persons who own or occupy the land at any time—
    - (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 his or her 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 person is liable under this section for a levy with respect to a water management authorisation whether the water management authorisation was granted before or after the commencement of the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*.
- (8) A levy is payable even though taking water under the terms of a water management authorisation (including another relevant water management authorisation) has been prohibited or restricted under this Act or under a relevant water management authorisation.
- (10) 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 he or she holds the permit throughout the year or not.
- (11) A levy becomes payable on the date for payment stated in the notice under section 105.

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- (12) A levy or instalments of a levy are payable pursuant to a notice served under section 105 despite the fact that the person liable disputes the amount of the levy, but any overpayment must be refunded by the Minister when the correct amount is finally determined.

### **105—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 104.
- (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.

### **106—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 (3), 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).
- (3) The Minister cannot make an assessment under subsection (1)(c) of the quantity of water taken (except for domestic or stock purposes) unless, before the commencement of the accounting period in relation to which the assessment is to be made, the Minister publishes in the Gazette—
- (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;
  - (b) if the basis of assessment is to be crop area—water use rates for the crop concerned;
  - (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.
- (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 per cent 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 per cent and the Minister is able to determine the degree of inaccuracy, the Minister may serve a further notice under section 105 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 per cent but the Minister is unable to determine the degree of inaccuracy, the Minister may serve a further notice under section 105 based on the Minister's assessment under subsection (1)(c) and subsection (3) 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 per cent, 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 128 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.
- (12) The Governor may, by regulation, prescribe standards for meters used for the purpose of determining the quantity of water taken.

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

- (1) If a person who holds a water management authorisation or an imported water permit has failed to pay a levy, or an instalment of a levy, within 3 months after being served with a notice under section 105, the Minister may serve further notice on the holder of the water management authorisation or permit requiring payment within a period of not less than 1 month and stating that the water management authorisation or permit (as the case may be) may be cancelled, suspended or varied by the Minister if the amount is not paid within that time.
- (2) The Minister may cancel, suspend or vary the water management authorisation or imported water permit by 7 days written notice served on the holder of the water management authorisation or permit if the levy or instalment is not paid in accordance with the notice referred to in subsection (1).

### **108—Costs associated with collection**

- (1) Subject to subsection (2), a regional NRM 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 NRM board with respect to a particular financial year cannot exceed an amount determined in accordance with the regulations.

## **Division 3—Special provisions**

### **109—Application of Division**

This Division applies to—

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

### **110—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.

### **111—Discounting levies**

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

### **112—Recovery rights with respect to unpaid levy**

- (1) In the case of an OC-NRM levy, the levy will be a first charge on rateable land in accordance with a scheme established by the regulations.
- (2) In the case of an NRM water levy, other than a levy imposed in relation to a water licence or water allocation, the levy will be a first charge on—
  - (a) in the case of a levy imposed in relation to a site use approval or delivery capacity entitlement—any land where any water that relates to the relevant water management authorisation is used;
  - (b) in the case of a water resource works approval—the land where the relevant works are located, or to which they are connected (taking into account any principles prescribed by the regulations),in accordance with a scheme established by the regulations.
- (3) In addition, any levy that is not paid in accordance with a notice under section 105, together with any interest under section 110, may be recovered by the Minister as a debt from any person who is liable to pay the levy.
- (4) No statute of limitations bars or affects any action or remedy for recovery by the Minister of an amount under subsection (3).

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- (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.

### **113—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, he or she 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;

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- (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 his or her 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.

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- (16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is vested in a purchaser or the Minister in pursuance of this section, the Registrar-General may register the vesting despite the non-production of the duplicate, but in that event the Registrar-General must cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee or the Minister (as the case may be).
- (17) 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

### 114—Refund of levies

- (1) A regional NRM 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 NRM board.
- (6) A regional NRM board must grant an application under this section if the relevant criteria set out in the regional NRM 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 one 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 NRM board under this section.
- (9) On the granting of an application, the relevant regional NRM 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 NRM 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.

### **115—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
  - (ca) a person who is the holder of a delivery capacity entitlement who takes water contrary to the provisions that apply in relation to that delivery capacity entitlement; or
  - (cb) a person who takes water and is not authorised under section 128 or as part of a water allocation to take that water, and so acts in contravention of this Act; or
  - (d) a person who has acted in contravention of a notice under section 132.
- (2) The Minister may declare different penalties—
- (a) depending on the quantity of water taken or used;
  - (b) for water taken from different water resources;
  - (c) in the case of a contravention of a notice under section 132—depending on the relevant circumstances.
- (3) Subject to subsection (3a), a notice declaring a penalty under subsection (1)(a), (b), (c) or (ca)—
- (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.
- (3a) If the Minister has not declared a penalty or penalties under paragraph (a), (b), (c) or (ca) 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.

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- (4) A notice declaring a penalty under subsection (1)(cb)—
- (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.
- (5) The sections of this Chapter prescribed by the regulations apply to, and in relation to, a penalty under this section as though it were a levy declared under section 101.
- (6) In this section—
- accounting period* and *consumption period* have the same respective meanings as in Division 2.

### 116—Appropriation of levies, penalties and interest

- (1) Money paid to the Minister 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 NRM board for the region in respect of which the levy is declared;
    - (ii) in the case of a levy under Division 2—
      - (A) in the case of money attributable to a water levy—be paid to the regional NRM board for the region where the water resource in relation to which the levy was declared is located; and
      - (B) in the case of a special purpose water levy—be applied for the purpose for which the levy was raised;
  - (b) in the case of a penalty under section 115—be paid into the NRM Fund;
  - (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) Money paid to the Minister will be deposited in the NRM Fund.

## Part 2—Statutory funds

### Division 1—The Natural Resources Management Fund

#### 117—The Natural Resources Management Fund

- (1) There will be a fund kept in a separate account at the Treasury to be called the *Natural Resources Management Fund*.
- (2) The NRM 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

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- (d) the prescribed percentage of fees (other than expiation fees) paid under this Act; and
  - (e) expiation fees and the prescribed percentage of penalties recovered in respect of offences against this Act; and
  - (f) 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 NRM 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 NRM Fund—
- (a) in making payments to regional NRM boards; or
  - (b) in paying subsidies or making grants or other payments to NRM authorities or 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 1; or
  - (e) for any other purpose to further the objects of this Act or to support the operation or administration of this Act; or
  - (f) in making any other payment required or authorised by or under this Act or any other law.

**118—Accounts**

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

**119—Audit**

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

**Division 2—Regional NRM board funds**

**120—Regional NRM board funds**

- (1) Each regional NRM 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* (including as to the need to prepare an annual financial statement in relation to the fund for the purposes of the annual audit by the Auditor-General).
- (2) The fund of a regional NRM 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 NRM 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 NRM board may apply any part of its fund—
- (a) in implementing its regional NRM plan, in initiating or supporting other projects and programs 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 supporting the work of NRM groups; or
  - (d) in providing financial assistance to other bodies or persons in accordance with this Act; or
  - (e) in refunding a levy under Part 1 (as necessary); or
  - (f) in making any other payment required or authorised by or under this Act or any other law.



## Chapter 6—Management and protection of land

### 121—Interpretation

In this Chapter—

**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 NRM board for the relevant area; or
- (b) in prescribed circumstances—a State authorised officer.

### 122—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 Chapter.
- (2) Before taking action under subsection (1), the relevant authority must consider—
  - (a) any relevant provisions of the regional NRM plan; and
  - (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; and
  - (c) any factors prescribed by the regulations.
- (3) Furthermore, a relevant authority should take reasonable steps to attempt to resolve a matter with an owner of land, on the basis of the owner taking voluntary action to address a breach (or potential breach) of the general statutory duty in a manner acceptable to the relevant authority, before proceeding to the imposition of a requirement to prepare an action plan under this Chapter.
- (4) 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

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- (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 *Country Fires Act 1989*; or
  - (f) an activity undertaken in circumstances prescribed by the regulations.

### **123—Requirement to implement action plan**

- (1) A requirement to prepare an action plan under this Chapter 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 Officer for a review of the notice.
- (4) The Chief Officer may, on application under subsection (3) and after giving the applicant a reasonable opportunity to be heard and to place material before the Chief Officer, confirm, vary or set aside the notice.
- (5) The Chief Officer must prepare and make available written reasons for his or her decision on an application under subsection (3).
- (6) Subject to the outcome of any review under subsection (4) (and, if relevant, any appeal under Chapter 10), 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.
- (9) The owner may, within 21 days after receiving a notice under subsection (8), apply to the Chief Officer for a review of the notice.
- (10) The Chief Officer may, on application under subsection (9) and after giving the applicant a reasonable opportunity to be heard and to place material before the Chief Officer, confirm, vary or set aside the notice.
- (11) The Chief Officer must prepare and make available written reasons for his or her decision on an application under subsection (9).

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- (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 Officer or an NRM authority may—
    - (i) cause to be carried out such measures as appear to the Chief Officer or NRM authority (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 paragraph (d) of subsection (12) 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 Officer or an NRM authority 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 Officer or an NRM authority under subsection (15), the Chief Officer or NRM authority (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 129, be required under Chapter 7, 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 Chapter to whom an application for a permit for that activity would otherwise have to be made.



## Chapter 7—Management and protection of water resources

### Part 1—General rights in relation to water

#### 124—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.
- (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.
- (3) However, subject to subsections (4) and (6)—
  - (a) —
    - (i) an authorisation under section 128; or
    - (ii) a water allocation that relates to the relevant water resource,is required to take water from a prescribed watercourse, lake or well or to take water from a surface water prescribed area; and
  - (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.
- (4) Subsection (3) 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).

- (5) Subsection (4) 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.
- (6) Subsection (3) 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 he or she gives the water if the rate at which the water is taken does not exceed the rate prescribed by regulation.
- (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.
- (7) Despite the other provisions of this section, water must not be taken contrary to the provisions of an NRM plan that applies in relation to that water unless the water is taken pursuant to an authorisation under section 128 or a water allocation that relates to the relevant water resource.
- (8) Rights at common law in relation to the taking of naturally occurring water are abolished.

## **125—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.
- (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) Before making a recommendation to the Governor, the Minister must—
  - (a) cause to be published in the Gazette, in a newspaper circulating generally throughout the State and in a local newspaper a notice outlining the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least 3 months) specified in the notice; and
  - (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.

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- (6) 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.
- (7) 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.
- (8) In this section—
- local newspaper* means a newspaper circulating in the part of the State in which the water resource to which the regulation applies or will apply is situated.

## Part 2—Control of activities affecting water

### Division 1—Determination of relevant authority

#### 126—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 (6), the relevant authority in relation to activities for which a permit is required under this Part is—
- (a) in the case of an activity referred to in section 127(3)(a), (b) or (c)—the Minister;
  - (b) in the case of an activity referred to in section 127(3)(d) where—
    - (i) a comprehensive NRM plan has been adopted for the region in which the activity is to be undertaken—the regional NRM board for that region;
    - (ii) in any other case—the Minister;
  - (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;
  - (d) in the case of an activity (other than an activity referred to in paragraph (c)) referred to in section 127(3)(e) or (f)—the authority (being the Minister, the regional NRM board, an NRM group, a council or a council subsidiary) specified in the relevant NRM plan or regulation as the authority from whom the permit must be obtained.
- (3) The authority that is specified as the relevant authority by subsection (2) or by an NRM plan or regulation under paragraph (d) of that subsection may appoint the Minister, a regional NRM board, an NRM group, a council or a council subsidiary in its place to be the relevant authority and in that event the Minister, board, NRM group, council or council subsidiary so appointed is the relevant authority.
- (4) An appointment under subsection (3) must be in writing.

- (5) An NRM plan will be taken to be a comprehensive plan in relation to a permit for an activity referred to in section 127(3)(d) if the Minister has given to the regional NRM board a certificate that, in the Minister's opinion, the plan deals comprehensively with matters requiring consideration before granting or refusing a permit for an activity of that kind.
- (6) 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 Part.

## **Division 2—Control of activities**

### **127—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 128; 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 Part 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 an NRM plan that applies in relation to that water.
- (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 (5) that is identified in an NRM plan that applies in the region 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) The Minister must not make a recommendation under subsection (3)(f) unless or until the Minister has consulted with the Natural Resources Committee of the Parliament in relation to the proposed regulations.
- (5) Subject to this Act, a person must not undertake any of the following activities contrary to an NRM plan applying in the region in which the activity is 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 an NRM region at a rate that exceeds the rate prescribed by an NRM plan 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 an NRM region at a rate that exceeds a rate prescribed by an NRM plan;
  - (k) an activity prescribed by the regulations.
- (5a) 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

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- (b) a person must not use water or surface water (as the case may be) taken from the relevant water resource unless authorised to do so by a site use approval; and
  - (c) if the relevant water allocation plan so requires—a person must not take water or surface water (as the case may be) unless authorised to do so by a delivery capacity entitlement.
- (5b) Subsection (5a) does not apply—
- (a) in the case of subsection (5a)(a)—to any works prescribed by regulation under this paragraph;
  - (b) in the case of subsection (5a)(b)—to any circumstance or situation, or after any point, prescribed by regulation under this paragraph;
  - (c) in the case of subsection (5a)(c)—to any circumstance or situation prescribed by regulation under this paragraph.
- (6) A person who—
- (a) contravenes subsection (1), (2), (3) or (5a); or
  - (ab) contravenes or fails to comply with a term or provision of a water management authorisation; or
  - (b) contravenes or fails to comply with a condition to which a management authorisation, an authorisation under section 128 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—\$70 000;
    - (B) where the offender is a natural person—\$35 000,whichever is the greater;
- (b) in any other case—
  - (i) where the offender is a body corporate—\$70 000;
  - (ii) where the offender is a natural person—\$35 000.

Expiation fee: If the offence relates to the breach of a prescribed condition of a water management authorisation—\$750.

- (7) The Minister, an NRM authority, a council or a council subsidiary that proposes to undertake an activity does not require a permit for the activity if he, she or it is the relevant authority for the purposes of granting permits for that kind of activity.

- (8) 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.
- (9) In this section—  
*prescribed rate* means \$25.

### **128—Certain uses of water authorised**

- (1) Subject to subsection (2), the Minister may, by notice published in the Gazette, 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 a newspaper circulating generally throughout the State.
- (6) If a notice referred to in subsection (1) applies to a particular water resource but does not apply generally throughout the State, a notice varying or revoking it under subsection (5) must also be published in a newspaper circulating in the area in which the water resource is situated.
- (7) A notice published under subsection (5) or (6) 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.
- (8) If SA Water has discharged water into a prescribed watercourse, the Minister may authorise SA Water to take water from the watercourse.
- (9) An authorisation under subsection (8) is subject to such conditions as the Minister thinks fit and may be varied or revoked by the Minister at any time.

### **129—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;

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- (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 NRM plan, or an approved action plan under Chapter 6, 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;
  - (c) to destroy vegetation growing in a watercourse or lake or on the floodplain of a watercourse pursuant to an obligation under Chapter 8 or in accordance with consent granted under the *Native Vegetation Act 1991*;
  - (d) to undertake an activity that is required to implement an approved action plan under this Act or an order or requirement under Chapter 9;
  - (e) to undertake an activity that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act;
  - (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*;
  - (g) to undertake an activity under an approved property plan under the *Pastoral Land Management and Conservation Act 1989*;
  - (h) to undertake an activity under section 43 of the *Pastoral Land Management and Conservation Act 1989*;
  - (i) to authorise a person to undertake an activity that he or she is authorised to undertake by a licence granted under Part 3 Division 2 of the *South Eastern Water Conservation and Drainage Act 1992* or Part 3 Division 5 of the *Upper South East Dryland Salinity and Flood Management Act 2002*;
  - (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 37 of the *Development Act 1993*; and
  - (b) in any event, subsection (1) does not apply if the operation of this section is excluded by the regulations.

- (4) A permit is not required to undertake an activity contemplated by subsection (2) if the well is within the ambit of Schedule 2.

### 130—Notice to rectify unauthorised activity

- (1) If a person has—
- (a) undertaken an activity of a kind referred to in this Division in contravention of—
    - (i) this Division; 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 128 or a permit,

the relevant authority may serve notice on the owner of the land on which the activity was undertaken directing him or her 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) he or she 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—\$50 000;
- (b) where the offender is a natural person—\$25 000.

- (3) In this section—

***corresponding previous enactment*** means—

- (a) the *Local Government Act 1934*; or
- (b) the *Water Resources Act 1990*; or
- (c) 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 128—the Minister or the Chief Officer.

### **131—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—\$50 000;
  - (b) where the offender is a natural person—\$25 000.
- (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 Officer; or
- (c) the relevant regional NRM board.

### **132—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 a newspaper circulating in that part of the State in which the watercourse, lake or well or the surface water is situated—

- (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—
- (a) at the expiration of 7 days from publication of the notice in the Gazette and in the newspaper;
  - (b) in relation to a person on whom a copy of the notice published in the Gazette and newspaper has been served personally or by post—at the time of service or the time specified in paragraph (a) whichever is the earlier.
- (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 he or she may take water; or
  - (b) direct him or her 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—\$50 000;
- (b) where the offender is a natural person—\$25 000.

Expiation fee: \$315.

- (8) If the owner or occupier of land fails to comply with a requirement of a notice under subsection (6)(a), the Chief Officer may enter the land and take the action specified in the notice and such other action as the Chief Officer considers appropriate in the circumstances and the Chief Officer'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 a newspaper circulating in that part of the State in which the water resource is situated.
- (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.

### **133—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 Chapter 9 Part 1; and
  - (b) a reparation order or reparation authorisation may be issued under Chapter 9 Part 1; and
  - (c) an order may be made by the ERD Court under Chapter 9 Part 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.

### **134—Minister may direct removal of dam etc**

- (1) The Minister may, on the recommendation of a regional NRM board or on the Minister's own initiative after consultation with the relevant regional NRM 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 211 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.

## Division 3—Permits

### 135—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) The decision of a relevant authority to grant an application must not be inconsistent with the State NRM plan.
- (4) A relevant authority must take into account the provisions of the relevant regional NRM plan when considering an application for a permit.
- (5) A relevant authority must not grant a permit contrary to a notice for the time being in force under section 132.
- (6) If an application for a permit relates to an area 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 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 application (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).
- (7) The relevant authority's decision on an application for a permit that relates to an area within the Murray-Darling Basin 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).
- (8) 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.
- (9) 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.
- (10) Depending on its nature, a condition may remain in force after the activity authorised by the permit has been completed.
- (11) 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.
- (12) 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.

- (13) If an NRM plan has been varied, a relevant authority may vary a permit granted by it so that the permit is not inconsistent with the plan.
- (14) If it is not possible or practicable to vary a permit under subsection (13) so that the permit is not inconsistent with an NRM plan, the relevant authority may revoke the permit.
- (15) 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.
- (16) In any other case, the relevant authority may vary, suspend or revoke a permit with the consent of the holder of the permit.
- (17) 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.
- (18) The holder of a permit may appeal to the ERD Court against the variation or revocation of the permit under this section.
- (19) 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.
- (20) In this section—
- relevant authority* in relation to a permit means the authority that is for the time being the relevant authority under section 126 for the purpose of granting or refusing an application for a permit of that kind.

### **136—Requirement for notice of certain applications**

- (1) This section applies to an application for a permit if an NRM plan 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 those persons specified in the plan and those persons (if any) prescribed by the regulations and to 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 regulation 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 him or her, 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).

### **137—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.

### **138—Availability of copies of permits etc**

- (1) The relevant authority must make—
  - (a) copies of permits granted by it; and
  - (b) written representations made under section 136 in relation to an application for a permit and the written response of the applicant (if any),  
available for inspection and purchase by members of the public.
- (2) The relevant authority must not charge for inspection of a document referred to in subsection (1) and must not charge more than the fee prescribed by regulation for sale of copies of a document referred to in subsection (1).

## **Division 4—Provisions relating to wells**

### **139—Well drillers' licences**

- (1) The Chief Officer 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 Officer'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 Officer.
- (4) If the holder of a well driller's licence contravenes or fails to comply with a condition of the licence—
  - (a) the Chief Officer 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: \$25 000.
- (5) The Chief Officer may cancel a well driller's licence if the Chief Officer 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 Officer under subsection (4)(a) or (5) on the ground that the decision was harsh or unreasonable.
- (7) The Chief Officer may vary a well driller's licence on the application of the holder of the licence.

### **141—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 regulation.

### **142—Non-application of certain provisions**

- (1) A provision of this Division 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 referred to in subsection (1) may be varied or revoked by subsequent proclamation.

### **143—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 2; 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 Officer 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).

#### **144—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—\$30 000;
  - (b) where the offender is a natural person—\$15 000.
- (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 Division 3; 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.

#### **145—Requirement for remedial or other work**

- (1) If the Chief Officer 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 Officer 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 Officer 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 Officer 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 Officer's opinion, a defect in a well resulted from work carried out by a licensed well driller, the Chief Officer 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—\$30 000;
  - (b) where the offender is a natural person—\$15 000.
- (6) If a person on whom a notice has been served fails to comply with the notice the Chief Officer 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 Officer considers appropriate in the circumstances and the Chief Officer's costs will be a debt due by the person to the Crown.

## **Part 3—Licensing and associated rights and entitlements**

### **Division 1—Water licences**

#### **146—Nature of water licences**

- (1) The Minister may grant a licence (a *water licence*) in respect of a prescribed watercourse, lake or well or in respect of the surface water in a surface water prescribed area or part of a surface water prescribed area.
- (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) If the regulations so require in prescribed circumstances, the Minister must, before acting under subsection (4) or (5)—
  - (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the matter.
- (7) A determination of the Minister under subsection (4) (including on account of a variation under subsection (5)) must, in relation to a water resource within the Murray-Darling Basin, take into account the terms and requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
- (8) A water licence is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.

#### **147—Water licences—applications and matters to be considered**

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

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- (4) If an application for a water licence is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the licence be subject to conditions specified by the Minister).
- (5) The Minister's decision on an application for a water licence that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of a water licence must—
- (a) be made in the public interest; and
  - (b) be consistent with requirements (if any) prescribed by the regulations.
- (7) The Minister may, if the licence is being issued under procedures that require the payment of a fee or purchase price with respect to the licence, require the relevant payment before granting a water licence.
- (8) In this section—  
***relevant water allocation plan*** means the water allocation plan that relates to the water resource in relation to which the licence is sought and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

## 148—Issuing of water licences

A water licence—

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

## 149—Variation of water licences

- (1) A water licence may be varied by the Minister—
- (a) at any time on the application of, or with the consent of, the licensee; or

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- (b) if the licence provides for intervals at which the conditions of the licence may be varied—at those intervals if, in the opinion of the Minister, the variation is necessary or desirable to more effectively regulate the use of water from the resource—
    - (i) in accordance with the relevant water allocation plan and this Act; or
    - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
  - (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the licence relates and the variation is necessary, in the opinion of the Minister, to prevent the licence from being inconsistent (as to the basis on which the water access entitlement is determined) or seriously at variance (as to the licence conditions) with the plan; or
  - (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) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).

- (4) A licensee may appeal to the ERD Court against—
  - (a) a decision to refuse to grant an application to vary his or her licence under subsection (1)(a); or
  - (b) the variation of his or her licence under subsection (1)(b), (c) or (d).
- (5) However, if the licence relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.
- (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a water licence under this section.
- (7) The Minister must, after making a variation, give notice of the variation to a person with a prescribed interest in the licence in accordance with the regulations.

### **150—Transfer of water licences**

- (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 his or her approval must—
  - (a) be made in a form approved by the Minister; and
  - (b) be accompanied by the fee prescribed by the regulations.
- (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 NRM 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) if the licence relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a transfer must be refused).
- (9) Subsection (8)(a) operates subject to the terms or requirements of an Interstate Water Entitlements Transfer Scheme.
- (10) If an application for a transfer relates to a licence that relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
- (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (13) or impose conditions specified by the Minister as part of his or her direction).
- (11) If an application for a transfer relates to a licence held by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *South Australian Water Corporation Act 1994*.
- (12) If a person is recorded on The Water Register as having an interest in a water licence (other than as a licensee), the Minister must not grant approval for a transfer under this section without the written consent of that person.
- (13) The Minister may, when granting an application for a transfer under this section—
- (a) vary the water access entitlement under the licence (including as to the basis on which the water access entitlement is determined);
  - (b) vary any condition of the licence—
    - (i) to ensure consistency with the relevant water allocation plan; or
    - (ii) in the case of a licence that relates to a water resource within the Murray-Darling Basin—to comply with any direction under subsection (10) or otherwise to take action to prevent, reduce or address damage to the River Murray;

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

### **151—Surrender of water licences**

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

## **Division 2—Allocation of water**

### **152—Source of allocation**

- (1) A water allocation may be obtained—
  - (a) on account of a water access entitlement under a water licence; or
  - (b) under an Interstate Water Entitlements Transfer Scheme.
- (2) In a case where subsection (1)(a) applies, the water allocation may be obtained—
  - (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 Minister will issue a water allocation that is to take effect for the purposes of this Act.

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- (4) 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.
- (5) A water allocation is subject to—
- (a) any other provision of this Act that operates with respect to the water allocation; and
  - (b) the conditions attached to the water allocation.
- (6) A water allocation is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.
- (7) A water allocation will relate to a specified period (not exceeding 12 months) and if water is not taken under the terms of the allocation during that period then that particular allocation will expire in any event at the end of that period.

**153—Issuing of water allocation**

- (1) A water allocation granted or issued by the Minister—
- (a) must be consistent with the relevant water access entitlement or IWETS (as the case requires) in relation to the volume of water granted; and
  - (b) must be consistent with the provisions of the relevant water allocation plan; and
  - (c) is subject to the conditions—
    - (i) prescribed from time to time by the regulations; or
    - (ii) endorsed on a relevant water licence or on the water allocation itself by the Minister.
- (2) Without limiting any other provision, a water allocation may—
- (a) comprise 1 or more components that expire on a future date;
  - (b) restrict the purpose for which any component or volume of water may be used.
- (3) In this section—

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

**154—Water allocations—matters to be considered**

- (1) The Minister may determine not to grant or issue a water allocation—
- (a) if in the opinion of the Minister—

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- (i) it would be contrary to the provisions of the relevant water allocation plan to grant or issue the water allocation; or
    - (ii) the water allocation would relate to water that is so contaminated that its use would create a risk to the health of people or animals; or
  - (b) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or
  - (c) to a person who has acted in contravention of this Act; or
  - (d) on any ground prescribed by the regulations; or
  - (e) on any other reasonable ground.
- (2) If a water allocation is within a class prescribed by the regulations for the purposes of this provision, the Minister must, before granting or issuing the water allocation—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the matter (including a direction that the water allocation not be granted or issued or, if it is granted or issued, then the water allocation be subject to conditions specified by the Minister).
- (3) The Minister's decision on the grant or issue of a water allocation that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as may be relevant).
- (4) In this section—  
***relevant water allocation plan*** means the water allocation plan that relates to the water resource in relation to which the water allocation applies and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

### 155—Reduction of water 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 NRM board; and
  - (b) cause to be published in the Gazette, in a newspaper circulating generally throughout the State and in a local newspaper a notice outlining the proposed recommendation, stating the reasons for it and inviting interested persons to make written submissions to the Minister in relation to the proposal within a period (being at least 3 months) specified in the notice (and then have regard to all submissions made in accordance with the notice); and
  - (c) have regard to the views of the regional NRM board and all submissions made in accordance with the notice.
- (6) The Minister may, in taking action under this section, make corresponding variations to water access entitlements and delivery capacity entitlements that relate to relevant water allocations reduced under this section.
- (7) Nothing in this section limits or affects the operation of section 156.

### **156—Variation of water allocations**

- (1) A water allocation may be varied by the Minister—
  - (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—
    - (i) in accordance with the relevant water allocation plan and this Act; or
    - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or

- (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the 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 164O; 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) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- (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 155.

### **157—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 his or her approval must—
  - (a) be made in a form approved by the Minister; and
  - (b) be accompanied by the fee prescribed by the regulations.
- (4) The Minister may refuse to grant approval for the transfer of a water allocation—
  - (a) if the holder of the water allocation is in breach of a condition of the water allocation; or
  - (b) unless or until any NRM water levy that has been imposed in relation to the relevant water licence has been paid.
- (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) if the water allocation relates to a water resource within the Murray-Darling Basin, must be made after taking into account the terms or requirements of the Murray-Darling Basin Agreement, or any relevant resolution of the Ministerial Council under that agreement; 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).
- (6) If an application for the transfer of a water allocation relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
  - (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (8) or impose conditions specified by the Minister as part of his or her direction).

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- (7) If an application for the transfer of a water allocation is made by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *South Australian Water Corporation Act 1994*.
- (8) 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—
    - (i) to ensure consistency with the relevant water allocation plan; or
    - (ii) in the case of a water allocation that relates to a water resource within the Murray-Darling Basin—to comply with any direction under subsection (6) or otherwise to take action to prevent, reduce or address damage to the River Murray.
- (9) As an example but without limiting subsection (8), if, following the transfer of a water allocation, the water will not be taken from the same part of the water resource as before, the Minister may exercise his or her powers under subsection (8)—
- (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.
- (10) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a water allocation is not chargeable with duty under that Act.

### **158—Surrender of water allocations**

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

## **Division 3—Water resource works approvals**

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

- (1) An application for a water resource works approval must be in a form approved by the Minister and must—
- (a) specify—
    - (i) the water resource in relation to which the approval is being sought; and
    - (ii) the nature and extent of the works for which the approval is being sought; and
    - (iii) the place where the works will be located; and
  - (b) be accompanied by the fee prescribed by the regulations; and

- (c) be accompanied by such other information or material as the Minister may require.
- (2) The Minister may, after receiving an application, request the applicant to provide such additional information or material as the Minister thinks fit in order to assess the application.
- (3) The Minister may refuse to grant an approval—
  - (a) if in the opinion of the Minister—
    - (i) it would be contrary to the provisions of the relevant water allocation plan to grant the approval; or
    - (ii) the proposed works are inappropriate after taking into account any matter prescribed by the regulations, or such other matters as the Minister thinks fit; or
  - (b) to a person, or to the associate of a person, who formerly held a water management authorisation that was cancelled under this Act; or
  - (c) to a person who has acted in contravention of this Act; or
  - (d) on any ground prescribed by the regulations; or
  - (e) on any other reasonable ground.
- (4) If an application for an approval is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
  - (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the approval be subject to conditions specified by the Minister).
- (5) The Minister's decision on an application for a water resource works approval that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of 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.

### **160—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) 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.
- (2) Without limiting the operation of subsection (1)(b), a condition of a water resource works approval that relates to a water resource within the Murray-Darling Basin may include—
  - (a) a requirement that a person who has the benefit of the approval enter into a bond in such sum and subject to such terms and conditions specified by the Minister, or enter into some other arrangement specified by the Minister (which may include the payment of a sum or sums of money into an account specified by the Minister), to ensure that money is available to address the costs of any damage to the River Murray (being the costs of any such damage within the meaning of section 3(5) of the *River Murray Act 2003*) that may be attributable to the taking or use of water from the resource;
  - (b) a requirement that a person who has the benefit of the approval—
    - (i) develop to the satisfaction of the Minister an environment improvement program containing requirements specified by the Minister, and then comply with the requirements of that program to the satisfaction of the Minister; or
    - (ii) participate in a specified environment improvement program (including a program that applies with respect to any part of the River Murray);
  - (c) a requirement that a person who has the benefit of the approval participate in any other form of scheme to protect, restore or otherwise benefit the River Murray specified by the Minister (including a scheme established by the Minister or any other person or body that has effect in relation to any part of the River Murray and including by payment of a sum or sums of money into an account established or used for the purposes of the scheme).
- (3) A condition of a kind referred to in subsection (2) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.

## 161—Variation of approvals

- (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—
    - (i) in accordance with the relevant water allocation plan and this Act; or
    - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or

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- (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) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- (4) The holder of a water resource works approval may appeal to the ERD Court against—
  - (a) a decision to refuse to grant an application to vary the approval under subsection (1)(a); or
  - (b) the variation of his or her licence under subsection (1)(b), (c) or (d).
- (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 water resource works approval under this section.
- (7) However, the Minister must, after making a variation, give notice of the variation to a person with a prescribed interest in the relevant land in accordance with the regulations.
- (8) Without limiting a preceding subsection, a water resource works approval may be varied by operation of the provisions of the relevant water allocation plan (and that variation will take effect by force of this subsection).

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## 162—Notice provisions

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

- (a) notice of the application must be given by the Minister, in accordance with the regulations, to those persons specified in the plan and to those persons (if any) prescribed by the regulations, and to the public generally; and
- (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 him or her, appeal to the ERD Court against the decision; and
- (i) if an appeal is lodged by a person who is entitled to be given notice of the decision under paragraph (g), the applicant for the 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) where an appeal is commenced—
  - (A) until the appeal is dismissed, struck out or withdrawn; or
  - (B) until the questions raised by the appeal have been finally determined (other than any question as to costs).

### **163—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.

### **164—Nature of approval**

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

## **Division 4—Site use approval**

### **164A—Site use 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) If an application for an approval is within a class of applications prescribed by the regulations for the purposes of this provision, the Minister must, before making a decision on the application—
- (a) consult the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is to be granted, then the approval be subject to conditions specified by the Minister).
- (5) The Minister's decision on an application for a site use approval that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of an approval must be consistent with requirements (if any) prescribed by the regulations.

### **164B—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) 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.

- (2) Without limiting the operation of subsection (1)(b), 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).
- (3) A condition of a kind referred to in subsection (2) may also be imposed with respect to damage to the River Murray occurring before the imposition of the condition.

### **164C—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 taking of water from the resource—
    - (i) in accordance with the relevant water allocation plan and this Act; or
    - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
  - (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the 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) if the approval relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- (4) The holder of 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 his or her licence 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 by operation of the provisions of the relevant water allocation plan (and that variation will take effect by force of this subsection).

#### **164D—Notice provisions**

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

- (a) notice of the application must be given by the Minister, in accordance with the regulations, to those persons specified in the plan and to those persons (if any) prescribed by the regulations, and to the public generally; and

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- (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 him or her, appeal to the ERD Court against the decision; and
- (i) if an appeal is lodged by a person who is entitled to be given notice of the decision under paragraph (g), the applicant for the site use approval or variation (as the case may be) must be notified by the ERD Court of the appeal and will be a party to the appeal; and
- (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) where an appeal is commenced—
    - (A) until the appeal is dismissed, struck out or withdrawn; or
    - (B) until the questions raised by the appeal have been finally determined (other than any question as to costs).

### **164E—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.

### **164F—Nature of approval**

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

## **Division 5—Delivery capacity entitlements**

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

- (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 thinks fit in order to assess the application.
- (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) The Minister's decision on an application for a delivery capacity entitlement that relates to a water resource within the Murray-Darling Basin must take into account the terms or requirements of the Murray-Darling Basin Agreement and any resolution of the Ministerial Council under that agreement (insofar as they may be relevant).
- (6) In addition, the Minister's decision on the grant of a delivery capacity entitlement must—
- (a) be made in the public interest; and
  - (b) be consistent with requirements (if any) prescribed by the regulations.
- (7) The Minister may, if the delivery capacity entitlement is being issued under procedures that require the payment of a fee or purchase price with respect to the delivery capacity entitlement, require the relevant payment before granting a delivery capacity entitlement.
- (8) In this section—  
***relevant water allocation plan*** means the water allocation plan that relates to the water resource in relation to which the delivery capacity entitlement is sought and includes the water allocation plan of another water resource (if any) that includes provisions relating to the taking, or the taking and use, of water from the firstmentioned water resource.

### **164H—Issuing of delivery capacity entitlements**

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

- (d) remains in force until the delivery capacity entitlement—
  - (i) is terminated by or under this Act; or
  - (ii) if relevant, expires under the terms of the delivery capacity entitlement.
- (2) Subject to any provision made under subsection (1)(c), a delivery capacity entitlement is personal property and may pass to another in accordance with the provisions of this Act or, subject to this Act, in accordance with any other law for the passing of property.

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

A delivery capacity entitlement—

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

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

- (1) A delivery capacity entitlement may be varied by the Minister—
  - (a) at any time on the application of, or with the consent of, the holder of the delivery capacity entitlement; or
  - (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—
    - (i) in accordance with the relevant water allocation plan and this Act; or
    - (ii) in accordance with the objects of the *River Murray Act 2003* or the *Objectives for a Healthy River Murray* under that Act; or
  - (c) at any time if there has been an alteration to the water allocation plan for the water resource to which the 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) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking 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); and
  - (d) must be consistent with requirements (if any) prescribed by regulation under this paragraph (which regulation may prescribe circumstances where an application for a variation must be refused).
- (4) The holder of a delivery capacity entitlement may appeal to the ERD Court against—
- (a) a decision to refuse to grant an application to vary his or her delivery capacity entitlement under subsection (1)(a); or
  - (b) the variation of his or her delivery capacity entitlement under subsection (1)(b), (c) or (d).
- (5) However, if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin then no right of appeal will arise under subsection (4) if the regulations so provide.
- (6) The Minister is not required to conduct a hearing or to give notice to a third party before varying a delivery capacity entitlement under this section.

#### **164K—Transfer of delivery capacity entitlements**

- (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 his or her approval must—
  - (a) be made in a form approved by the Minister; and
  - (b) be accompanied by the fee prescribed by the regulations.
- (5) 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 NRM 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) if the delivery capacity entitlement relates to a water resource within the Murray-Darling Basin, must be made after taking 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); 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) 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 that relates to a water resource within the Murray-Darling Basin and falls within a class prescribed by the regulations for the purposes of this provision (which class may be prescribed so as to consist of all such applications), the Minister must, before making his or her decision on whether to grant the application—
- (a) consult with the Minister to whom the administration of the *River Murray Act 2003* is committed; and
  - (b) comply with the Minister's directions (if any) in relation to the application (including a direction that the application not be granted, or that if it is granted, then the Minister exercise a specified power under subsection (12) or impose conditions specified by the Minister as part of his or her direction).
- (10) If an application for the transfer of a delivery capacity entitlement relates to a delivery capacity entitlement held by SA Water, the Minister's decision on the application must be made with the concurrence of the Minister for the time being administering the *South Australian Water Corporation Act 1994*.
- (11) The Minister may, before granting an application for the transfer of a delivery capacity entitlement, direct that an assessment of the effect of granting the application be made (at the expense of the applicant) by an expert appointed or approved by the Minister.

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Division 5—Delivery capacity entitlements

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- (12) 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 comply with any direction under subsection (9) or otherwise to take action to prevent, reduce or address damage to the River Murray;
  - (c) if relevant, take any other action required or permitted under an Interstate Water Entitlements Transfer Scheme.
- (13) A delivery capacity entitlement that has been transferred for a limited period reverts automatically to the transferor when the period expires.
- (14) Despite the provisions of the *Stamp Duties Act 1923*, the transfer of a delivery capacity entitlement is not chargeable with duty under that Act.

**164L—Surrender of delivery capacity entitlements**

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

**Division 6—Interstate agreements**

**164M—Interstate agreements**

- (1) The Minister may (on behalf of the State of South Australia) enter into an agreement with a Minister of any other State or a Territory—
- (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.

## **Division 7—Related matters**

### **164N—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 132, continue to use water without a water management authorisation until the end of the prescribed period or, if he or she applies for any necessary water management authorisation (depending on the circumstances of the particular case) within 6 months after the publication in the Gazette of the regulation declaring the resource to be 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 his or her reasonable requirements during the establishment period; or
  - (b) for water for a development, project or other undertaking to which he or she was legally committed or in respect of which he or she had committed significant financial or other resources during the establishment period; or
  - (c) under both paragraphs (a) and (b).
- (3) If at the expiration of the prescribed period, the aggregate of water access entitlements assigned to existing users under subsections (1) and (2) exceeds, in the opinion of the Minister, the capacity of the resource, the Minister may—
  - (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 132, 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 he or she was legally committed or in respect of which he or she had, in the opinion of the Minister, committed significant financial or other resources during the establishment period;

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

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

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

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

- (ii) to surrender the whole or a specified part of the water allocation to the Minister, for a price specified by the holder of the water allocation;
- (b) under which the holder of a water licence of a specified class must, in accordance with the terms of the scheme, make an offer to surrender the licence for a price specified by the holder of the licence;
- (c) under which the Minister will, in accordance with the terms of the scheme—
  - (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 NRM Register includes a notation that a person has an interest in the relevant water allocation or water licence and the acceptance has been made without the written consent of that person; or
  - (d) the Minister receives the relevant acceptance after the Minister has brought the scheme to an end; or
  - (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.

### **164P—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

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- (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 132, the Minister may cancel, suspend or vary the water management authorisation by 7 days written notice served on the holder of the water management authorisation.
- (3) If—
  - (a) the holder of a water management authorisation, or a person acting on behalf 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.

**164Q—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 Chapter 5, and any interest in respect of an unpaid levy or instalment, in relation to the entitlement;
  - (c) thirdly—in discharging any other liability of the former holder of the entitlement under this Act to the Minister or to 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 his or her whereabouts, an amount payable to the former holder of the entitlement must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (8) The purchaser of an entitlement under this section takes the entitlement free of all charges.

### **164R—Law governing decisions under this Part**

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

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

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

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

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

as expeditiously as possible and in any event within the prescribed period under subsections (4) and (5).

- (7) If the Minister does not decide an application within the prescribed period, the applicant may, after giving 14 days notice in writing to the Minister, apply to the ERD Court for an order requiring the Minister to make a decision on the application within a time fixed by the ERD Court.
- (8) If the ERD Court makes an order under subsection (7), the ERD Court should also order the Minister to pay the applicant's costs of the proceedings unless the ERD Court is satisfied—
  - (a) that the delay is not attributable to an act or omission of the Minister; or
  - (b) that the delay is attributable to a decision of the Minister not to deal with the application within a reasonable time because—
    - (i) it appeared to the Minister that there had been a failure to comply with a requirement imposed by or under this Act; or

- (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 4—Reservation of excess water by Minister**

### **165—Interpretation**

In this Part, unless the contrary intention appears—

*reserved water* means water reserved by notice published in the Gazette under section 166.

### **166—Reservation of excess water in a water resource**

- (1) If—
  - (a) a water allocation plan has been adopted 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 167 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 167 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).

### **167—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 one payment or a series of periodic payments;
  - (d) subsections (2) and (4) of section 151 do not apply in relation to an allocation of reserved water;
  - (f) 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*.

### **168—Public notice of allocation of reserved water**

- (1) If—
- (a) the Minister has by notice in the Gazette reserved water under this Part; 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.

## **Part 5—Water conservation measures**

### **169—Water conservation measures**

- (1) For the purposes of this section, water conservation measures may do one 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;

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- (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 one 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 Chapter; and
- (ii) to the provisions of any relevant water allocation plan, and of any other relevant part of this Chapter.
- (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—\$10 000;
  - (b) where the offender is a natural person—\$5 000.
- Expiation fee: \$315.

## **Part 5A—Interaction with Irrigation Acts**

### **169A—Interaction with *Irrigation Act 2009***

- (1) The Minister may transfer a water licence, and deal with any related entitlement under this Chapter, 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 Part 3 Division 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).

### **169B—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 Part 3 Division 1;

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- (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.

## Part 6—Related matters

### 170—Effect of water use on ecosystems

When making a decision under this Chapter 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.

### 171—By-laws

- (1) A regional NRM board has power to make by-laws with respect to any matter prescribed by the regulations in relation to—
- (a) water that is under the control of the board; or
  - (b) a watercourse or lake, or infrastructure, that is under the care, control and management of the board; or
  - (c) an area that is within the immediate vicinity of a watercourse or lake, or infrastructure, that is under the care, control and management of the board.
- (2) Without limiting the operation of subsection (1), the regulations may authorise by-laws that provide for the prohibition or regulation of—
- (a) the use of water that is under the control of a regional NRM board; or
  - (b) the use of a watercourse or lake, or infrastructure, that is under the care, control and management of a regional NRM board; or
  - (c) prescribed activities with respect to any such water, watercourse, lake or infrastructure, or any area that is within the immediate vicinity of any such watercourse, lake or infrastructure.
- (3) A regional NRM board cannot make a by-law that requires that a person obtain a licence from the board to carry out an activity unless the regulations have conferred express power in the board to do so.
- (4) A by-law under this section—
- (a) may make different provision according to the matters or circumstances to which they are expressed to apply; and

- (b) may provide that a matter or thing in respect of which the by-law may be made is to be determined according to the discretion of the regional NRM board, or a person or body prescribed by the regulations; and
  - (c) if the regulations so provide, fix a minimum as well as a maximum penalty for any breach of a by-law, or a maximum penalty only, or a general maximum penalty applicable to several by-laws provided that the maximum penalty so fixed does not exceed \$750, and in the case of a continuing offence fix a further penalty not exceeding \$50 for every day on which the offence or breach of the by-law continues.
- (5) A by-law under this section must—
  - (a) be consistent with the objects of this Act; and
  - (b) avoid unreasonable duplication or overlap with the provisions of this Act or the regulations; and
  - (c) be expressed plainly and in gender neutral language,but a by-law cannot be challenged on the ground that it is inconsistent with one or more of these principles.
- (6) A by-law under this section will not apply to, or in relation to, any activity undertaken by SA Water.
- (7) Before making a by-law under this section, a regional NRM board—
  - (a) must consult any council whose area may be directly affected by the operation of the by-law; and
  - (b) must cause to be published a notice in a newspaper circulating generally throughout the region setting out the text of the proposed by-law, stating the reasons for it and inviting interested persons to make written submissions to the board in relation to the proposal within a period (being at least 6 weeks) specified in the notice; and
  - (c) must have regard to the views of the council and to all submissions made in accordance with the notice; and
  - (d) may amend the text of the proposed by-law in response to one or more of those views or submissions.
- (8) In addition, a regional NRM board must not make a by-law unless or until—
  - (a) the board has obtained a certificate, in the prescribed form, signed by a legal practitioner certifying that, in the opinion the legal practitioner—
    - (i) the board has power to make the by-law; and
    - (ii) the by-law is not in conflict with this Act; and
  - (b) the Minister has given approval to the making of the by-law.
- (9) The Minister must not give an approval under subsection (8)(b) unless the Minister has given any council whose area may be directly affected by the operation of the by-law notice of his or her proposal to give the approval and given consideration to any submission made by the council within a period (of at least 21 days) specified by the Minister.

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- (10) A by-law comes into operation on the day on which it is published in the Gazette, or from a later day or days fixed in the by-law.
  - (11) Section 10AA of the *Subordinate Legislation Act 1978* does not apply to a by-law of a regional NRM board.
  - (12) In the event of an inconsistency between a by-law made by a regional NRM board under this section and a by-law made by a council under the *Local Government Act 1999*, the by-law made by the board will prevail (and the by-law made by the council will not apply to the extent of the inconsistency).
  - (13) A by-law made under this section, and all subsequent by-laws altering the by-law, unless it has already expired or been revoked, expires on the seventh anniversary of the day on which the by-law is published in the Gazette.
  - (14) Water for the time being comprising a water resource in the region of a regional NRM board will be taken to be under the control of the board.

### **172—Representations by SA Water**

- (1) If water is discharged into a watercourse or lake in the region of a regional NRM 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 NRM board must have regard to representations made under subsection (1).

### **173—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 NRM board 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;
- (c) the right of SA Water to erect dams or reservoirs across and in the bed of the River Torrens;
- (d) 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.

### **173A—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.



## Chapter 8—Control of animals and plants

### Part 1—Preliminary

#### 174—Preliminary

- (1) The Minister may, by notice in the Gazette—
  - (a) declare that a specified provision of this Chapter 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 control 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 control 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 an NRM plan.
- (5) For the purposes of this Chapter, 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 Chapter;
  - (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).

## Part 2—Control provisions

### Division 1—Specific controls

#### 175—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 control area for that class of animals or plants.

Maximum penalty: \$10 000.

- (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 control area for a class of plants to which this subsection applies—
- (a) a plant of that class; or
  - (b) any animal, plant, soil, vehicle, farming implement or other produce, goods, material or thing carrying a plant of that class.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (3) Subject to this Act, a person who owns land within a control 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 control area.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (4) It is a defence to a charge of an offence against subsection (2) or (3) if the defendant proves—
- (a) that the defendant acted in accordance with the terms of a written approval given by an authorised officer; or
  - (b) 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.

#### 176—Possession of animals or plants

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

Maximum penalty:

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

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

- (2) 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 control area for that class of plants.

Maximum penalty:

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

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

- (3) For the purposes of subsection (2), 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).

### **177—Sale of animals or plants, or produce or goods carrying plants**

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

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

- (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 a plant of a class to which this subsection applies.

Maximum penalty:

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

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

- (3) It is a defence to a charge of an offence against subsection (2) if the defendant proves—
- (a) that the defendant acted in accordance with the terms of a written approval given by an authorised officer; or
  - (b) 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.

### **178—Sale of contaminated items**

- (1) Subject to this Act, a person must not sell any animal, plant, soil, vehicle, farming implement or other produce, goods or materials that contain or are carrying a plant of a class to which this subsection applies without first giving notice of the presence of the particular plant to the purchaser in the manner set out in the regulations.

Maximum penalty:

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

Expiation fee: \$500.

- (2) Subsection (1) does not limit or affect the operation of section 177.
- (3) The Minister may, by notice in the Gazette, specify a form that must be used for the purpose of giving notice under subsection (1).
- (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (3).

### **179—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, in a control area for that class of animals.

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

- (2) 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 control area for that class of plants.

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

- (3) Subject to subsection (4), it is a defence to a charge of an offence against subsection (1) or 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) The defence prescribed by subsection (3) 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 control area then 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 control area then the defence would not apply.
- (5) Any reasonable costs or expenses incurred by the Minister, or an NRM authority, in the capture or destruction, or attempted capture or destruction, of an animal released in contravention of subsection (1) 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.
- (6) Any reasonable costs or expenses incurred by the Minister, or an NRM authority, in collecting, dealing with or destroying a plant released in contravention of subsection (2) 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.
- (7) An apparently genuine document purporting to be a certificate of the Minister or an NRM authority (as the case may be) stating the amount of any costs or expenses referred to in subsection (5) or (6) 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.
- (8) 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, 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.

### **180—Notification of presence of animals or plants**

- (1) If an owner of land within a control 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 NRM group for the area in which the land is situated (or, if there is no such group, the relevant regional NRM board) of the species of animal or plant and the locality in which it was seen or is to be found.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) If an NRM authority 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 control area for that class of animals or plants and its area or region, the NRM authority must, within 48 hours, notify the Chief Officer of the species of animal or plant and the locality in which it was seen or is to be found.
- (3) If the Chief Officer 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 control area for that class of animal or plant, the Chief Officer must, within 48 hours, notify the NRM group for the area in which the land is situated, and the regional NRM board, 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.

### **181—Requirement to control certain animals or plants**

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

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

- (2) An owner of land within a control 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—\$50 000 or imprisonment for 1 year;

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

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

- (3) An instruction under subsection (1) or (2) must be given by notice in a form approved by the Minister.

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

- (1) Subject to this section, an owner of land within a control 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 control 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 control 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 the requirements of subsection (1), (2) or (3).
- (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 breaches a requirement under subsection (1), (2) or (3) is not, on account of that breach alone, liable to any civil or criminal action, but—
  - (a) a person may be guilty of an offence if the person does not comply with any relevant requirements under section 183; and
  - (b) compliance with any of those subsections may be enforced by the issuing of a protection order under Chapter 9 Part 1.
- (7) All NRM groups 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 control area for that class of animals or plants and the area of the NRM group (and, if there is no such group, the responsibility to take action under this subsection will rest with the relevant regional NRM board).
- (8) In this section—
 

**relevant authority** means—

  - (a) the regional NRM board for the relevant area; or
  - (b) the Chief Officer; or

- (c) a State authorised officer.

### 183—Requirement to implement action plan

- (1) If an authorised officer considers that an owner of land has been, is, or is likely to be, in breach of section 182(1), (2) or (3), the authorised officer may, by notice in a form approved by the Minister, require the owner to prepare an *action plan* to address the breach.
- (2) A notice under subsection (1) must specify a 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 Officer for a review of the notice.
- (4) The Chief Officer may, on application under subsection (3) and after giving the applicant a reasonable opportunity to be heard and to place material before the Chief Officer, confirm, vary or set aside the notice.
- (5) The Chief Officer must prepare and make available written reasons for his or her decision on an application under subsection (3).
- (6) Subject to the outcome of any review under subsection (4) (and, if relevant, any appeal under Chapter 10), if an owner of land is required to prepare an action plan then the owner must submit such a plan to the authorised officer who 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 the breach, and to comply with section 182 in the future; and
  - (b) the period or periods within which those measures are proposed to be taken.
- (8) The authorised officer to whom the action plan is submitted should, within 28 days 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 his or her decision.
- (9) 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,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 Officer or an NRM authority may—
    - (i) cause to be carried out such measures as appear to the Chief Officer or NRM authority (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).
- (10) A person taking action under paragraph (d) of subsection (9) 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.
- (11) A person must not hinder or obstruct a person acting under subsection (9)(d) or (10).  
Maximum penalty: \$10 000.
- (12) The reasonable costs and expenses incurred by the Chief Officer or an NRM authority in taking action under subsection (9)(d) may be recovered as a debt from the relevant owner.
- (13) If an amount is recoverable by the Chief Officer or an NRM authority under subsection (12), the Chief Officer or NRM authority (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.
- (14) An authorised officer may, on his or her 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.
- (15) However, an authorised officer must take reasonable steps to consult with the relevant owner of land before he or she takes action under subsection (14) (unless the authorised officer is acting at the request of the owner).

#### **184—Native animals**

Despite sections 182(6)(b) and 183(1), a protection order or notice to prepare an action plan can only apply with respect to a native animal if the order or notice (as the case may be) is issued by a State authorised officer.

#### **185—NRM authorities may recover certain costs from owners of land adjoining road reserves**

- (1) If an NRM authority carries out on road reserve measures for the destruction or control of animals or plants of a class to which this section applies, the NRM authority may, within 3 months, give notice in writing to each owner of land adjoining the road reserve requiring the owner to pay to the NRM authority 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 NRM authority to be the costs and expenses incurred by the NRM authority 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), an NRM authority 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 an NRM authority by an owner of land under this section (including any interest charge) may be recovered by the NRM authority as a debt.
- (6) An NRM authority 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.

### **186—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 Part, 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 Officer 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: \$1 250.  
Expiation fee: \$160.
  - (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 Officer within 14 days of the giving of that notice.
  - (6) The Chief Officer may, on application made under subsection (5), confirm, vary or set aside the proposals.

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**187—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 Part 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: \$100 000 or imprisonment for 2 years.
- Expiation fee: \$500.

## **Division 2—Permits**

### **188—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 Division 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 Division 1 operates as an absolute prohibition of the conduct for which the permit is sought by virtue of a declaration under Part 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 the regional NRM plan.
- (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).

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- (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 NRM 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 NRM 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: \$50 000.  
Expiation fee: \$750.
- (12) In this section—
- relevant authority* means—
- (a) in relation to a Category 1 or Category 2 animal or plant—the Chief Officer;
  - (b) in relation to a Category 3 animal or plant—the regional NRM board for the relevant area.

### Division 3—Related matters

#### 189—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 Chapter,

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

### 190—Offence to damage certain fences

- (1) A person must not interfere with an animal-proof fence except with 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.

### 191—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.

### 192—Protection of certain vegetation and habitats

- (1) A person must, in taking measures for the control of animals or plants under this Chapter, 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 Chapter).

Maximum penalty: \$20 000.

Expiation fee: \$750.

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

- (a) comply with any requirement—

- (i) set out in the regional NRM plan; 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 the regional NRM plan; 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: \$20 000.

Expiation fee: \$750.

(3) In this section—

*relevant authority* means—

- (a) the regional NRM board for the relevant area; or
- (b) the Chief Officer; or
- (c) a State authorised officer.



## Chapter 9—Civil remedies

### Part 1—Orders issued by NRM authorities

#### Division 1—Orders

##### 193—Protection orders

- (1) An NRM authority or a State authorised officer may issue a protection order under this Division for the purpose of securing compliance with—
  - (a) the requirements of Chapter 2 Part 2; or
  - (b) a requirement under section 133 or 182; or
  - (c) a management agreement; or
  - (d) any other requirement imposed by or under this Act or a 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 an NRM authority or State 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;

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- (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) If an emergency protection order is issued by an authorised officer who is not a State authorised officer, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written protection order issued by an NRM authority or a State authorised officer and served on the relevant person.
- (7) An NRM authority 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.
- (8) An NRM authority or State authorised officer may, by written notice served on a person to whom a protection order has been issued, vary or revoke the order.
- (9) 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 Chapter 2 Part 2—\$ 2 500;
- (b) in any other case—\$50 000.

Expiation fee:

- (a) if the order was issued in relation to a domestic activity for the purpose of securing compliance with Chapter 2 Part 2 in relation to a domestic activity—\$250;
- (b) in any other case—\$750.

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- (10) A person must not hinder or obstruct a person complying with a protection order.  
Maximum penalty: \$10 000.
- (11) 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).

### **194—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 NRM 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 Division 2.
- (6) In this section—
- relevant authority* means—
- (a) an NRM authority; or
  - (b) the Chief Officer.

### **195—Reparation orders**

- (1) If an NRM authority or State authorised officer is satisfied that a person has caused harm to any natural resource by contravention of—
- (a) the requirements of Chapter 2 Part 2; or
  - (b) a requirement under section 133 or 182; or
  - (c) a management agreement; or
  - (d) any other requirement imposed by or under this Act or a repealed Act and prescribed by the regulations for the purposes of this section,
- the NRM authority or State authorised officer may issue a reparation order requiring the person—

- (e) to take specified action within a specified period to make good any resulting damage to the natural resource; or
  - (f) 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 NRM authority or State authorised officer; and
  - (e) may include requirements for specified tests or monitoring; and
  - (f) may include requirements for furnishing to the NRM authority or State 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) If an emergency reparation order is issued by an authorised officer who is not a State authorised officer, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written reparation order issued by an NRM authority or a State authorised officer and served on the relevant person.

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- (7) An NRM authority 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.
- (8) An NRM authority or State authorised officer may, by written notice served on a person to whom a reparation order has been issued, vary or revoke the order.
- (9) A person to whom a reparation order is issued must comply with the order.  
Maximum penalty: \$50 000.  
Expiation fee: \$750.

### **196—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 Division 2.
- (6) In this section—
- relevant authority* means—
- (a) an NRM authority; or
  - (b) the Chief Officer.

### **197—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 Chapter 2 Part 2; or
  - (b) a requirement under section 133 or 182; or
  - (c) a management agreement; or

- (d) any other requirement imposed by or under this Act or a 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 order 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.

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(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 Division 2.

(10) In this section—

*relevant authority* means—

- (a) an NRM authority; or
- (b) the Chief Officer.

### **198—Related matter**

A person cannot claim compensation from—

- (a) the Crown; or
- (b) an NRM authority; or
- (c) the Chief Officer; or
- (d) an authorised officer; or
- (e) a person acting under the authority of an NRM authority, the Chief Officer or an authorised officer,

in respect of a requirement imposed by or under this Division, 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 Division.

## **Division 2—Registration of orders and effect of charges**

### **199—Registration**

(1) If—

- (a) an NRM authority or an officer issues an order or authorisation under Division 1; 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.

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- (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 Division 1 to carry out the requirements of the order—on payment of any amount recoverable under Division 1 in relation to the action so taken; or
    - (ii) an authorisation—on payment of any amount recoverable under Division 1 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 under Division 1 issued by an NRM authority—the NRM authority;
  - (b) in relation to an order or authorisation under Division 1 issued by the Chief Officer or a State authorised officer—the Chief Officer.

## **200—Effect of charge**

A charge imposed on land under Division 1 with respect to an order or authorisation registered under this Division 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 Division of the relevant order or authorisation in relation to the land.

## **Part 2—Orders made by ERD Court**

### **201—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 NRM 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 Officer; or
  - (b) by an NRM authority; 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.

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- (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.

## Chapter 10—Appeals

### 202—Right of appeal

- (1) The following rights of appeal lie to ERD Court:
  - (a) an owner of land who is dissatisfied with—
    - (i) a review of a notice by the Chief Officer under section 123(4) or (10) may appeal to the Court against the decision of the Chief Officer; or
    - (ii) a decision of a relevant authority to vary an action plan under subsection (17) of section 123, 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 Chapter 7—
    - (i) a person who is subject to a restriction under section 132(5) may appeal to the Court against the restriction;
    - (ii) an applicant for a water management authorisation, a well driller's licence or a permit under Chapter 7 may appeal to the Court against a refusal to grant or issue the authorisation, licence or permit or the imposition of conditions in relation to the authorisation, licence or permit (other than in a case involving the allocation of reserved water within the meaning of Chapter 7 Part 4);
    - (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;
    - (v) the holder of a water management authorisation, licence or permit under Chapter 7 may, if authorised to do so by a specific provision of that Chapter, 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 Chapter 7 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) an owner of land who is dissatisfied with—
    - (i) a review of a notice by the Chief Officer under section 183(4) may appeal to the Court against the decision of the Chief Officer; or
    - (ii) a decision of an authorised officer to vary an action plan under subsection (14) of section 183, or on an application under that subsection, may appeal to the Court against the decision;

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- (d) a person who has applied for a permit under Chapter 8 Part 2 Division 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 Chapter 9 Part 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 197 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 Chapter 7 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 or reparation authorisation under Chapter 9 or variation of such an order or authorisation—within 21 days after the order or authorisation or variation is served; or
- (b) 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*.

### **203—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.

## **204—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.



## Chapter 11—Management agreements

### 205—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 Chapter 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.

## Chapter 12—Miscellaneous

### Part 1—Avoidance of duplication of procedures etc

#### 206—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 his or her 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 126;
- (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.

## **Part 2—Other matters**

### **207—Native title**

- (1) Nothing done under this Act will be taken to affect native title in any land or water.

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- (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.

## 208—Service of notices or other documents

- (1) If this Act requires or authorised a notice or other document to be served on, or given to, a person, the notice or document may—
- (a) be served on, or given to, the person or an agent of the person; or
  - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
  - (c) be sent by post to the person or an agent of the person at his or her last known address; or
  - (d) 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 the person by facsimile 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*.

## 209—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 113 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.

## 210—Compulsory acquisition of land

- (1) The Minister may, after taking into account any recommendation of the relevant regional NRM 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.

## 211—Compensation

- (1) A regional NRM 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 NRM 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 134(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 134(1).

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- (6) A claim for compensation under this section against a regional NRM 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 NRM 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.

## **212—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.

## **213—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.

## **214—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.

## **215—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: \$315.

- (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: \$315.

- (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 an NRM authority or a person acting on behalf of such an authority without the authority'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: \$315.

- (4) The Minister's or an NRM authority'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: \$315.

## **216—Criminal jurisdiction of Court**

An offence against any of the following sections of this Act lies within the criminal jurisdiction of the ERD Court:

- (a) section 123;
- (b) section 127;
- (c) sections 130 to 132 (inclusive);
- (d) sections 144 and 145;
- (e) sections 175 to 181 (inclusive);
- (f) section 183;
- (g) sections 187 and 188;
- (h) sections 190 to 193 (inclusive);

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- (i) section 195;
  - (j) section 219;
  - (k) section 221.

### **217—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 Officer; or
    - (iv) a State authorised officer; or
    - (v) 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.

### **218—General defence**

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.

### **219—Offences by bodies corporate**

- (1) If a body corporate commits an offence against this Act, 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 where the offender is a natural person.
- (2) A person may be prosecuted and convicted of an offence under this section whether or not the body corporate has been prosecuted or convicted of the offence committed by the body corporate.

### **220—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 one 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.

## 221—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.

## 222—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.

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**223—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
  - (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
  - (d) the defendant took or used a specified quantity of water; or
  - (e) 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
  - (f) a person had failed to carry out the requirements of a notice under Chapter 8; or
  - (g) 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 NRM 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 his or her 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 NRM plan prepared and adopted 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 prepared, adopted and for the time being in force under this Act.
- (6) If in any proceedings under Chapter 9 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.

#### **224—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.

#### **225—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 Chapter 5; or
  - (b) a condition or proposed condition with respect to a permit or licence under Chapter 7; 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.

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**226—NRM Register**

- (1) The Minister must keep a register (the *NRM Register*) of—
  - (a) water management authorisations granted or issued under this Act; and
  - (b) permits granted under this Act; and
  - (c) action plans imposed under section 123 or 183; and
  - (d) other prescribed matters,in such form and containing such information as the Minister thinks fit.
- (1a) The register may be divided into such parts as the Minister thinks fit but the Minister must at least establish 1 part that specifically relates to Schedule 3A entitlements under Chapter 7.
- (1b) The part established under subsection (1a) that specifically relates to Schedule 3A entitlements under Chapter 7—
  - (a) will be known as *The Water Register*; and
  - (b) will be subject to the operation of Schedule 3A.
- (2) Subject to this section, the register must be made available for public inspection.
- (3) 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.
- (3a) The Minister may also establish or authorise arrangements that restrict or prohibit access to the register (or a part of the register) to protect information that, in the opinion of the Minister, is commercially sensitive or should be protected for some other reasonable cause.
- (4) 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.
- (5) Information on the register may be made available on conditions determined or approved by the Minister.
- (6) Without limiting a preceding subsection, any part of the register may be kept in the form of a computer record.

**227—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: \$5 500

**228—Annual report**

The Department must, after the end of each financial year, provide to the NRM Council, for inclusion in the annual report of the NRM Council, a report on the operation, administration and enforcement of this Act for that financial year.

## **229—Damage caused by non-compliance with a notice etc**

- (1) If—
  - (a) a person fails to comply with—
    - (i) a requirement under section 123 or 183; or
    - (ii) an order under Chapter 9 Part 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.

## **230—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 Chapter 9 Part 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 Officer; or
  - (c) an NRM authority.

## **231—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 or by-law 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, regulation or by-law as in force from time to time or as in force at a specified time.

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- (2) If a code, standard or other document is applied, adopted or incorporated in a notice, regulation or by-law—
- (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 or by-law 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 (in the case of regulations) or to the relevant NRM board (in the case of by-laws) to be necessary.

### **232—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.

### **233—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 3.
- (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.

- (4) A regulation under item 13 of Schedule 3 with respect to regional NRM levies cannot be made unless the Minister has given the LGA notice of the proposal to make a regulation under that item and given consideration to any submission made by the LGA within a period (of at least 21 days) specified by the Minister.

### **234—Review of Act by Minister**

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the results of the review to be submitted to him or her.
- (2) The Minister must ensure that, as part of the review, reasonable steps are taken to seek submissions from—
- (a) State agencies, and agencies of the Commonwealth, that have an interest in natural resources management; and
  - (b) the local government sector; and
  - (c) relevant industry, environment and community organisations.
- (3) The review and the report must be completed before the end of the 2006/2007 financial year.
- (4) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

## **Schedule 1—Provisions relating to NRM Council, regional NRM boards and NRM groups**

### **1—Interpretation**

In this Schedule, unless the contrary intention appears—

*member* means a member of a prescribed body;

*prescribed body* means—

- (a) the NRM Council; or
- (b) a regional NRM board; or
- (c) an NRM group.

### **2—Procedure at meetings**

- (1) The quorum for a meeting of a prescribed body is determined by dividing the number of members 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 a prescribed body.
- (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 prescribed body must cause accurate minutes to be kept of its proceedings.
- (6) Subject to this Act, a prescribed body may determine its own procedures.

### **3—Meetings to be held in public subject to certain exceptions**

- (1) Subject to this clause, a meeting of a prescribed body must be conducted in a place open to the public.
- (2) A prescribed body 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 prescribed body may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the prescribed body considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subclause (6) (after taking into account any relevant consideration under that subclause).

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- (6) The following information and matters are listed for the purposes of subclause (5):
- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - (b) information the disclosure of which—
    - (i) could reasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
    - (ii) would, on balance, be contrary to the public interest;
  - (c) information the disclosure of which would reveal a trade secret;
  - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
    - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - (ii) would, on balance, be contrary to the public interest;
  - (e) matters affecting the safety or security of any person or property;
  - (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - (g) matters that must be considered in confidence in order to ensure that the prescribed body does not breach any law, order of direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - (h) legal advice;
  - (i) information relating to actual litigation, or litigation that the prescribed body believes on reasonable grounds will take place;
  - (j) information the disclosure of which—
    - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official; and
    - (ii) would, on balance, be contrary to the public interest; or
  - (k) tenders for the supply of goods, the provision of services or the carrying out of works;
  - (l) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a draft plan relating to the amendment is released for public consultation under this Act.
- (7) A member of the public who, knowing that an order is in force under subclause (5), enters or remains in a room in which a meeting of a prescribed body is being held is guilty of an offence.

Maximum penalty: \$2 500.

- (8) If a person referred to in subclause (7) fails to leave the room on request, it is lawful for a Public Service employee or a member of the police force forcibly to remove the person from the room.
- (9) If an order is made under subclause (5), a note must be made in the minutes of the making of the order and of the grounds on which it was made.

#### **4—Agenda and minutes of meeting to be provided to Minister etc**

- (1) A prescribed body must provide—
  - (a) the Minister; and
  - (b) in the case of a regional NRM board—
    - (i) the member or members of the House of Assembly whose electoral district or districts include the whole or part of the board's region; and
    - (ii) each constituent council,

with a copy of the agenda for, and the minutes of, each meeting, or the part of each meeting, of the prescribed body that is open to members of the public.

- (2) An agenda must be provided under subclause (1) at least 3 days before the meeting to which it relates is held except where the meeting is held to deal with an emergency.
- (3) A prescribed body must make available for inspection and purchase by members of the public copies of the agenda for, and the minutes of, each meeting, or the part of each meeting, that is open to members of the public.
- (4) A prescribed body must not charge for inspection of an agenda or minutes and must not charge more than the fee prescribed by regulation for sale of copies of an agenda or minutes.
- (5) A prescribed body must, at the request of the Minister, provide the Minister with a copy of the agenda or the minutes or both of each meeting, or the part of each meeting, that is closed to members of the public.

#### **Schedule 2—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 one 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 Chapter 7 Part 2 Division 4.
- 6 A proclamation referred to in this Schedule may be varied or revoked by subsequent proclamation made by the Governor.

### **Schedule 3—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 permit 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.
- 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

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- (c) activities on land under the care, control or management of the Minister, an NRM authority 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 NRM plans.
- 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 an NRM authority; or
  - (c) in relation to the registration or discharge of instruments on the NRM 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 \$10 000, for a contravention of, or failure to comply with, a regulation.

## **Schedule 3A—The Water Register**

### **Part 1—Preliminary**

#### **1—Interpretation**

In this Schedule—

*register* means The Water Register.

#### **2—Applications**

An application under this Schedule—

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

### **3—Minister's power to require information**

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

### **4—Form of record and management of register**

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

### **5—Authentication of searches**

The Minister may authenticate—

- (a) any information on the register; or
- (b) any search of the register,

in such manner as the Minister thinks fit.

## **Part 2—Registration of entitlements issued under Chapter 7**

### **6—Registration of entitlements**

**Note—**

Paragraphs (e) and (f) had not come into operation at the date of the publication of this version.

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

- (a) the name and contact details of the holder or holders of the Schedule 3A entitlement;
- (b) the water resource to which the Schedule 3A entitlement relates, including any zone or other relevant information as to its location;
- (c) the date on which the Schedule 3A entitlement was issued and, if relevant, the date on which the Schedule 3A entitlement will expire under the terms of the Schedule 3A entitlement;
- (d) any of the following in relation to the Schedule 3A entitlement (insofar as may be relevant):
  - (i) the date of any variation;
  - (ii) the date of any transfer;
  - (iii) the date of any surrender or cancellation;

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- (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 3A entitlement;

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

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

Note—

Clauses 8—13 had not come into operation at the date of the publication of this version.

### 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 law displacement provision for the purposes of section 5G of the Corporations Act 2001 of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act.*

### **10—Variation of registered security interests**

- (1) *The parties to a security interest registered under this Part may apply to vary the security interest.*
- (2) *If the security interest is subject to another security interest that has been subsequently recorded on the register, the agreement in writing to the variation must be obtained from the holder of the subsequent security interest.*
- (3) *Subject to subclause (2), an application under subclause (1) must be accompanied by a copy of the instrument that evidences or gives effect to the variation.*
- (4) *Subject to subclause (5), the Minister must, on receipt of an application in accordance with the requirements of subclauses (2) and (3), register the variation.*

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- (5) *The Minister must not register a variation under subclause (4) if to do so is prevented by the regulations.*
- (6) *The instrument furnished under subclause (3) will be held as part of the register.*

### **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**

### **Note—**

Clause 14 had not come into operation at the date of the publication of this version.

### **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**

### **Note—**

Clause 15 had not come into operation at the date of the publication of this version.

### **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 3A entitlement to be stated in connection with an application to register the transfer under this Schedule.

### **17—Correction of instruments**

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

### **18—Cancellation of registration**

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

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

### **19—Address for service of notices**

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

### **20—ERD Court**

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

## **Schedule 4—Repeals and transitional provisions**

### **Part 17—Repeal of Acts**

#### **43—Repeal of Acts**

- (1) The following Acts are repealed:
  - (a) *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986;*
  - (b) *Soil Conservation and Land Care Act 1989;*
  - (c) *Water Resources Act 1997.*

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- (2) Despite subclause (1), the Governor may, by proclamation, suspend the repeal of a specified provision or provisions of an Act that would otherwise be repealed by force of that subclause until a subsequent day fixed in the proclamation, or until a day to be fixed by subsequent proclamation.
- (3) The repeal of an Act under this clause does not affect the operation of another provision of this Schedule that provides for the continuation of any part of the Act for the purposes of the provision.

## Part 18—Transitional provisions

### 44—Interpretation

In this Part—

**liability** includes a contingent liability;

**prescribed body** means—

- (a) a control board established under Part 2 Division 2 of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*; or
- (b) a soil conservation board established under Part 3 Division 3 of the *Soil Conservation and Land Care Act 1989*; or
- (c) a catchment water management board established under Part 6 Division 3 of the *Water Resources Act 1997*; or
- (d) a water resources planning committee established under Part 6 Division 4 of the *Water Resources Act 1997*;

**related body** means a body established for a purpose related to natural resources management (whether or not it has also been established for other purposes) declared by the Minister by notice in the Gazette to be a related body under this Schedule;

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

**repealed Act** means an Act that falls within the ambit of Part 17;

**right** includes a right of action;

**statutory body** means—

- (a) a prescribed body; or
- (b) any other body that is established by or under a repealed Act.

### 45—Continuation of prescribed bodies

- (1) Subject to this clause, a prescribed body in existence immediately before the relevant day will continue in existence on and after the relevant day despite the repeal of some or all of the Act under which the prescribed body was established.
- (2) Subject to this clause, a person who is a member of a prescribed body immediately before the relevant day will continue in office on and after the relevant day.
- (3) On and after the relevant day—
  - (a) a member of a prescribed body—

- 
- (i) will continue to be entitled to any allowances or expenses that applied in relation to the member immediately before the relevant day; and
    - (ii) will continue in his or her office until—
      - (A) his or her term of office expires; or
      - (B) he or she dies; or
      - (C) he or she resigns by notice in writing to the Minister; or
      - (D) he or she is removed from office by the Minister by notice in writing to the member,(whichever first occurs); and
  - (b) an act of a prescribed body will not be invalid by reason only of a vacancy in its membership; and
  - (c) the procedures of a prescribed body will, while the prescribed body has members holding office under subclause (2), be the procedures that applied immediately before the relevant day, subject to any modifications prescribed by the regulations; and
  - (d) while a prescribed body has members holding office under subclause (2), a quorum of the prescribed body will be determined by dividing the number of members at the particular time by 2, ignoring any fraction, and adding 1; and
  - (e) if or when a prescribed body ceases to have any members holding office under subclause (2), the prescribed body will continue as a corporation sole constituted by the Chief Officer; and
  - (f) a prescribed body will be able to perform or exercise any function or power that applied in relation to the prescribed body immediately before the relevant day, subject to any modifications or exclusions prescribed by the regulations, and subject to the operation of subclauses (4) and (5); and
  - (g) a person employed by a prescribed body immediately before the relevant day will continue as an employee of that prescribed body.
- (4) A prescribed body is subject to direction by any regional NRM board whose region includes some or all of the area of the State in relation to which the prescribed body was established.
- (5) If 2 or more regional NRM boards may give a direction to the one prescribed body under subclause (4), those boards must consult before any such direction is given to the prescribed body and, if the boards cannot agree with respect to a particular matter, then the boards must refer the matter to the Minister and the Minister will give directions to each board in order to resolve the matter.
- (6) A prescribed body may perform or exercise a function or power delegated to the prescribed body by a regional NRM board under this Act—
- (a) despite the fact that the function or power was not a function or power that the prescribed body was capable of performing or exercising before the relevant day; and

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- (b) despite the fact that, in performing the function or in exercising the power, the prescribed body may be acting outside the area in relation to which the prescribed body was established.
- (7) The Chief Officer must ensure that proper accounts are kept of a prescribed body's financial affairs.
- (8) The accounts required under subclause (7) will, according to a determination of the Chief Officer, form part of the accounts of a regional NRM board specified by the Chief Officer and those accounts, and any related financial information, will be incorporated into the accounts and financial statements of that board for financial reporting and auditing purposes.
- (10) The Governor may, by proclamation, dissolve a prescribed body continued in existence under subclause (1) or (3)(e).
- (11) However, a prescribed body must not be dissolved unless or until the Governor is satisfied—
- (a) that the prescribed body no longer has any employees; and
  - (b) that adequate arrangements are in place to deal with any remaining assets, rights or liabilities of the prescribed body (including by the making of a proclamation under clause 46 or 47).

#### **46—Vesting of property etc**

- (1) The Governor may, by proclamation, vest any asset, right or liability of a statutory body or of a related body in—
- (a) the Crown; or
  - (b) a Minister; or
  - (c) any other agency or instrumentality of the Crown; or
  - (d) with the consent of the authority or person—another authority or person, nominated in the proclamation.
- (2) If a statutory body is dissolved by or under this Schedule and no other provision has been made for the vesting of all (or all remaining) assets, rights or liabilities of the statutory body, those assets, rights and liabilities will vest in the Minister.
- (3) The vesting of assets, rights or liabilities under this clause operates by force of this clause and despite the provisions of any other law or instrument.
- (4) The Registrar-General or another authority required or authorised under 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 clause.
- (5) No fee is payable in respect of an application under subclause (4).
- (6) Nothing done under this clause—
- (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

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- (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.

#### **47—References**

The Governor may, by proclamation, declare that a reference in an Act or instrument (or an instrument of a specified class) to a specified person or body (or to a person or body of a specified class) is to be taken to be a reference to the Minister, or to another person or body (or to another person or body of a specified class) specified in the proclamation.

#### **48—Authorised officers**

- (1) A person who was an authorised officer under a repealed Act immediately before the relevant day will be taken to have been appointed as an authorised officer under this Act.
- (2) Subject to subclause (3), any condition applying under a repealed Act with respect to an authorised officer immediately before the relevant day will apply as a condition under this Act.
- (3) The Chief Officer may, by instrument in writing—
  - (a) designate an authorised officer to which subclause (1) applies as a State authorised officer or a regional authorised officer for the purposes of this Act;
  - (b) vary or revoke any condition that would otherwise apply to an authorised officer by virtue of the operation of subclause (2), or apply new conditions.

#### **49—Special provisions relating to employees**

- (1) Nothing in a preceding clause affects the status of an employee of a prescribed body while that person remains in that employment.
- (2) Without limiting the operation of subclause (1)—
  - (a) an employee of a prescribed body will continue to be covered by any workers compensation or other insurance or superannuation scheme that applied immediately before the commencement of this clause while he or she remains in that employment (and any right or liability exercisable, acquired, arising or accrued during that employment will not be affected by virtue of the enactment of this Act); and
  - (b) the appointment of an employee of a prescribed body as an authorised officer under this Act will not, in itself, affect any continuity of employment under this Schedule.

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- (3) In addition to subclause (2), if—
- (a) an employee of a prescribed body (to be referred to as a **transferring employee** for the purposes of this clause) leaves his or her employment with a prescribed body and within 3 months of having done so commences employment as a member of the staff of a regional NRM board; and
  - (b) the transferring employee was, when he or she left his or her employment with the prescribed body, a member of LGSS; and
  - (c) the transferring employee, after having gained employment as a member of the staff of the regional NRM board and before the expiration of the 3 month period referred to in paragraph (a), elects, by notice in writing to his or her employing authority, to remain as a member of LGSS,

then the transferring employee may remain as a member of LGSS by virtue of this subclause for so long as he or she retains continuity of employment with 1 or more regional NRM boards.

- (4) A transferring employee who is eligible to make an election under subclause (3) may remain as a member of LGSS until—
- (a) he or she makes an election under that subclause (in which case he or she may continue as a member of LGSS even if he or she would not otherwise qualify to remain as a member of LGSS under the provisions of that scheme); or
  - (b) the expiration of the 3 month period within which the election may be made (and if an election is not so made, then he or she will be taken to have resigned as a member of LGSS at the expiration of that period and will become a member of the Triple S scheme at that time).
- (5) If a transferring employee who is eligible to make an election under subclause (3) becomes a member of the Triple S scheme on (or before) the expiration of the 3 month period that applies under that subclause—
- (a) the transferring employee is entitled to become a member of the Triple S scheme without being required to undergo a medical examination in order to maintain the same level of insurance cover that the transferring employee enjoyed under LGSS; but
  - (b) if the transferring employee suffers from a medical condition or other restriction relevant to the terms or conditions of his or her membership of LGSS, the South Australian Superannuation Board may impose similar terms or conditions in relation to his or her membership of the Triple S scheme.
- (6) An employing authority must, immediately after receiving a notice under subclause (3)(c), furnish copies of the notice to—
- (a) the South Australian Superannuation Board; and
  - (b) the Local Government Superannuation Board.

- (7) In this clause—

**employing authority** in relation to a transferring employee has the same meaning as under the *Southern State Superannuation Act 1994* in relation to a member under that scheme;

**LGSS** means the Local Government Superannuation Scheme;

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*Triple S scheme* means the Southern State Superannuation Scheme established by the *Southern State Superannuation Act 1994*.

## 50—Initial constitution of boards

- (1) The Governor may, on the recommendation of the Minister, appoint a person as the first presiding member of a regional NRM board before appointing any other members of the board before the relevant provisions of Chapter 3 have been brought into operation and without the need to follow any other process set out in that Chapter.
- (2) The Governor may, on the recommendation of the Minister, appoint some or all of the members of the Interim NRM Council as the first members of the NRM Council under this Act.
- (3) An appointment under subclause (2)—
  - (a) may be made despite the fact that the constitution of the NRM Council under this clause would be inconsistent with Chapter 3 Part 2 Division 2; and
  - (b) may be made without the need to follow any process set out in Chapter 3; and
  - (c) will have effect for a term not exceeding 12 months, as specified by the Governor at the time of appointment; and
  - (d) will be made on any conditions specified by the Governor in the instrument of appointment.
- (4) The Governor may appoint a person appointed under subclause (2) as the presiding member of the NRM Council.
- (5) In the event of a casual vacancy in the office of a person appointed under subclause (2), the Governor may, on the recommendation of the Minister, appoint a person to the vacant office for the balance of the initial term of appointment.
- (6) A person holding office under this clause is eligible for reappointment to the NRM Council at the end of the term specified under subclause (3)(c).
- (7) A reference in this Act to the NRM Council will be taken to include a reference to the NRM Council as constituted under this clause.
- (8) In this clause—

*Interim NRM Council* means the *Natural Resources Management Council* established by the Minister in June 2002.

## 51—Constitution of Environment, Resources and Development Court

A commissioner of the ERD Court who, before the relevant day, had been designated by the Governor under the *Water Resources Act 1997* as a person who has expertise in the use, conservation or management of water resources 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 fields that are relevant to the jurisdiction conferred on the Court by this Act.

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**52—Special provisions relating to the repeal of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986***

- (1) In this clause—
- relevant Act* means the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*.
- (2) Any animal held by an authorised officer in the circumstances contemplated by section 27(7) of the relevant Act immediately before the relevant day may be destroyed or disposed of in such manner as the Chief Officer may approve.
- (3) Any money in the Animal and Plant Control Commission Fund or the Dingo Control Fund immediately before the relevant day will be paid into the NRM Fund and may be applied—
- (a) for the purposes for which it could be applied before the relevant day; or
  - (b) for any purpose connected with the operation of this Act.
- (4) Subject to clause 55—
- (a) any rate declared under section 31 of the relevant Act that has not been paid before the relevant day may be recovered by the Minister, and that section will continue to have effect for the purposes of the recovery of the rate as if a reference in that section to the Animal and Plant Control Commission were a reference to the Minister (and any process or proceeding for the recovery of such a rate that has not been completed before the relevant day may be continued and completed by the Minister after the relevant day); and
  - (b) any money in a fund established under section 35 of the relevant Act will be transferred to a regional NRM board in accordance with a scheme established by the Minister; and
  - (c) any amount payable by a council under section 36 of the relevant Act will be payable to a regional NRM board at the direction of the Minister and may be recovered by the Minister if it is not paid, and that section will continue to have effect for the purposes of the recovery of the money as if a reference in that section to the Animal and Plant Control Commission were a reference to the Minister.
- (5) Any proclamation in force under section 40 or 51 of the relevant Act immediately before the relevant day will have effect as if it were a notice published by the Minister under section 174 of this Act, and may be subsequently varied or revoked by the Minister by notice in the Gazette under section 174(2) (including by notice published on the day of the commencement of section 174).
- (6) The Minister may, in connection with the operation of subclause (5), assign any relevant animal or plant to a category referred to in section 174 of this Act.
- (7) Any permit in force under section 45 or 55 of the relevant Act immediately before the relevant day will continue to have force and effect as if it were a permit issued under section 188 of this Act (and section 188 will then apply in relation to the permit).
- (8) Any notice or requirement issued or imposed under the relevant Act before the relevant day may be enforced and will have effect as if this Act had not been enacted.

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- (9) Subclause (8)—
- (a) operates subject to any provision, modification or exclusion prescribed by the regulations; and
  - (b) except as so prescribed, does not derogate from the operation of section 16 of the *Acts Interpretation Act 1915*.

**53—Special provisions relating to the repeal of the *Soil Conservation and Land Care Act 1989***

- (1) In this clause—
- relevant Act* means the *Soil Conservation and Land Care Act 1989*.
- (2) Any money in the Soil Conservation and Land Care Fund immediately before the relevant day will be paid into the NRM Fund and may be applied—
- (a) for the purposes for which it could be applied before the relevant day; or
  - (b) for any purpose connected with the operation of this Act.
- (3) Any function, power or duty to be performed, exercised or discharged under the relevant Act will, on or after the relevant day, be performed, exercised or discharged by the Chief Officer.
- (4) An approved district plan under section 36 of the relevant Act will, insofar as it applies with respect to a particular NRM region, be taken to form part of the regional NRM plan of the relevant NRM board until the board prepares a regional NRM plan under Chapter 4 Part 2.
- (5) A regional NRM board may initiate any procedure under this Act to amend any part of its plan that has been incorporated under subclause (4).
- (6) In addition, the Minister may, by notice in the Gazette, modify one or more district plans—
- (a) to address a situation where the boundaries of a district under the relevant Act do not correspond with the boundaries of an NRM region under this Act; or
  - (b) to address any other situation that is, in the opinion of the Minister, relevant to the transition to regional NRM boards and NRM regions under this Act.
- (7) Except as otherwise provided by this Schedule, an application, appeal or other proceeding commenced before the Soil Conservation Appeal Tribunal (the *Tribunal*), but which has not been finally determined at the relevant day, and all interlocutory or other associated proceedings, may be proceeded with and completed as if this Act had not been enacted.
- (8) A right of appeal to the Tribunal in existence before the relevant day or exercisable after the relevant day with respect to a matter arising before the relevant day (and not within the ambit of subclause (7)) may be exercised as if this Act had not been enacted, except that a reference to the Tribunal will be taken as a reference to the ERD Court.
- (9) Any notice or requirement issued or imposed under the relevant Act before the relevant day may be enforced and will have effect as if this Act had not been enacted.

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(10) Subclause (9)—

- (a) operates subject to any provision, modification or exclusion prescribed by the regulations; and
- (b) except as so prescribed, does not derogate from the operation of section 16 of the *Acts Interpretation Act 1915*.

#### **54—Special provisions relating to the repeal of the *Water Resources Act 1997***

(1) In this clause—

*relevant Act* means the *Water Resources Act 1997*.

- (2) Any regulation in force under section 8 of the relevant Act immediately before the relevant day (including such a regulation in force by virtue of the operation of Schedule 3 of that Act) will continue in force and effect as if it were a regulation made under section 125 of this Act.
- (3) Any authorisation in force under section 11 of the relevant Act immediately before the relevant day (including such an authorisation in force by virtue of the operation of Schedule 3 of that Act) will continue to have force and effect as if it were an authorisation of the Minister under section 128 of this Act.
- (4) Any notice in force under section 16 of the relevant Act immediately before the relevant day will continue to have force and effect as if it were a notice under section 132 of this Act.
- (5) Any entitlement that exists under section 36 of the relevant Act will continue to have effect as if it were an entitlement under section 155 of this Act.
- (6) A licence or permit granted under Part 4 or 5 of the relevant Act in force immediately before the relevant day (including such a licence or permit in force by virtue of Schedule 3 of that Act) will continue to have force and effect as if it were a corresponding licence or permit (as the case requires) under this Act (and any application or process made or commenced under the relevant Act before the relevant day and not finally determined by that day, or any action or proceeding brought or capable of being brought, in relation to such a licence or permit, may be dealt with or completed, or brought, under this Act).
- (7) The State Water Plan will continue in force and effect and will be taken to be the State NRM Plan until the NRM Council prepares the State NRM Plan required under Chapter 4 Part 1.
- (8) A catchment water management plan (including a plan that has effect under section 98 of the relevant Act) will, insofar as it applies in relation to water resources within an NRM region and is in operation immediately before the relevant day, be taken to be the regional NRM plan of the relevant regional NRM board until the board prepares a regional NRM plan under Chapter 4 Part 2.
- (9) A water allocation plan will, insofar as it applies in relation to water resources within an NRM region and is in operation immediately before the relevant day, be taken to be a water allocation plan of the relevant regional NRM board applying to those water resources under this Act until the board prepares a corresponding water allocation plan under Chapter 4 Part 2.

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- (10) A regional NRM board may, in connection with the operation of subclause (8) or (9), adopt or continue with any procedure or process commenced under the relevant Act before the relevant day in relation to the preparation, review or amendment of a plan (and any such procedure or process may be continued by the board as if it were a catchment water management board or a water resources planning committee but otherwise as if this Act had not been enacted but once that procedure or process is completed then it will have effect for the purposes of this Act), or initiate any procedure of its own under this Act to amend a plan.
- (11) A reference in a catchment water management plan or a water allocation plan to a catchment water management board will be taken to include a reference to a regional NRM board whose region incorporates some or all of the relevant catchment area.
- (12) Any specification or provision in a catchment water management plan that has effect for the purposes of a provision of the relevant Act will, unless otherwise determined by the Minister by notice in the Gazette, continue to have effect for the purposes of the corresponding provision under this Act.
- (13) In addition, the Minister may, by notice in the Gazette, modify one or more catchment water management plans or water allocation plans—
- (a) to address a situation where the boundaries of a catchment area under the relevant Act does not correspond with the boundaries of an NRM 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 NRM boards and NRM regions under this Act; or
    - (ii) relevant to the fact that catchment water management plans and water allocation plans under the relevant Act are to have effect as regional NRM plans and water allocation plans under this Act.
- (14) Subject to clause 55, any levy declared under Part 8 Division 1 of the relevant Act remains due and payable, and may be collected, as if this Act had not been enacted, except that a reference in that Division to the Minister will be taken to be a reference to the Minister to whom the administration of this Act is committed and a reference to the Water Resources Levy Fund will be taken to be reference to the NRM Fund (and any process or proceeding for the recovery of such a levy that has not been completed before the relevant day may be continued and completed by the Minister to whom the administration of this Act is committed after the relevant day).
- (15) A penalty declared under section 132 of the relevant Act and in effect immediately before the relevant day will continue to have effect.
- (16) Subsection (2c) of section 132 of the relevant Act will continue to have effect in all respects as if this Act had not been enacted.
- (17) Subject to clause 55, any amount payable by a council under Part 8 Division 2 of the relevant Act will, after the relevant day, be payable under a scheme established by the Minister for the purposes of this provision (and such a scheme may provide that an amount be paid to a regional NRM board rather than a catchment water management board).

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- (18) A council may, in respect of any amount payable under the relevant Act or the scheme referred to in subclause (17), impose or collect a levy under section 138 of the relevant Act (which will continue to have effect for that purpose).
- (19) Any money in the Water Resources Levy Fund immediately before the relevant day will be paid into the NRM Fund and may be applied—
- (a) the purposes for which it could be applied before the relevant day; or
  - (b) for any purpose connected with the operation of this Act.

### 55—Special provisions relating to levies

- (1) The following provisions apply in connection with the operation of Chapter 5:
- (a) the scheme established by sections 30 and 31 of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* (and, accordingly, the operation of those sections) will continue in relation to the 2004/2005 and 2005/2006 financial years with the following modifications:
    - (i) a reference to the fund under section 30 will be taken to be a reference to the NRM Fund;
    - (ii) a reference to the Animal and Plant Control Commission in either section will be taken to be a reference to the Minister,

and the business plan of a regional NRM board for the 2005/2006 financial year should contain an estimate of any expenditure to be incurred by the board with respect to the control of dingoes for that financial year;
  - (b) the scheme established by sections 36 and 37 of the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986* (and, accordingly, the operation of those sections) will continue until 30 June 2006 with the following modifications and the application of the following provisions:
    - (i) with respect to 2005—
      - (A) if the Animal and Plant Control Commission has made a determination under section 36(2) in respect of 2005 before the commencement of this clause—any amount to be contributed by a council must be paid to a regional NRM board in accordance with any direction of the Minister;
      - (B) if the Animal and Plant Control Commission has not made a determination in respect of 2005 before the commencement of this clause—an amount determined by the Minister (in accordance with those sections) with respect to a particular council will be payable by the council and must be paid to a regional NRM board in accordance with any direction of the Minister;
    - (ii) with respect to the 6 month period ending on 30 June 2006—an amount determined by the Minister with respect to a particular council will be payable by the council and must be paid to a regional NRM board in accordance with any direction of the Minister;

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- (iii) a determination of the amount to be paid by a constituent council may be made without the lodging of a written estimate of expenditure for the ensuing year but the business plan of a regional NRM board for the 2005/2006 financial year should contain an estimate of any expenditure to be incurred by the board with respect to the performance of functions under Chapter 8 during the ensuing financial year;
  - (iv) a reference to the Animal and Plant Control Commission in either section will be taken to be a reference to the Minister;
  - (v) a reference to a control board in either section will be taken to be a reference to a regional NRM board;
  - (vi) the Minister is not required to pay the second instalment under section 37(2) in respect of 2006;
- (c) the scheme established by Part 8 of the *Water Resources Act 1997* (and accordingly the operation of the Part) will continue in relation to the 2004/2005 financial year with the following modifications:
- (i) a reference to the Minister will be taken to be a reference to the Minister to whom the administration of this Act is committed;
  - (ii) a reference to the Water Resources Levy Fund will be taken to be a reference to the NRM Fund;
  - (iii) a reference to a catchment water management board will be taken to be a reference to a regional NRM board;

and sections 92 to 96, and 100 to 108, of this Act will not apply with respect to the 2004/2005 financial year;

- (d) with respect to the 2005/2006 financial year, a person—
- (i) who has paid or is liable to pay a levy under Chapter 5 Part 1 Division 2 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 in respect of that financial year; or
  - (ii) who has paid or is liable to pay a water supply charge under the *Irrigation Act 1994* in respect of that financial year to the Minister administering that Act or to a trust under that Act in circumstances where the Minister or trust has paid or is liable to pay in respect of the year a levy under Chapter 5 Part 1 Division 2 in relation to water supplied to that person for irrigating land,

is not liable to pay a levy under Chapter 5 Part 1 Division 1 for that financial year.

- (2) The amount payable by a council pursuant to a determination of the Minister under subclause (1)(b)(ii) must not exceed 50 per cent of the amount payable by the council with respect to 2005, plus an amount that takes into account increases (if any) in the CPI during the 6 months ending on 31 March 2005.
- (3) The Minister may only make a determination under subclause (1)(b)(i)(B) or (ii) on the recommendation of the NRM Council.

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- (4) In order to take into account the exemptions under subclause (1)(d) across constituent councils when determining the contributions that should be made with respect to the 2005/2006 financial year under section 92, the Minister will, in relation to that financial year, increase any base contribution amount under that section by the Minister's estimate of the amount by which the share of the constituent councils will be reduced on account of those exemptions.
  - (5) A council's share of the amount to be contributed by constituent councils determined under section 92 with respect to the 2005/2006 financial year is reduced by an amount equivalent to the amount by which the return to the council by the imposition of a regional NRM levy is reduced because of the exemption under subclause (1)(d).

## 56—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of a relevant Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of the relevant 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.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule or Schedule 1 of the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*, or regulations made under this Schedule, apply to any amendment or repeal effected by a relevant Act.
- (5) In this clause—

**relevant Act** means—

  - (a) this Act; or
  - (b) the *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007*.

## 57—Governor may extend term of office etc

- (1) Despite any other provision of this Act, the Governor may, by notice in the Gazette, extend the term of office of a member of the NRM Council, or of a regional NRM board, appointed prior to the commencement of this clause (but not so the total term of office of the member exceeds 3 years).
- (2) The Governor may, in the same notice, make provision for the continuation of fees, allowances and expenses to be paid to the member for the period of the extension.
- (3) If the Governor extends the term of office of a member under this clause, the term of office specified in the instrument of appointment of the member will be taken to be, and to always have been, the term as so extended.



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## Legislative history

### Notes

- This version is comprised of the following:

Chapter 1	17.9.2012
Chapter 2	26.7.2007
Chapter 3	1.2.2010
Chapter 4	1.1.2013
Chapter 5	1.7.2010
Chapter 6	26.7.2007
Chapter 7	1.1.2013
Chapter 8	26.7.2007
Chapter 9	26.7.2007
Chapter 10	1.7.2009
Chapter 11	26.7.2007
Chapter 12	1.2.2010
Schedules	1.2.2010
- 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](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Natural Resources Management Act 2004* amended the following:

*Crown Lands Act 1929*

*Dog and Cat Management Act 1995*

*Dog Fence Act 1946*

*Environment Protection Act 1993*

*Ground Water (Qualco-Sunlands) Control Act 2000*

*Local Government Act 1934*

*Mining Act 1971*

*National Parks and Wildlife Act 1972*

*Native Vegetation Act 1991*

*Parliamentary Committees Act 1991*

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*Pastoral Land Management and Conservation Act 1989*

*Petroleum Act 2000*

*River Murray Act 2003*

*South Eastern Water Conservation and Drainage Act 1992*

*Subordinate Legislation Act 1978*

## Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	2.9.2004 ( <i>Gazette 2.9.2004 p3545</i> ) except Ch 3 Pt 3 Div 2, ss 27, 28 and Sch 4 cl 50(1)—9.12.2004 ( <i>Gazette 9.12.2004 p4492</i> ) and except ss 13(1)—(7), 14, 25, 26, Ch 3 Pt 3 Divs 4—10, Ch 3 Pt 5, Ch 5 Pt 2 and Ch 11—14.4.2005 ( <i>Gazette 14.4.2005 p876</i> ) and except ss 92—95 and 98—116—9.6.2005 ( <i>Gazette 9.6.2005 p1775</i> ) and except Ch 2 Pt 2, Ch 3 Pts 4 & 6, Ch 4 Pt 2, Chs 6—10, ss 206—230 & 234, Sch 2, Sch 4 Pts 2—5, Sch 4 cll 13—17, 18(1), (8), 19 & 20, Sch 4 Pt 9, Sch 4 cll 24, 25, 26(2)—(4), 27(3)—(5), 28, Sch 4 Pts 12 & 14—17, Sch 4 cll 44—49 and 51—55—1.7.2005 ( <i>Gazette 30.6.2005 p2093</i> ) and except ss 96 & 97—2.2.2006 ( <i>Gazette 2.2.2006 p419</i> )
2005	20	<i>Statutes Amendment (Environment and Conservation Portfolio) Act 2005</i>	9.6.2005	Pt 5 (ss 27 & 28) and Sch 1 (cl 1)—23.6.2005 ( <i>Gazette 23.6.2005 p1901</i> )
2005	79	<i>Development (Miscellaneous) Amendment Act 2005</i>	8.12.2005	Sch 1 (cll 2—7)—12.1.2006 ( <i>Gazette 12.1.2006 p43</i> )
2006	12	<i>Natural Resources Management (Transfer of Water Licences) Amendment Act 2006</i>	29.6.2006	1.7.2006 ( <i>Gazette 29.6.2006 p2100</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 54 (s 172)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 15 (ss 71 & 72)—1.4.2007 ( <i>Gazette 29.3.2007 p930</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 57 (s 157)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2007	3	<i>Natural Resources Management (Extension of Terms of Office) Amendment Act 2007</i>	1.3.2007	1.3.2007
2007	8	<i>Local Government (Stormwater Management) Amendment Act 2007</i>	5.4.2007	Sch 1 (cll 1—7)—1.7.2007 ( <i>Gazette 10.5.2007 p1978</i> )

2007	24	<i>Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007</i>	26.7.2007	26.7.2007 ( <i>Gazette 26.7.2007 p3206</i> ) except ss 12, 18, 21(2), (3), 23, 24(1), (3)—(6), 25—27, 28(2), 29—34, 35(1)—(3), (8)—(12), 36, 37, 39—41, 45—47, new Sch 3A cll 1—5, 6(a)—(d), (g), 7, 16—20 (as inserted by s 48) & Sch 1 cll 1—5—1.7.2009 ( <i>Gazette 11.6.2009 p2727</i> ) and except new Sch 3A cll 6(e), (f), 8—15 (as inserted by s 48) & Sch 1 cl 6—uncommenced
2007	60	<i>Marine Parks Act 2007</i>	29.11.2007	Sch 1 (cll 41 & 42)—6.11.2008 ( <i>Gazette 6.11.2008 p5055</i> )
2008	41	<i>Murray-Darling Basin Act 2008</i>	6.11.2008	Sch 1 Pt 4 (cll 6—14)—15.12.2008 ( <i>Gazette 11.12.2008 p5475</i> ); Pt 5 (cll 15—30)—1.7.2009 immediately after ss 12 & 39 of 24/2007 ( <i>Gazette 11.6.2009 p2726</i> )
2009	13	<i>Irrigation Act 2009</i>	16.4.2009	Sch 1 (cl 2)—23.4.2009 ( <i>Gazette 23.4.2009 p1477</i> )
2009	14	<i>Renmark Irrigation Trust Act 2009</i>	16.4.2009	Sch 1 (cl 2)—23.4.2009 immediately after 13/2009 ( <i>Gazette 23.4.2009 p1477</i> )
2009	82	<i>Statutes Amendment and Repeal (Trade Measurement) Act 2009</i>	10.12.2009	Pt 2 (s 4)—1.7.2010: s 2(2)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 97 (ss 230—238)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2011	11	<i>Statutes Amendment (Personal Property Securities) Act 2011</i>	14.4.2011	Pt 19 (s 51)—16.6.2011 ( <i>Gazette 16.6.2011 p2610</i> )
2011	44	<i>Natural Resources Management (Commercial Forests) Amendment Act 2011</i>	17.11.2011	17.9.2012 ( <i>Gazette 13.9.2012 p4450</i> ) except ss 6—24—uncommenced
2012	1	<i>Arkaroola Protection Act 2012</i>	8.3.2012	Sch 1 (cl 4)—26.4.2012 ( <i>Gazette 26.4.2012 p1496</i> )
<b>2012</b>	<b>9</b>	<b><i>Water Industry Act 2012</i></b>	<b>19.4.2012</b>	<b>Sch 2 (cll 6—11)—1.1.2013 (<i>Gazette 21.6.2012 p2837</i>)</b>
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 38 (ss 71 & 72)—17.6.2013 ( <i>Gazette 6.6.2013 p2498</i> )

## 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>	1.7.2005
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.6.2007
Ch 1		
s 3		
s 3(1)		

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biological diversity or biodiversity	amended by 20/2005 s 27	23.6.2005
commercial forest	inserted by 44/2011 s 4(1)	17.9.2012
construct	amended by 24/2007 s 12(1)	1.7.2009
consumptive pool	inserted by 24/2007 s 12(2)	1.7.2009
declared forestry area	inserted by 44/2011 s 4(2)	17.9.2012
delivery capacity entitlement	inserted by 24/2007 s 12(3)	1.7.2009
designated commercial forest	inserted by 44/2011 s 4(3)	17.9.2012
domestic partner	inserted by 43/2006 s 157(1)	1.6.2007
employing authority	inserted by 41/2006 s 71(1)	1.4.2007
forest vegetation	inserted by 44/2011 s 4(4)	17.9.2012
forest water licence	inserted by 44/2011 s 4(4)	17.9.2012
Interstate Water Entitlements Transfer Scheme	amended by 41/2008 Sch 1 cl 6(1)	15.12.2008
	substituted by 24/2007 s 12(4)	1.7.2009
	amended by 41/2008 Sch 1 cl 15	1.7.2009
Murray-Darling Basin	substituted by 41/2008 Sch 1 cl 6(2)	15.12.2008
Murray-Darling Basin Agreement	inserted by 41/2008 Sch 1 cl 6(2)	15.12.2008
Schedule 3A entitlement	inserted by 24/2007 s 12(5)	1.7.2009
	amended by 44/2011 s 4(5)	17.9.2012
security interest	inserted by 24/2007 s 12(5)	1.7.2009
	amended by 44/2011 s 4(6)	17.9.2012
site use approval	inserted by 24/2007 s 12(6)	1.7.2009
spouse	substituted by 43/2006 s 157(2)	1.6.2007
stormwater infrastructure	inserted by 8/2007 Sch 1 cl 1(1)	1.7.2007
surface water	amended by 8/2007 Sch 1 cl 1(2)	1.7.2007
surface water prescribed area	amended by 8/2007 Sch 1 cl 1(3)	1.7.2007
to take	amended by 8/2007 Sch 1 cl 1(4)	1.7.2007
water access entitlement	inserted by 24/2007 s 12(7)	1.7.2009
water allocation	amended by 24/2007 s 12(8)	1.7.2009
	amended by 44/2011 s 4(7)	17.9.2012
<i>water (holding) allocation</i>	<i>deleted by 24/2007 s 12(9)</i>	<i>1.7.2009</i>
water licence	substituted by 24/2007 s 12(10)	1.7.2009
water management authorisation	inserted by 24/2007 s 12(10)	1.7.2009

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The Water Register	inserted by 24/2007 s 12(10)	1.7.2009
water resource works approval	inserted by 24/2007 s 12(11)	1.7.2009
<i>water (taking) allocation</i>	<i>deleted by 24/2007 s 12(12)</i>	<i>1.7.2009</i>
works	inserted by 24/2007 s 12(13)	1.7.2009
s 3(5) and (6)	substituted by 24/2007 s 12(14)	1.7.2009
s 3(10)	amended by 43/2006 s 157(3)	1.6.2007
s 3(12)	inserted by 41/2006 s 71(2)	1.4.2007
s 4		
s 4(2)	amended by 41/2008 Sch 1 cl 7	15.12.2008
s 5		
s 5(4)	inserted by 24/2007 s 13	26.7.2007
Ch 3		
Ch 3 Pt 2		
s 20		
s 20(1)	amended by 84/2009 s 230	1.2.2010
Ch 3 Pt 3		
s 28A	inserted by 84/2009 s 231	1.2.2010
s 29		
s 29(1)	amended by 79/2005 Sch 1 cl 2	12.1.2006
s 34		
s 34(3)	substituted by 41/2006 s 72	1.4.2007
s 34(4)	substituted by 41/2006 s 72	1.4.2007
	amended by 84/2009 s 232(1)	1.2.2010
s 34(5)	inserted by 41/21006 s 72	1.4.2007
	amended by 84/2009 s 232(2)	1.2.2010
s 34(6)—(13)	inserted by 41/21006 s 72	1.4.2007
s 34(14)	inserted by 41/21006 s 72	1.4.2007
public sector agency	amended by 84/2009 s 232(2)	1.2.2010
s 38		
s 38(1)	amended by 84/2009 s 233	1.2.2010
s 38(2)	amended by 24/2007 s 14	26.7.2007
Ch 3 Pt 4		
s 50	amended by 84/2009 s 234	1.2.2010
s 51A	inserted by 84/2009 s 235	1.2.2010
s 53		
s 53(2)	amended by 24/2007 s 15	26.7.2007
s 56	substituted by 24/2007 s 16	26.7.2007
s 57		
s 57(1)	amended by 84/2009 s 236	1.2.2010
s 57(2)	substituted by 24/2007 s 17	26.7.2007
Ch 4		

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#### Ch 4 Pt 2

##### s 75

s 75(3) amended by 79/2005 Sch 1 cl 3 12.1.2006

s 75(5) amended by 60/2007 Sch 1 cl 41 6.11.2008  
amended by 1/2012 Sch 1 cl 4 26.4.2012

##### s 76

s 76(4) amended by 79/2005 Sch 1 cl 4 12.1.2006  
amended by 24/2007 s 18(1), (2) 1.7.2009  
(f) and (g) deleted by 24/2007 s 18(3) 1.7.2009

s 76(4a)—(4e) inserted by 24/2007 s 18(4) 1.7.2009

s 76(8) amended by 24/2007 s 18(5) 1.7.2009

s 76(9)—(14) inserted by 44/2011 s 5 17.9.2012

##### s 78

s 78(4) (a) deleted by 79/2005 Sch 1 cl 5 12.1.2006

##### s 79

s 79(2) substituted by 79/2005 Sch 1 cl 6(1) 12.1.2006

s 79(3)—(5) *deleted by 79/2005 Sch 1 cl 6(1)* 12.1.2006

s 79(6) (a)(ii) deleted by 79/2005 Sch 1 cl 6(2) 12.1.2006

##### s 80

s 80(8) amended by 24/2007 s 19 26.7.2007

s 80(17)—(20) *deleted by 79/2005 Sch 1 cl 7* 12.1.2006

##### s 81

s 81(7) amended by 24/2007 s 20(1)—(3) 26.7.2007

##### s 82

**s 82(2) amended by 9/2012 Sch 2 cl 6(1) 1.1.2013**

**s 82(3) substituted by 9/2012 Sch 2 cl 6(2) 1.1.2013**

**s 82(4) amended by 9/2012 Sch 2 cl 6(3) 1.1.2013**

s 87 amended by 41/2008 Sch 1 cl 8 15.12.2008

##### s 88

**s 88(1) amended by 9/2012 Sch 2 cl 7 1.1.2013**

##### s 89

s 89(1) amended by 8/2007 Sch 1 cl 2 1.7.2007

s 89(2) amended by 24/2007 s 21(1) 26.7.2007

amended by 60/2007 Sch 1 cl 42 6.11.2008

amended by 41/2008 Sch 1 cl 9 15.12.2008

amended by 24/2007 s 21(2), (3) 1.7.2009

#### Ch 5

##### Ch 5 Pt 1

##### s 92

s 92(2) amended by 24/2007 s 22(1) 26.7.2007

s 92(7a) inserted by 24/2007 s 22(2) 26.7.2007

##### s 100

s 100(2) substituted by 24/2007 s 4 26.7.2007

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	substituted by 24/2007 s 23	1.7.2009
<i>s 100(3) and (4)</i>	<i>deleted by 24/2007 s 23</i>	1.7.2009
s 101		
s 101(1)	amended by 24/2007 s 5(1)	26.7.2007
	amended by 24/2007 s 24(1)	1.7.2009
	amended by 44/2011 s 6	uncommenced—not incorporated
s 101(4)	amended by 24/2007 s 24(2)	26.7.2007
s 101(5)	substituted by 24/2007 s 24(3)	1.7.2009
s 101(5a)	inserted by 24/2007 s 24(3)	1.7.2009
s 101(6)	substituted by 24/2007 s 24(3)	1.7.2009
s 101(6a)	inserted by 24/2007 s 24(3)	1.7.2009
s 101(7)	amended by 24/2007 s 24(4)	1.7.2009
<i>s 101(10)</i>	<i>amended by 24/2007 s 5(2)</i>	26.7.2007
	<i>deleted by 24/2007 s 24(5)</i>	1.7.2009
s 101(15)	substituted by 24/2007 s 24(6)	1.7.2009
<i>s 102</i>	<i>expired: s 102(8) (before deletion by 24/2007 s 25 could come into operation)—omitted under Legislation Revision and Publication Act 2002</i>	(9.6.2008)
s 103		
s 103(1)	amended by 24/2007 s 26(1)	1.7.2009
s 103(3)	substituted by 24/2007 s 26(2)	1.7.2009
s 103(4)	amended by 24/2007 s 26(3)	1.7.2009
s 103(7)	amended by 24/2007 s 26(4)	1.7.2009
s 103(8)	amended by 24/2007 s 26(5)	1.7.2009
s 104		
s 104(1)	substituted by 24/2007 s 6(1)	26.7.2007
	substituted by 24/2007 s 27(1)	1.7.2009
s 104(2)	substituted by 24/2007 s 27(1)	1.7.2009
s 104(4)	amended by 24/2007 s 6(2)	26.7.2007
	substituted by 24/2007 s 27(2)	1.7.2009
s 104(5)	amended by 24/2007 s 27(3)	1.7.2009
s 104(6)—(8)	substituted by 24/2007 s 27(4)	1.7.2009
<i>s 104(9)</i>	<i>amended by 24/2007 s 6(3)</i>	26.7.2007
	<i>deleted by 24/2007 s 27(4)</i>	1.7.2009
s 104(10a)	inserted by 44/2011 s 7	uncommenced—not incorporated
s 104(11)	amended by 24/2007 s 27(5)	1.7.2009
s 106		
s 106(1)	amended by 24/2007 s 28(1)	26.7.2007
<i>s 106(2)</i>	<i>deleted by 82/2009 s 4</i>	1.7.2010
<i>s 106(11)</i>	<i>deleted by 24/2007 s 28(2)</i>	1.7.2009
s 107	substituted by 24/2007 s 7	26.7.2007
	substituted by 24/2007 s 29	1.7.2009

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<i>s 112 before substitution by 24/2007</i>		
<i>s 112(1)</i>	<i>s 112 redesignated as s 112(1) by 24/2007 s 8</i>	26.7.2007
<i>s 112(2)—(4)</i>	<i>inserted by 24/2007 s 8</i>	26.7.2007
s 112	substituted by 24/2007 s 30	1.7.2009
s 114		
s 114(10)	amended by 24/2007 s 31	1.7.2009
s 115		
s 115(1)	amended by 24/2007 s 9(1), (2)	26.7.2007
	amended by 24/2007 s 32(1)	1.7.2009
s 115(2)	amended by 24/2007 s 32(2)	1.7.2009
s 115(3)	amended by 20/2005 s 28(1)	23.6.2005
	amended by 24/2007 s 32(3)	1.7.2009
s 115(3a)	inserted by 20/2005 s 28(2)	23.6.2005
	amended by 24/2007 s 32(4), (5)	1.7.2009
s 115(4)	amended by 24/2007 s 32(6)	1.7.2009
s 115(6)	inserted by 20/2005 s 28(3)	23.6.2005
Ch 7		
Ch 7 Pt 1		
s 124		
s 124(2a)	inserted by 8/2007 Sch 1 cl 3(1)	1.7.2007
s 124(3)	amended by 24/2007 s 33(1)	1.7.2009
s 124(6a)	inserted by 8/2007 Sch 1 cl 3(2)	1.7.2007
s 124(7)	amended by 24/2007 s 33(2)	1.7.2009
s 124(7a)	inserted by 44/2011 s 8	uncommenced—not incorporated
s 125		
s 125(4a)	inserted by 8/2007 Sch 1 cl 4	1.7.2007
s 125(5a)	inserted by 44/2011 s 9	uncommenced—not incorporated
Ch 7 Pt 2		
s 126		
s 126(1)	amended by 24/2007 s 34	1.7.2009
s 127		
s 127(1)	amended by 24/2007 s 10(1)	26.7.2007
	amended by 24/2007 s 35(1), (2)	1.7.2009
s 127(3)	amended by 24/2007 s 35(4), (5)	26.7.2007
	amended by 24/2007 s 35(3)	1.7.2009
s 127(5)	amended by 24/2007 s 35(6), (7)	26.7.2007
	amended by 44/2011 s 10	uncommenced—not incorporated
s 127(5a) and (5b)	inserted by 24/2007 s 35(8)	1.7.2009
s 127(6)	amended by 24/2007 s 10(2)	26.7.2007
	amended by 24/2007 s 35(9)—(12)	1.7.2009
s 128		

s 128(3)	amended by 8/2007 Sch 1 cl 5	1.7.2007
s 129		
s 129(1)	amended by 24/2007 s 36	1.7.2009
s 129(3a)	inserted by 44/2011 s 11	uncommenced—not incorporated
s 130		
s 130(1)	amended by 24/2007 s 37(1)	1.7.2009
s 130(3)		
relevant authority	amended by 24/2007 s 37(2), (3)	1.7.2009
s 135		
s 135(7)	substituted by 41/2008 Sch 1 cl 10	15.12.2008
s 140	deleted by 24/2007 s 38	26.7.2007
<i>Ch 7 Pt 3 before substitution by 24/2007</i>		
s 146		
s 146(1)	amended by 8/2007 Sch 1 cl 6	1.7.2007
s 146(5)	substituted by 41/2008 Sch 1 cl 11	15.12.2008
s 146A	inserted by 24/2007 s 11	26.7.2007
s 152		
s 152(1)	amended by 41/2008 Sch 1 cl 12	15.12.2008
s 156		
s 156(1)	amended by 41/2008 Sch 1 cl 13	15.12.2008
s 157		
s 157(9)	substituted by 12/2006 s 4	1.7.2006
s 160		
s 160(1)	amended by 41/2008 Sch 1 cl 14	15.12.2008
Ch 7 Pt 3	substituted by 24/2007 s 39	1.7.2009
s 146		
s 146(7)	amended by 41/2008 Sch 1 cl 16	1.7.2009
s 147		
s 147(5)	substituted by 41/2008 Sch 1 cl 17	1.7.2009
s 146(7a)	inserted by 44/2011 s 12	uncommenced—not incorporated
s 149		
s 149(3)	amended by 41/2008 Sch 1 cl 18	1.7.2009
s 150		
s 150(8)	amended by 41/2008 Sch 1 cl 19	1.7.2009
<b>s 150(11)</b>	<b>amended by 9/2012 Sch 2 cl 8</b>	<b>1.1.2013</b>
s 152		
s 152(1)	amended by 44/2011 s 13(1)	uncommenced—not incorporated
s 152(8)	inserted by 44/2011 s 13(2)	uncommenced—not incorporated
s 154		
s 154(3)	substituted by 41/2008 Sch 1 cl 20	1.7.2009
s 155		
s 155(1)	amended by 41/2008 Sch 1 cl 21	1.7.2009

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s 156		
s 156(3)	amended by 41/2008 Sch 1 cl 22	1.7.2009
s 157		
s 157(5)	amended by 41/2008 Sch 1 cl 23	1.7.2009
<b>s 157(7)</b>	<b>amended by 9/2012 Sch 2 cl 9</b>	<b>1.1.2013</b>
s 159		
s 159(5)	substituted by 41/2008 Sch 1 cl 24	1.7.2009
s 161		
s 161(3)	amended by 41/2008 Sch 1 cl 25	1.7.2009
s 164A		
s 164A(5)	substituted by 41/2008 Sch 1 cl 26	1.7.2009
s 164C		
s 164C(3)	amended by 41/2008 Sch 1 cl 27	1.7.2009
s 164G		
s 164G(5)	substituted by 41/2008 Sch 1 cl 28	1.7.2009
s 164J		
s 164J(3)	amended by 41/2008 Sch 1 cl 29	1.7.2009
s 164K		
s 164K(7)	amended by 41/2008 Sch 1 cl 30	1.7.2009
<b>s 164K(10)</b>	<b>amended by 9/2012 Sch 2 cl 10</b>	<b>1.1.2013</b>
Ch 7 Pt 4		
s 167		
s 167(1)	amended by 24/2007 s 40(1), (3)	1.7.2009
	(e) deleted by 24/2007 s 40(2)	1.7.2009
Ch 7 Pt 5A	inserted by 44/2011 s 14	uncommenced—not incorporated
Ch 7 Pt 5A	Pt 5A inserted by 13/2009 Sch 1 cl 2	23.4.2009
	Pt 5A to be redesignated as Pt 5B by 44/2011	uncommenced—not incorporated
	s 15	
s 169A	s 169A to be redesignated as s 169N by 44/2011	uncommenced—not incorporated
	s 16	
s 169B	s 169B inserted by 14/2009 Sch 1 cl 2	23.4.2009
	s 169B to be redesignated as s 169O by 44/2011	uncommenced—not incorporated
	s 17	
Ch 7 Pt 6		
s 173	amended by 24/2007 s 41	1.7.2009
	<b>(b) deleted by 9/2012 Sch 2 cl 11</b>	<b>1.1.2013</b>
s 173A	inserted by 11/2011 s 51	16.6.2011
Ch 8		
Ch 8 Pt 1		
s 174		
s 174(7)	amended by 24/2007 s 42	26.7.2007
Ch 8 Pt 2		
s 178		
s 178(1)	amended by 24/2007 s 43(1)	26.7.2007

s 178(2)	amended by 24/2007 s 43(2)	26.7.2007
s 179		
s 179(3)	amended by 24/2007 s 44	26.7.2007
Ch 9		
Ch 9 Pt 1		
s 193		
s 193(1)	amended by 44/2011 s 18	uncommenced—not incorporated
s 195		
s 195(1)	amended by 44/2011 s 19	uncommenced—not incorporated
s 197		
s 197(1)	amended by 44/2011 s 20	uncommenced—not incorporated
Ch 9 Pt 2		
s 201		
s 201(5)	amended by 17/2006 s 172(1)	4.9.2006
s 201(6)	amended by 17/2006 s 172(2)	4.9.2006
s 201(9)	amended by 17/2006 s 172(3)	4.9.2006
Ch 10		
s 202		
s 202(1)	amended by 24/2007 s 45(1)—(4)	1.7.2009
	(b)(iv) deleted by 24/2007 s 45(1)	1.7.2009
	amended by 44/2011 s 21(1), (2)	uncommenced—not incorporated
s 202(2)	amended by 24/2007 s 45(5)	1.7.2009
s 202(3)	amended by 24/2007 s 45(6)	1.7.2009
Ch 12		
Ch 12 Pt 2		
s 211		
s 211(1)	amended by 24/2007 s 46(1)	1.7.2009
s 211(2)	amended by 24/2007 s 46(2), (3)	1.7.2009
s 212		
s 212(3) and (4)	<i>deleted by 84/2009 s 237</i>	1.2.2010
s 216	amended by 44/2011 s 22	uncommenced—not incorporated
s 223		
s 223(2)	amended by 8/2007 Sch 1 cl 7	1.7.2007
s 226		
s 226(1)	amended by 24/2007 s 47(1)	1.7.2009
	amended by 44/2011 s 23	uncommenced—not incorporated
s 226(1a) and (1b)	inserted by 24/2007 s 47(2)	1.7.2009
s 226(2)	amended by 24/2007 s 47(3)	1.7.2009
s 226(3a)	inserted by 24/2007 s 47(4)	1.7.2009
s 226(5)	substituted by 24/2007 s 47(5)	1.7.2009
s 226(6)	inserted by 24/2007 s 47(5)	1.7.2009
Sch 1		
cl 5	<i>deleted by 84/2009 s 238</i>	1.2.2010

## Natural Resources Management Act 2004—1.1.2013 to 16.6.2013

### Legislative history

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Sch 3A	inserted by 24/2007 s 48	1.7.2009 except cll 6(e), (f), 8—15—uncommenced
cl 6	amended by 44/2011 s s 24(1)	uncommenced—not incorporated
cl 15		
cl 15(1)	amended by 44/2011 s 24(2)	uncommenced—not incorporated
cl 15(2)	amended by 44/2011 s 24(3)	uncommenced—not incorporated
Sch 4		
<i>Pts 1—16</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2005</i>
Pt 18		
cl 45		
cl 45(7) and (8)	substituted by 24/2007 s 49(1)	26.7.2007
<i>cl 45(9)</i>	<i>deleted by 24/2007 s 49(1)</i>	<i>26.7.2007</i>
cl 56		
cl 56(1)	amended by 24/2007 s 49(2)	26.7.2007
cl 56(2)	amended by 24/2007 s 49(3)	26.7.2007
cl 56(4)	substituted by 24/2007 s 49(4)	26.7.2007
cl 56(5)	inserted by 24/2007 s 49(4)	26.7.2007
cl 57	inserted by 3/2007 s 3	1.3.2007

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Environment and Conservation Portfolio) Act 2005, Sch 1*

#### **1—Transitional provision relating to *Natural Resources Management Act 2004* and *Water Resources Act 1997***

The penalties declared by the relevant Minister under section 132(1)(a) of the *Water Resources Act 1997* with respect to the taking of water in the consumption period that corresponds to the 2003/2004 financial year accounting period (as defined for the purposes of that section) will continue to apply for the purposes of the *Water Resources Act 1997* or the *Natural Resources Management Act 2004* (as the case requires) in respect of succeeding consumption periods until a new penalty is declared by the relevant Minister (either under section 132(1)(a) of the *Water Resources Act 1997* or section 115(1)(a) of the *Natural Resources Management Act 2004* (as the case requires)).

### *Natural Resources Management (Transfer of Water Licences) Amendment Act 2006, Sch 1*

#### **1—Transitional provision**

The amendment made to the *Natural Resources Management Act 2004* by this Act applies with respect to the transfer of a water licence, or of the whole or part of the water allocation of a water licence, effected by an instrument executed after the commencement of this Act.

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***Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions***

Note—

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

**1—Interpretation**

In this Part, unless the contrary intention appears—

***Commonwealth Act*** means the *Workplace Relations Act 1996* of the Commonwealth;

***employing authority*** means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

***Industrial Commission*** means the Industrial Relations Commission of South Australia;

***prescribed body*** means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;
- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;

- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

**relevant Act** means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;
- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

## 2—Transfer of employment

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).
- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
  - (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
  - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
  - (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;

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- (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
  - (b) will not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.
- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and
  - (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day,
- subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
  - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and

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- (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### 3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
- (b) 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,

and subclause (1) may have effect despite any other Act or law.

- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).

### 4—Interpretative provision

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

### 5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.

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- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

## 6—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.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

### *Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007, Sch 1*

#### Note—

Clause 6 had not come into operation at the date of the publication of this version.

## 4—Interpretation

In this Part—

*licence* means a water licence granted under the principal Act;

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

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

## 5—Water licences

- (1) A licence in force under section 146 of the principal Act immediately before the relevant day will continue as a licence under the principal Act as amended by this Act.
- (2) The following provisions apply in connection with the operation of subclause (1):
- (a) until the Minister otherwise determines, a licence under subclause (1) (as in force under the principal Act as amended by this Act)—
    - (i) need not make express provision for a water access entitlement in the manner contemplated by section 146(2) (as enacted by this Act); and

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- (ii) will be subject to the conditions that applied immediately before the relevant day, unless or until varied by determination of the Minister (either under the principal Act or under this clause); and
    - (iii) will be taken to provide the holder of the licence with a water allocation in the manner contemplated by section 152 (as enacted by this Act), subject to such action as the Minister may take, by determination, to convert a water (holding) allocation to a water (taking) and subject to such provisions or modifications as may be prescribed under clause 56 of Schedule 4 of the principal Act; and
  - (b) until the Minister otherwise determines, the holder of a licence under subclause (1) (as in force under the principal Act as amended by this Act)—
    - (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.
  - (3) A determination of the Minister under this clause—
    - (a) may be of general or limited application; and
    - (b) may make different provision according to the matters or circumstances which it is expressed to apply; and
    - (c) may be made from time to time; and
    - (d) may provide for other matters of an ancillary or incidental nature.

## 6—*The Water Register*

- (1) *The Minister may, by notice in the Gazette, convert an interest constituting a mortgage or charge over a water entitlement registered under section 226 of the principal Act before the commencement of this clause to a security interest registered on The Water Register under Schedule 3A of the principal Act (as enacted by this Act).*
- (2) *A notice under subclause (1) may be expressed to apply to specified classes of interests.*
- (3) *In this clause—*  
***water entitlement*** *means a water licence or a water allocation (or part of a water allocation).*

## Historical versions

1.7.2005  
12.1.2006  
2.2.2006  
1.7.2006  
4.9.2006  
1.3.2007  
1.4.2007

1.6.2007  
1.7.2007  
26.7.2007  
6.11.2008  
15.12.2008  
23.4.2009  
1.7.2009  
1.2.2010  
1.7.2010  
16.6.2011  
26.4.2012  
17.9.2012