

**NORTHERN TERRITORY OF AUSTRALIA**

**WATER ACT**

As in force at 16 September 2009

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## Schedule

### ENDNOTES

# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 16 September 2009. Any amendments that commence after that date are not included.

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## WATER ACT

**An Act to provide for the investigation, allocation, use, control, protection, management and administration of water resources, and for related purposes**

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Water Act*.

#### 2 Commencement

The various provisions of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette* in relation to those provisions.

#### 3 Repeal

- (1) The Acts of the State of South Australia specified in Part A of the Schedule, in their application to the Territory as laws of the Territory, are repealed.
- (2) The Act and Ordinances specified in Part B of the Schedule are repealed.

#### 4 Interpretation

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

**Advisory Committee** means a Water Advisory Committee established under section 23.

**aquifer** means a geological structure or formation, or an artificial land-fill, permeated or capable of being permeated permanently or intermittently with water.

**authorised officer** means a person appointed under section 21.

**bed** and **banks**, in relation to a waterway, means the land over which normally flows, or which is normally covered by, the water of the waterway, whether permanently or intermittently, but does not include land from time to time temporarily covered by the flood waters of the waterway and abutting on or adjacent to its bed and banks, the bed being the relatively flat portion and the banks being the relatively steep portions of the land comprising the bed and banks.

**beneficial uses** means the uses of water specified in subsection (3).

**bore** means a bore, hole, well, excavation or other opening in the ground, or a natural or artificially constructed or improved underground cavity, which is or could be used for the purpose of intercepting, collecting, obtaining or using ground water or for the purpose of disposing of water or waste below the surface of the ground, or which extends to an aquifer.

**Chairman**, in relation to the Review Panel, includes a person appointed under section 26 to act in the office of the Chairman, while the person is so acting.

**consent** means a consent granted and in force under this Act.

**Controller** means the Controller of Water Resources appointed under section 18.

**environment** means all aspects of the surroundings of man, including the physical, biological, economic, cultural and social aspects.

**environmental harm** means any harm to or adverse effect on, or potential harm to or adverse effect on, the environment.

**flow**, in relation to water, includes the discharge, release, escape or passage of water.

**ground water** means water occurring or obtained from below the surface of the ground (other than water contained in works, not being a bore, for the distribution, reticulation, transportation, storage or treatment of water or waste) and includes water occurring in or obtained from a bore or aquifer.

**land** includes a building or structure on land.

**licence** means a licence granted and in force under this Act.

**material environmental harm** means environmental harm that:

- (a) is not trivial or negligible in nature;
- (b) results or is likely to result in not more than \$50,000 being spent in taking appropriate action to prevent or minimise the harm or rehabilitate the environment; or
- (c) results in actual or potential loss or damage to the value of not more than \$50,000;

**mining or petroleum activity** means:

- (a) a mining activity within the meaning of the *Mining Management Act* or another activity for a purpose ancillary to that mining activity, including the use of water as drinking water;
- (b) exploration for petroleum under an Act of the Territory or of the Commonwealth;
- (c) the extraction and processing of petroleum under an Act of the Territory or of the Commonwealth;
- (d) the exercise by the holder of a petroleum interest within the meaning of the *Petroleum Act* of a right conferred under that Act on the holder of such an interest or the performance of a requirement imposed by or under that Act on the holder of such an interest;
- (e) the exercise of a right conferred, or the performance of a requirement imposed, by or under an Act of the Commonwealth on a person to whom a right to explore, extract or process petroleum is conferred by or under that Act; or
- (f) an activity for a purpose ancillary to a matter referred to in paragraph (b), (c), (d) or (e), including the use of water as drinking water.

**mining site** has the same meaning as in the *Mining Management Act*.

**occupier**, in relation to land, means the person in occupation (under whatever title or permission, or without title or permission) or entitled to be in occupation of the land.



**owner** means:

- (a) in relation to land alienated from the Crown by grant or by an Act – the owner of an estate in fee simple in the land;
- (b) in relation to land held under a lease granted by the Crown – the lessee;
- (c) in relation to land of the Crown subject to an agreement for sale or right of purchase – the person entitled to the benefit of the agreement or right of purchase; and
- (d) in relation to unalienated Crown land, not being land referred to in paragraph (c) – the Territory.

**permit** means a permit granted and in force under this Act.

**petroleum site** means:

- (a) an access authority area, licence area or permit area, each within the meaning of the *Petroleum Act*, on which occurs an activity referred to in paragraph (b), (c), (d), (e) or (f) of the definition of **mining or petroleum activity**; or
- (b) an area of land on which exploration for petroleum occurs, or petroleum is extracted or processed, under an Act of the Commonwealth.

**pollute**, in relation to water, means directly or indirectly to alter the physical, thermal, chemical, biological or radioactive properties of the water so as to render it less fit for a prescribed beneficial use for which it is or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to:

- (a) public health, safety or welfare;
- (b) animals, birds, fish or aquatic life or other organisms; or
- (c) plants.

**prescribed** in relation to a form, includes approved by the Controller under the Regulations.

**public authority** includes:

- (a) a statutory corporation; and
- (b) a council constituted under the *Local Government Act*.

**re-use**, in relation to water, includes to use waste water or effluent, whether or not it has been treated.

**Review Panel** means the Water Resources Review Panel established under section 24.

**serious environmental harm** means environmental harm that is more serious than material environmental harm and includes environmental harm that:

- (a) results or is likely to result in more than \$50,000 being spent in taking appropriate action to prevent or minimise the harm or rehabilitate the environment;
- (b) results in actual or potential loss or damage to the value of more than \$50,000;
- (c) damages an aspect of the environment that is of a high conservation value or of special significance; and
- (d) is irreversible or otherwise of a high impact or on a wide scale.

**take**, in relation to water, includes to withdraw, pump, extract, use or re-use, and to divert for the purposes of using or re-using, that water and, where it is artesian water occurring in a bore, to allow the artesian water to flow from the bore.

**this Act** includes the Regulations.

**tidal water** means:

- (a) water within the geographical area constituting the Territory that is directly affected by the tide;
- (b) water within the geographical area constituting the Territory seaward of water referred to in paragraph (a) that is not coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* of the Commonwealth; and
- (c) coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* of the Commonwealth, declared under section 5(6) to be tidal waters.

**waste** includes matter or a thing, whether wholly or partly in a solid, liquid or gaseous state, which, if added to water, may pollute the water.

**water** means water, whether or not it contains impurities.

**water extraction licence** means:

- (a) a licence under section 45 to take or use water; or
- (b) a licence under section 60 to take water from a bore.

**water extraction licence decision**, see section 71A(1).

**waterway** means:

- (a) a river, creek, stream or watercourse;
  - (b) a natural channel in which water flows, whether or not the flow is continuous;
  - (c) a channel formed wholly or partly by the alteration or relocation of a waterway described in paragraph (a) or (b);
  - (d) a lake, lagoon, swamp or marsh, whether formed by geomorphic processes or modified by works:
    - (i) in which water collects, whether or not the collection is continuous; and
    - (ii) into, through or out of which a current (which forms the flow or part of the flow of a river, creek, stream or watercourse) passes, whether or not that passage is continuous;
  - (e) land on which, as a result of works constructed on a waterway described in paragraph (a), (b) or (c), water collects, whether or not the collection is continuous;
  - (f) land which is intermittently covered by water from a waterway described in paragraph (a), (b), (c), (d) or (e), but does not include any artificial channel or work which diverts water away from such a waterway;
  - (g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip; or
  - (h) land declared under section 5(1) to be a waterway.
- (2) In this Act, a reference to a waterway includes a reference to a part or portion of a waterway.
- (3) The following are the beneficial uses of water:
- (a) agriculture – to provide irrigation water for primary production including related research;

- (b) aquaculture – to provide water for commercial production of aquatic animals including related research;
- (c) public water supply – to provide source water for drinking purposes delivered through community water supply systems;
- (d) environment – to provide water to maintain the health of aquatic ecosystems;
- (e) cultural – to provide water to meet aesthetic, recreational and cultural needs;
- (f) industry – to provide water for industry, including secondary industry and a mining or petroleum activity, and for other industry uses not referred to elsewhere in this subsection;
- (g) rural stock and domestic – to provide water for the purposes permitted under sections 10, 11 and 14.

## **5 Minister may declare land to be waterway, &c.**

- (1) The Minister may, by notice in the *Gazette*, declare any land not already a waterway:
  - (a) over which water collects or flows, whether or not the collection or flow is continuous; or
  - (b) adjacent to land that is otherwise a waterway,to be a waterway for the purposes of this Act.
- (2) The Minister shall not make a declaration under subsection (1) unless:
  - (a) the Minister is satisfied that:
    - (i) the declaration has been applied for by a person who, if the land were a waterway, would have the right to take and use water from it under section 10 or 11;
    - (ii) the applicant has caused notice of the application to be published in a newspaper circulating generally in the area in which the land is situated; and
    - (iii) the applicant has caused notice of the application to be given or sent by post to:
      - (A) the owner and the lawful occupier of the land;
      - (B) the council of the municipality in which the land is situated, if it is situated in a municipality; and

- (C) the responsible authority in relation to a planning area, if any, in which the land is situated; and
- (b) the Minister has considered all submissions on the application made within 60 days after the publication or giving of notice of the application under paragraph (a)(ii) or (iii), whichever is the later.
- (3) The Minister may require further information in relation to an application to be provided by the applicant.
- (4) A copy of a request made under subsection (3) shall be given or sent by post to all persons who, in the opinion of the Minister, are affected by the request.
- (5) The Minister may, in writing, as a condition precedent to the Minister making a declaration under subsection (1), require a person who:
- (a) owns land on the declared waterway; or
- (b) who will benefit from the declaration,
- to pay the amount of compensation specified by the Minister to another person who:
- (c) owns land on the declared waterway; or
- (d) will suffer detriment as a result of the declaration.
- (6) The Minister may, by notice in the *Gazette*, declare coastal waters of the Territory (within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* of the Commonwealth), to be tidal water for the purposes of this Act.

## **6 Act to bind Crown**

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly so permits, in all its other capacities.

## **7 Application of Act to mining or petroleum activity**

- (1) Section 15 does not apply to an interference with, or the obstruction of, a waterway if the interference or obstruction occurs in the course of a mining or petroleum activity.

- (2) Section 16 does not apply to waste that comes into contact with water, or water that is polluted, if:
  - (a) the contact or pollution occurs in the course of carrying out a mining or petroleum activity; and
  - (b) the waste or polluted water is confined within the mining site or petroleum site on which the activity is being carried out.
- (3) Subject to subsection (4), Parts 5 and 6 do not apply to an action or omission by a person, or to an action or omission caused, suffered or permitted by a person to be done, or to be omitted to be done, by another person, if the action or omission occurs in the course of carrying out a mining or petroleum activity.
- (4) Part 6, Division 5 applies to the disposal underground of waste in the course of carrying out a mining or petroleum activity on a mining site or petroleum site if the waste is not confined within the mining site or petroleum site.

## **8            Exercise of certain functions by statutory authorities**

- (1) A local government council or a prescribed statutory authority or body must not exercise functions relevant to the purposes of this Act except in accordance with this Act or as authorised by a delegation under this Act or a direction given by the Minister or the Controller.
- (2) The Minister or the Controller may give written directions to a local government council or a prescribed statutory authority or body in regard to the exercise of functions to which subsection (1) applies.

## **Part 2            General provisions relating to natural water and pollution**

### **Division 1        Rights to Natural Water, &c.**

#### **9            Crown rights to water**

- (1) In this Division, **water** means:
  - (a) the water flowing or contained in a waterway; or
  - (b) ground water.
- (2) Subject to this Act, the property in and the rights to the use, flow and control of all water in the Territory is vested in the Territory and those rights are exercisable by the Minister in the name of and on behalf of the Territory.

**10 Public right to take water for domestic and stock purposes**

- (1) Subject to section 99, a person may take water for domestic purposes, or for watering travelling stock, from a waterway.
- (2) Nothing in subsection (1) shall be construed as authorising a person to enter or remain on land to which the person does not otherwise have legal access.

**11 Rights of owners or occupiers of land in contact with waterway to take water for certain purposes**

Subject to section 99, the owner or occupier of land on or immediately adjacent to which there is a waterway may take water from that waterway for:

- (a) the use of the owner or occupier or the owner's or occupier's family and employees, for domestic purposes;
- (b) drinking water for grazing stock on the land; or
- (c) irrigating a garden, not exceeding 0.5 ha, which is part of the land and used solely in connection with a dwelling.

**12 Ownership of bed and banks of waterway forming boundary of land**

- (1) Where a waterway forms the boundary of land which is alienated by the Crown and that boundary is not a boundary surveyed for the purposes of the registration of the title to the land under the *Land Title Act*, the bed and banks of the waterway, to the extent, if any, that they were not the property of the Crown immediately before the commencement of this section are, by virtue of this section, acquired by and vested in the Territory.
- (2) In a grant or lease of land made after the commencement of this section, the bed and banks of a waterway forming the boundary of the land shall remain the property of the Territory except to the extent that they are contained within the boundaries of the land surveyed for the purposes of the registration of the title to the land under the *Land Title Act*.

**13 Rights of owner or occupier of adjacent land over banks of boundary waterway**

The owner or occupier of land immediately adjacent to the banks of a waterway, which banks are the property of the Territory, has, subject to this Act, the *Soil Conservation and Land Utilisation Act* and section 37(k) of the *Crown Lands Act*, the right to access for the owner or occupier or the owner's or occupier's family and

employees, and for the owner's or occupier's stock, to and over those banks.

**14 Right of owners of overlying land to take ground water for certain purposes**

Subject to sections 70 and 99, the owner or occupier of land may take ground water from beneath the land for:

- (a) the use of the owner or occupier or the owner's or occupier's family and employees, for domestic purposes;
- (b) drinking water for grazing stock on the land; or
- (c) irrigating a garden, not exceeding 0.5 ha, which is part of the land and used solely in connection with a dwelling.

**15 Obstruction of or interference with waterway prohibited**

- (1) In this section, **waterway** includes shallow ground water immediately underlying the bed or bank of a waterway.
- (2) Subject to subsection (6), a person shall not, unless authorised to do so by or under this Act:
  - (a) interfere with, or cause, suffer or permit another person to interfere with, a waterway; or
  - (b) do, or cause, suffer or permit another person to do, an act likely to obstruct the flow of water in a waterway.

Penalty: For a first offence – \$2,000.

For a second or subsequent offence – not less than \$2,000 or more than \$10,000 or imprisonment for 2 years.

Default penalty: \$200.

- (3) In a proceeding for an offence against subsection (2), proof of the existence of a structure or other obstruction:
  - (a) on land; or
  - (b) on, in or below a waterway,

by which the waterway is capable of being interfered with or the flow of water in which is capable of being obstructed is prima facie evidence that the waterway was interfered with, or the flow of water in it was obstructed, as the case may be, at the time the structure or other obstruction existed.



- (4) The Controller may, by notice in writing served on the owner or occupier of land:
- (a) comprising the bed and banks of a waterway; or
  - (b) immediately adjacent to both banks or part of a waterway in which an obstruction or interference to the flow or likely flow of water exists,
- require the owner or occupier to take such reasonable action to remove or abate the obstruction or interference as is specified in the notice and by the time or within the period so specified.
- (5) An owner or occupier served with a notice under subsection (4) shall not contravene or fail to comply with the notice.
- Penalty:        \$2,000.
- Default penalty: \$200.
- (6) The Minister may, by notice in the *Gazette*, exempt a category or class of obstruction or interference from the application of this section and, on the publication of that notice, this section, other than this subsection, ceases to apply to or in relation to obstructions or interferences of that category or class.

## **Division 2            Pollution**

### **16            Prohibition of pollution**

- (1) In this section, **water** means:
- (a) water flowing or contained in a waterway;
  - (b) ground water; or
  - (c) tidal water.
- (2) A person shall not, unless authorised to do so by or under this or any other law in force in the Territory and in accordance with that authorisation, wilfully cause, either directly or indirectly:
- (a) waste to come into contact with water; or
  - (b) water to be polluted,
- causing serious environmental harm.
- (2A) An offence against subsection (2) is an environmental offence level 1.

- (2B) A person shall not, unless authorised to do so by or under this or any other law in force in the Territory and in accordance with that authorisation, cause, either directly or indirectly:
- (a) waste to come into contact with water; or
  - (b) water to be polluted,
- causing serious environmental harm.
- (2C) An offence against subsection (2B) is an environmental offence level 2.
- (2D) A person shall not, unless authorised to do so by or under this or any other law in force in the Territory and in accordance with that authorisation, cause, either directly or indirectly:
- (a) waste to come into contact with water; or
  - (b) water to be polluted,
- causing material environmental harm.
- (2E) An offence against subsection (2D) is an environmental level 3 offence.
- (2F) A person shall not, unless authorised to do so by or under this or any other law in force in the Territory and in accordance with that authorisation, cause, either directly or indirectly:
- (a) waste to come into contact with water; or
  - (b) water to be polluted.
- (2G) An offence against subsection (2F) is an environmental offence level 4.
- (3) In a proceeding for an offence against this section, proof of the existence on land of a drain, pond, dump or other means (including mechanical means) whereby waste is capable of being conveyed, retained or deposited in such a manner as to come into contact directly or indirectly with water is prima facie evidence that waste came into contact with such water at the time that such drain, pond, dump or other means existed.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

**17 Rights to prevent pollution preserved**

- (1) Subject to subsection (2), nothing in this Act affects a right that a person has under a law in force in the Territory to restrict or prevent, or to obtain damages in respect of, the pollution of water.
- (2) In an action to restrict or prevent the pollution of water, it is a defence if it is proved that the pollution was authorised by a licence granted under section 63 or 74.

**Part 3 Administration**

**Division 1 General Administration**

**18 Controller of Water Resources**

The Minister may, in writing, appoint a person to be the Controller of Water Resources.

**19 Delegation**

- (1) The Minister or the Controller may, by instrument in writing, delegate to a person any of their respective powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister or the Controller, as the case may be.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister or the Controller.

**20 Power to enter land and take action**

- (1) In the exercise of the rights of the Territory under section 9(2) or the performance of a duty under section 34, the Controller or an authorised officer may enter and remain on any land but may not, without the permission of the owner or occupier, or the authority of a court, enter a dwelling house.
- (2) The Controller or an authorised officer may, on land entered by him or her in pursuance of subsection (1), take such measures or construct, maintain, repair, alter or remove such works as he or she thinks fit for the investigation, use, control, protection or management of water or the performance of the Controller's duty under this Act or the administration of the rights of the Territory in respect of water.

- (3) Where for a purpose referred to in subsection (1) or (2) the Controller or an authorised officer wishes to enter land, he or she shall, except in circumstances which he or she considers constitute an emergency, or where the purpose of the entry is to ascertain whether a breach of this Act (including the compliance with a term or condition of a licence, permit or consent granted under this Act) has occurred or for routine monitoring purposes, give notice in writing to the owner or occupier of the land of the intention to enter the land.
- (4) A notice required by subsection (3) to be given shall be served not later than 14 days before the entry and shall specify the land on or into which entry is to be made, the work, if any, proposed to be carried out or measures proposed to be taken, and the name and address of all contractors, agents, tradesmen, assistants or other persons who will enter the land to carry out the work or take the measures.
- (5) The Controller may, by notice in writing served on the owner or occupier of land, require the owner or occupier to do or not to do anything or to take such measures or construct or remove such works as, in the opinion of the Controller, are necessary or expedient for the investigation, use, control, protection or management of water or the administration of the rights of the Territory in respect of water specified in the notice, and by such time or within such period as is specified in the notice.
- (6) Where an owner or occupier of land refuses or fails to comply with a notice under subsection (5) or section 15(4), the Controller or an authorised officer may enter the land to which the notice relates and take such measures, or construct, maintain, repair, alter or remove such works, as are necessary to ensure compliance with the notice and the cost of so doing reasonably incurred by the Controller or authorised officer is a debt due and payable by the owner or occupier, as the case may be, to the Territory.
- (7) In the exercise of powers under this section or section 77, the Controller or an authorised officer may:
  - (a) be accompanied by such contractors, agents, tradesmen, assistants and other persons;
  - (b) take with him or her such plant, machinery, equipment and materials; and
  - (c) take such photographs,as the Controller or authorised officer thinks necessary or expedient in the circumstances.

- (8) In this section **authorised officer** means a person appointed under section 21 for the purposes of this section.

**21 Authorised officer**

- (1) The Controller may, in writing, appoint a person to be an authorised officer for the purposes of this Act.
- (2) The Controller shall cause each authorised officer to be issued with an identification card bearing his or her signature and the authorised officer shall show the card to any person who requests to know the identity of the authorised officer in the performance of the authorised officer's duties under this Act.

**22 Water control district**

The Minister may, by notice in the *Gazette*, declare a part of the Territory to be a water control district for a purpose specified in the notice and allocate a name to the district.

**22A Beneficial uses within water control district**

The Administrator may, by notice in the *Gazette*, declare the beneficial uses of the water in a water control district.

**22B Water allocation plans**

- (1) The Minister may, by notice in the *Gazette*, declare a water allocation plan in respect of a water control district.
- (2) The Minister must specify the period (not longer than 10 years) that a water allocation plan is to remain in force.
- (3) The Minister must ensure that a review of a water allocation plan is conducted at intervals not longer than 5 years.
- (4) Water resource management in a water control district is to be in accordance with the water allocation plan declared in respect of the district.
- (5) A water allocation plan is to ensure in the water control district that:
- (a) water is allocated within the estimated sustainable yield to beneficial uses;
  - (b) the total water use for all beneficial uses (including those provided through rural stock and domestic use and licences granted under sections 45 and 60) is less than the sum of the allocations to each beneficial use;

- (c) the right to take or use water under a licence granted under section 45 or 60 is able to be traded (in part or in full); and
  - (d) as far as possible – the full cost for water resources management is to be recovered through administrative charges to licensees and operational contributions from licensees.
- (6) An allocation under subsection (5)(a) is to include an allocation to the environment.

### **23 Water Advisory Committees**

- (1) The Minister may, in writing:
- (a) establish, and appoint the members of, a Water Advisory Committee for the Territory or a part of the Territory or for a particular purpose; and
  - (b) allocate a name to each such Advisory Committee.
- (1A) If a water allocation plan is declared under section 22B in respect of a water control district, the Minister may, in writing:
- (a) establish, and appoint the members of, a Water Advisory Committee for the district; and
  - (b) allocate a name to the Advisory Committee.
- (1B) An Advisory Committee referred to in subsection (1A):
- (a) in addition to subsection (3) – is to advise the Controller on the effectiveness of the water allocation plan in maximising economic and social benefits within ecological restraints; and
  - (b) is to carry out any other functions that the Controller may from time to time direct the Advisory Committee to perform.
- (2) An Advisory Committee shall consist of such members as the Minister thinks fit and the members shall hold office at the Minister's pleasure.
- (3) An Advisory Committee shall consider and advise the Controller on such matters within its jurisdiction as are referred to it by the Controller.

## **Division 2 Water Resources Review Panel**

### **24 Establishment and constitution of Review Panel**

- (1) The Minister may, by instrument in writing, establish a Water Resources Review Panel to advise the Minister in reviewing his or her actions or those of the Controller.
- (2) The Review Panel shall consist of a chairman appointed by the Minister (who shall, subject to this Division, hold office for 3 years but is eligible for reappointment) and, for the purposes of considering, and advising the Minister on, a matter referred to the Review Panel under section 30(3)(b), not less than 2 persons nominated by the Chairman from a group appointed under subsection (3) who shall hold office as members of the Review Panel for as long as the Chairman considers it necessary to enable the Review Panel to perform its functions in relation to the matter.
- (3) The Minister shall, by instrument in writing, appoint a group of 8 persons for the purposes of subsection (2) having respectively, in the Minister's opinion, relevant qualifications or experience in bore drilling, primary industry, secondary industry, Aboriginal affairs, public health, environmental management, fisheries and mining.
- (4) When the occasion arises for the Chairman to nominate members to constitute with him or her the Review Panel for the purposes of a particular matter, the Chairman shall choose those members of the group who, in the Chairman's opinion, are best qualified and available to constitute the Review Panel for the consideration of that matter.
- (5) Nothing in this Division prevents the Review Panel from being constituted by different members for the purposes of 2 or more matters being considered concurrently by the Review Panel or a member of the Review Panel from being a member in respect of 2 or more matters at the same time.

### **25 Resignation of member**

- (1) The Chairman or other member of the Review Panel or of the group appointed under section 24(3) may resign office by writing signed by him or her and delivered to the Minister.
- (2) A resignation under subsection (1) has no effect until it is accepted by the Minister.

**26 Absence of chairman or vacancy in office**

Where there is a vacancy in the office of the Chairman or the Chairman is or is about to be absent from the Territory or unable to perform the duties of his or her office, the Minister may appoint a person to act in the office of the Chairman:

- (a) in the case of a vacancy – for the remainder of the period of appointment of the Chairman; or
- (b) in any other case – for the period during which the Chairman is absent from the Territory or unable to perform his or her duties.

**27 Confidentiality**

A member of the Review Panel (including the Chairman) shall not disclose information obtained in the course of his or her duties as such, unless that disclosure is made in the course of those duties.

Penalty: \$2,000 or imprisonment for 3 months.

**28 Disclosure of interest**

- (1) The Chairman or other member of the Review Panel who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Review Panel at a meeting of the Review Panel (otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director) shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at that meeting.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Review Panel and the Chairman or member shall not, while he or she has that interest, take part after the disclosure in any deliberation or decision of the Review Panel in relation to that matter.

**29 Meetings of Review Panel**

- (1) The Chairman of the Review Panel shall, as soon as practicable after a matter is referred to the Review Panel under section 30(3)(b) by the Minister, nominate the appropriate members of the group as members of the Review Panel in accordance with section 24(4) and call a meeting of the Review Panel so constituted to consider the matter.
- (2) At a meeting of the Review Panel questions arising shall be determined by a majority of the votes of members.



- (3) The Review Panel shall cause minutes of its meetings to be kept but shall otherwise determine the procedure to be followed at or in connection with its meetings.

### **Division 3 Review of certain actions and decisions**

#### **30 Application for review**

- (1) Subject to subsection (2), a person aggrieved by an action or decision under this Act (other than section 93(3)) of the Controller, or under section 5(6) of the Minister, may apply to the Minister to review the matter.
- (2) An application under this section shall be made in the prescribed manner and form.
- (3) Subject to this Act, the Minister may:
  - (a) in the case of an application against an action or decision of the Controller:
    - (i) uphold the action or decision;
    - (ii) substitute for the decision the decision that, in the opinion of the Minister, the Controller should have made in the first instance; or
    - (iii) refer a matter back to the Controller for reconsideration of the action or decision with or without directions about new matters that the Controller shall take into account in that reconsideration; or
  - (b) in any case, refer the matter to the Review Panel with the request that it advise the Minister within the time indicated on what action the Minister should take in relation to the matter.
- (4) Where a matter has been referred under subsection (3)(b) to the Review Panel, the Review Panel shall consider it and advise the Minister accordingly and the Minister shall take such action under subsection (3)(a)(i) or (ii) as he or she thinks fit.

#### **31 Power of Review Panel**

- (1) For the purpose of enabling it to advise the Minister on a matter referred to it under section 30(3)(b), the Review Panel may:
  - (a) by notice signed by its Chairman, require the attendance before the Review Panel of a person;

- (b) by notice signed by its Chairman, require the production of any relevant books, papers or documents before the Review Panel;
  - (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of the contents of such books, papers or documents;
  - (d) require a person to give evidence on oath;
  - (e) require a person appearing before the Review Panel to answer a relevant question put to the person by the Review Panel or by any other person appearing before the Review Panel; or
  - (f) enter and inspect, or authorise a person to enter and inspect, any land for the purposes of a proceeding before the Review Panel.
- (2) A person who:
- (a) having been served with a notice to attend before the Review Panel fails without reasonable excuse to attend in accordance with the notice;
  - (b) having been served with a notice to produce before the Review Panel any books, papers or documents, fails without reasonable excuse to comply with the notice;
  - (c) misbehaves before the Review Panel, wilfully insults the Review Panel or a member of the Review Panel in that capacity or, without reasonable excuse, interrupts the proceedings of the Review Panel;
  - (d) refuses to be sworn, or to answer a relevant question, when required to do so by the Review Panel; or
  - (e) refuses to permit the Review Panel, or a person authorised by the Review Panel, to enter land,

is guilty of an offence.

Penalty: \$1,000.

## **32 Reasons to be given**

The Review Panel shall give to the Minister its reasons in writing for a recommendation made by it to the Minister.

**Division 4          Protection of officers, &c.****33          Protection of members of review panel and other officers**

No action or proceeding, civil or criminal, shall lie or be continued against a member of the Review Panel, the Controller or an authorised officer, or against a person to whom a power or function has been delegated under section 19, for or in respect of an act or thing done in good faith by the Review Panel or person in the exercise or performance, or purported exercise or performance, of a power or function under this Act.

**Part 4                  Water resources investigation****34          Water resources investigation**

To enable effective planning for water resource development and environmental protection, it is the duty of the Controller to ensure as far as possible that a continuous program for the assessment of water resources of the Territory is carried out, including the investigation collection, collation and analysis of data concerning the occurrence, volume, flow, characteristics, quality, flood potential and use of water resources, and for that purpose the Controller may:

- (a) systematically gauge stream flow, record climatic data and monitor groundwater levels;
- (b) construct, operate, repair, maintain, alter and remove gauging, recording and monitoring stations and investigation and monitoring bores;
- (c) sample and analyse water and waste; and
- (d) cooperate with a State of the Commonwealth in the investigation of water resources which traverse the boundary between the Territory and the State.

**35          Monitoring equipment, &c., not fixture or improvement to land**

Where in the performance of the Controller's duty anything is attached to land, it shall be taken not to be:

- (a) a fixture to the land for the purpose of giving the owner or occupier of the land a proprietary interest in it; or
- (b) an improvement.

**36 Water investigation permits**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a permit to explore for water.
- (2) A permit granted under subsection (1) is subject to such terms and conditions, if any, as are specified in the permit document.
- (3) A permit may empower its holder to enter Crown land or private land and to take such measures and carry out such works for the purposes of this Part as are specified in the permit document or prescribed and, subject to this Act, the holder of the permit may, with such workmen and equipment as reasonably required for that purpose, enter the land and do those things accordingly.
- (4) A permit shall be granted for such period, not exceeding 12 months, as is specified in the permit document.

**37 Breach of terms or conditions of permit**

The holder of a permit granted under section 36 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the permit is subject.

Penalty: \$1,000.

Default penalty: \$200.

**38 Notice where private land disturbed**

- (1) Where in the exercise of a power by virtue of a permit under this Part the holder of the permit wishes to enter land, he or she shall give notice in writing to the owner or occupier of the land of the holder's intention to enter the land.
- (2) A notice required under subsection (1) to be given shall be served not later than 14 days before the exercise of the power and shall specify the land on which entry is to be made, the work proposed to be carried out on the land and the name and place of business of each person who will enter on the land to carry out the work.

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**39 Access to confidential information**

(1) Where the holder of a mining tenement, as defined in section 4 of the *Mining Act*, an exploration licence granted under that Act, or a permit or licence as defined in the *Petroleum Act* is obliged to:

- (a) obtain and send to the Secretary, as defined in the *Mining Act* or the Minister under the *Petroleum Act*, as the case may be, water samples and data on underground water encountered during exploration drilling;
- (b) deposit a drill core or cutting with the Secretary under the *Mining Act* or a person directed by the Secretary or inform the Minister under the *Petroleum Act* of the recovery of such a core or cutting; or
- (c) lodge at the office of the Secretary a report,

the Controller may:

- (d) have access to any such samples, data, drill core, cutting or report;
- (e) arrange for or undertake an analysis of such samples, drill core or cutting; and
- (f) make or obtain copies of any such data or report,

notwithstanding any provisions of the *Mining Act* or *Petroleum Act* concerning confidentiality and without the need to obtain the permission of the holder of the mining tenement or exploration licence or permit or licence under the *Petroleum Act*.

(2) Where under subsection (1) a person becomes aware of information to which confidentiality attaches under the *Mining Act* or *Petroleum Act*, the person shall not reveal the information to, or suffer or permit the information to be revealed or to be discovered by, a person who is not an authorised officer.

Penalty: \$5,000.

## **Part 5            Surface water**

### **Division 1       Works**

#### **40            Prohibition of unauthorised works**

- (1) A person shall not, unless authorised by or under this Act, construct or alter a dam, water storage or other water control structure in a waterway or in such a way as to affect the flow or likely flow of water in a waterway.

Penalty:            For a first offence – \$2,000.

                          For a second or subsequent offence – not less than \$2,000 or more than \$10,000.

Default penalty: \$200.

- (2) Notwithstanding that the right to the use and flow, and to the control, of all water in the Territory is, by virtue of section 9(2), vested in the Territory, the owner or occupier of land may:
- (a) drain the land in accordance with this Act and the *Soil Conservation and Land Utilisation Act*; or
  - (b) for the retention or conservation of water for use on the land, construct, operate, maintain, repair or alter a dam or other water storage or works (other than prescribed works) not in a waterway,

if the flow or likely flow of water in or into a waterway is not materially diminished or increased thereby.

- (3) In a proceeding for an offence against subsection (1), proof of the existence of a dam, water storage or water control structure (other than a dam, water storage or structure permitted under subsection (2)) on the land is prima facie evidence that the dam or water storage was, or prescribed works were, constructed in contravention of subsection (1) at the time that the dam, water storage, or water control structure, are proved to have existed.

#### **41            Grant of construction permit**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a permit in the prescribed form to construct or alter a dam, water storage or water control structure referred to in section 40(1).

- (2) A permit may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the permit document.
- (3) A permit shall be granted for such period, not exceeding 12 months, as is specified in the permit document.

#### **42 Breach of term or condition of permit**

The holder of a permit granted under section 41 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the permit is subject.

Penalty:        \$2,000.

Default penalty: \$200.

### **Division 2            Taking surface water**

#### **43 Definition**

In this Division, **water** means water flowing or contained in a waterway.

#### **44 Unauthorised taking or use of surface water prohibited**

- (1) A person shall not, unless permitted by or under this Act, take or use water except in accordance with a licence granted under this Division.

Penalty:        For a first offence – \$2,000.

For a second or subsequent offence – not less than \$2,000 or more than \$10,000.

Default penalty: \$200.

- (2) In a proceeding for an offence against subsection (1), proof of the existence on land of a channel or other means (including mechanical means) whereby water is capable of being taken or used is prima facie evidence that water was taken or used in contravention of that subsection during the time the channel or other means existed.
- (3) The Administrator may, on the recommendation of the Minister, by notice in the *Gazette*, declare that subsection (1) does not apply to or in relation to the taking or use of water of a class, kind, description or volume, or at a rate or for a purpose, specified in the notice and, accordingly, that subsection does not apply.

**45            Licence to take or use water**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence in the prescribed form to take or use water.
- (2) A licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) Subject to subsection (4), a licence shall be granted for such period, not exceeding 10 years, as is specified in the licence document.
- (4) The Controller may, where in the opinion of the Minister there are special circumstances that justify so granting the licence, grant a licence for such period exceeding 10 years as is specified in the licence document.

**46            Breach of term or condition of licence**

The holder of a licence granted under section 45 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.

Penalty:        \$2,000.

Default penalty: \$200.

**Part 6            Ground water**

**Division 1        General**

**47            Declaration of exemptions**

The Administrator may, on the recommendation of the Minister, by notice in the *Gazette*, declare that a provision of this Part does not apply to or in relation to a bore, or to drainage water or waste, of a class or description specified in the notice and, accordingly, that provision does not apply.



## **Division 2            Drilling licences**

### **48            Prohibition of unlicensed drillers**

- (1) A person shall not, unless he or she is the holder of the relevant licence under section 49, or is acting under the supervision of the holder of such a licence:
- (a) drill or construct a bore;
  - (b) deepen or enlarge a bore;
  - (c) remove, replace, alter or repair the casing, lining or screen of a bore; or
  - (d) plug, backfill or seal off a bore.

Penalty:        For a first offence – \$5,000 or imprisonment for 3 months.

                    For a second or subsequent offence – not less than \$5,000 or more than \$10,000 or imprisonment for 12 months.

- (2) For the purposes of subsection (1), a person shall not be regarded as acting under the supervision of the holder of a licence unless the holder of the licence is present while the act is performed.

### **49            Grant of drilling licence**

- (1) Subject to this Act, the Controller may:
- (a) of his or her own motion or on application in the prescribed manner and form; and
  - (b) on being satisfied that the person has the prescribed qualifications,
- grant to a person a drilling licence of a prescribed kind in the prescribed form.
- (2) A drilling licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) A drilling licence shall be granted for such period, not exceeding 5 years, as is specified in the licence document.

**50            Breach of term or condition of licence**

The holder of a drilling licence granted under section 49 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.

Penalty:        \$5,000.

Default penalty: \$500.

**51            Surrender of licence**

The holder of a drilling licence granted under section 49 to whom notice has been given in accordance with section 93 shall, within 30 days after the date of the notice, deliver to the Controller the licence document.

**52            Obligation to produce drilling licence**

A person working as a driller or on or in connection with a bore shall, if required to do so by the Controller, produce within a reasonable time to the Controller:

- (a) the person's drilling licence granted under section 49; or
- (b) satisfactory evidence that he or she is acting under the supervision of the holder of a drilling licence.

**53            Obligation to provide information**

- (1) The Controller may require the holder of a drilling licence granted under section 49 to provide to him or her, in such form and by such time or within such period as the Controller requires, the prescribed information and samples.
- (2) The holder of a drilling licence to whom a requirement under subsection (1) applies shall not refuse or fail to comply with the requirement.

Penalty:        \$2,000.

Default penalty: \$200.

**54            Drillers' Qualifications Advisory Committee**

- (1) There shall be a Drillers' Qualifications Advisory Committee.

- (2) The Drillers' Qualifications Advisory Committee shall:
- (a) be constituted by a chairman and such number of other members; and
  - (b) have such powers and functions, as are prescribed.
- (3) The chairman and members of the Drillers' Qualifications Advisory Committee shall be appointed by the Minister and hold office at the Minister's pleasure.

### **Division 3 Construction permits**

#### **55 Notification of particulars of bores**

- (1) The Controller may, by notice in the *Gazette*, require every owner or occupier of land or land of a specified class, either generally or within an area specified in the notice, to provide to the Controller:
- (a) within such time as is specified in the notice; or
  - (b) as soon as practicable after the completion of the construction or alteration of a bore,
- such information as is specified in the notice in relation to all or any bores situated on the land of that owner or occupier.
- (2) A person to whom a notice under subsection (1) applies shall not refuse or fail to comply with the notice.

Penalty: \$2,000.

Default penalty: \$200.

#### **56 Prohibition of unlawful construction, &c.**

- (1) A person shall not, unless authorised by or under this Act, cause, suffer or permit:
- (a) a bore to be drilled, constructed, altered, plugged, backfilled or sealed off;
  - (b) the casing, lining or screen of a bore to be removed, replaced, altered, slotted or repaired;
  - (c) a bore (whether in the course of construction or not) to be deepened; or

- (d) work to be carried out in relation to a bore in respect of which the Administrator has, by notice under section 47, declared that a provision of this Part does not apply, if the work will result in the provision then applying to the bore.

Penalty: For a first offence – \$5,000.

For a second or subsequent offence – not less than \$5,000 or more than \$10,000.

- (2) It is a defence to a prosecution for an offence against subsection (1) if it is proved that:
- (a) the work by which it is alleged the offence was committed was urgently required to prevent pollution or deterioration of the water in a bore;
  - (b) in the circumstances it was not reasonably practicable to apply for a permit under section 57;
  - (c) as soon as practicable after the work was commenced the Controller was informed of the nature of the work; and
  - (d) the regulations, if any, relating to work carried out in those circumstances were complied with.

### **57 Grant of bore construction permit**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a permit in the prescribed form to carry out an operation referred to in section 56(1).
- (2) A permit may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the permit document.
- (3) A permit shall be granted for such period, not exceeding 12 months, as is specified in the permit document.

### **58 Breach of term or condition of permit**

The holder of a permit granted under section 57(1) shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the permit is subject.

Penalty: \$2,000.

Default penalty: \$200.

## **Division 4            Extraction of ground water**

### **59            Prohibition of unlicensed extraction of ground water**

- (1) A person shall not, unless authorised by section 14 or otherwise by or under this Act to do so, take water from a bore except in accordance with a licence granted under this Division.

Penalty:            For a first offence – \$2,000.

                          For a second or subsequent offence – not less than \$1,000 or more than \$5,000.

Default penalty: \$200.

- (2) In proceedings for an offence against subsection (1), proof of the existence on land of pumping equipment or other prescribed means whereby water is capable of being taken from a bore is prima facie evidence that the water was taken in contravention of that subsection at the time that equipment or those means are proved to have existed.

### **60            Grant of licence to take ground water**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence in the prescribed form to take water from a bore.
- (2) A licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) Subject to subsection (4), a licence shall be granted for such period, not exceeding 10 years, as is specified in the licence document.
- (4) The Controller may, where in the opinion of the Minister there are special circumstances that justify so granting the licence, grant a licence for such period exceeding 10 years as is specified in the licence document.

**61 Breach of term or condition of licence**

The holder of a licence granted under section 60 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.

Penalty: \$2,000.

Default penalty: \$200.

**Division 5 Waste disposal**

**62 Prohibition of unlicensed waste disposal**

- (1) A person shall not, unless authorised by or under this Act to do so, wilfully cause waste to be disposed of underground by means of a bore causing serious environmental harm.
- (1A) An offence against subsection (1) is an environmental offence level 1.
- (1B) A person shall not, unless authorised by or under this Act to do so, cause waste to be disposed of underground by means of a bore causing serious environmental harm.
- (1C) An offence against subsection (1B) is an environmental offence level 2.
- (1D) A person shall not, unless authorised by or under this Act to do so, cause waste to be disposed of underground by means of a bore causing material environmental harm.
- (1E) An offence against subsection (1D) is an environmental offence level 3.
- (1F) A person shall not, unless authorised by or under this Act to do so, cause waste to be disposed of underground by means of a bore.
- (1G) An offence against subsection (1F) is an environmental offence level 4.
- (2) In proceedings for an offence against this section, proof of the existence on land of a means whereby waste is capable of being disposed of underground by means of a bore is prima facie evidence that waste was disposed of underground by means of a bore in contravention of this section at the time those means are proved to have existed.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

**63            Grant of underground waste disposal licence**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence in the prescribed form to dispose of waste underground by means of a bore.
- (2) A licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) A licence shall be granted for such period, not exceeding 12 months, as is specified in the licence document.

**64            Breach of term or condition of licence**

- (1) The holder of a licence granted under section 63 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.
- (2) An offence against subsection (1) is an environmental offence level 3.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

**65            Change in use of bore**

- (1) Subject to subsection (2), a person shall not, without the consent in writing of the Controller, cause, suffer or permit:
  - (a) a bore that is not being used for or in connection with the disposal of waste to be used for or in connection with the disposal of waste;
  - (b) a bore that is being used for or in connection with the disposal of waste to be used for the taking of water; or
  - (c) any change in the use to occur in relation to a bore to which the Administrator has, by notice under section 47, declared that a provision of this Part does not apply, if that change will result in the provision then applying to the bore.
- (2) The Controller may, on application, consent to a person doing a thing referred to in subsection (1) and the person may do that thing accordingly.
- (3) A consent may be granted under subsection (2) subject to such terms and conditions, if any, as are specified in the consent document.

(4) A person to whom a consent is granted shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the consent is subject.

(5) An offence against this section is an environmental offence level 3.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

## **Division 6            Recharge of aquifers**

### **66            Prohibition of unlicensed recharge**

(1) A person shall not, unless authorised by or under this Act to do so, cause, suffer or permit works to be constructed, operated or altered for the purpose of increasing the water contained in an aquifer, except in accordance with a licence under this Division.

Penalty:        \$2,000.

Default penalty: \$200.

(2) In proceedings for an offence against subsection (1), proof of the existence on land of a means whereby the water contained in an aquifer is capable of being increased is prima facie evidence that the water contained in an aquifer was increased in contravention of that subsection at the time those means are proved to have existed.

### **67            Grant of recharge licence**

(1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence to increase the water contained in an aquifer.

(2) A licence may be granted under subsection (1) subject to such terms and conditions as are specified in the licence document.

(3) A licence shall be granted for such period, not exceeding 10 years, as is specified in the licence document.

### **68            Breach of term or condition of licence**

The holder of a licence granted under section 67 shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.

Penalty:        \$2,000.

Default penalty: \$200.



## **Division 7            General**

### **69            Prohibition of waste**

- (1) The owner or occupier of land on which a bore is situated:
- (a) shall, if the bore is no longer in use – cause it to be properly plugged, sealed off or backfilled; and
  - (b) shall not cause, suffer or permit water from the bore to run to waste.

Penalty:        \$2,000.

Default penalty: \$200.

- (2) For the purposes of subsection (1), an owner or occupier referred to in that subsection shall be deemed to hold the necessary drilling licence under section 49.

### **70            Power to give directions**

Notwithstanding anything in this Act but without limiting the generality of section 20, where the Controller is satisfied that an act or omission by a person in relation to a bore may result, directly or indirectly, in the pollution or deterioration, inequitable distribution, loss, wastage or undue depletion of water, the Controller may, by notice served on the owner or occupier of the land on which the bore is situated, direct that person, within the period specified in the notice, to:

- (a) close, and shut off the supply of ground water from, the bore in the manner specified in the notice;
- (b) restrict or limit the amount of water taken from the bore to the extent specified in the notice;
- (c) install and maintain a suitable meter to record the amount of water taken or discharged from the bore;
- (d) discontinue the use of the bore;
- (e) disconnect all pipes or drainage works discharging into, or in the vicinity of, the bore and take such action as is specified in the notice to prevent waste from entering the bore;
- (f) close, or partly or entirely plug, seal off or backfill the bore in the manner specified in the notice;

- (g) treat waste in a manner specified in the notice before it is allowed to enter the bore;
- (h) restrict, in the manner specified in the notice, the amount of waste entering the bore; or
- (j) use the water taken from the bore for such purposes as are specified in the notice,

or to do any combination of those things.

## **71 Contravention of notice**

A person shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a notice under section 70, notwithstanding that the contents of the notice differ from, are inconsistent with, or are contrary to, a term or condition of a licence, permit or consent granted under this or any other Act.

Penalty: \$2,000.

Default penalty: \$200.

## **Part 6A Water extraction licence decisions**

### **71A Water extraction licence decision and application of Part**

- (1) A water extraction licence decision is a decision about an application to which this Part applies.
- (2) This Part applies to an application:
  - (a) for the grant of a water extraction licence; or
  - (b) for an amendment or modification of a water extraction licence involving an increase in the quantity of water that may be taken or used under the licence.
- (3) This Part does not apply to an application for the renewal of a water extraction licence if the quantity of water that may be taken or used under the renewed licence will not increase.

### **71B Notice of intention to make water extraction licence decision**

- (1) Within 30 days after lodgment of an application to which this Part applies, the Controller must give notice of the Controller's intention to make a water extraction licence decision.

- (2) The Controller must publish the notice in a newspaper circulating throughout the Territory and may also publish the notice in a newspaper circulating in the general locality to which the application relates.
- (3) The notice must include the following information:
  - (a) whether the application is for the grant, amendment or modification of a water extraction licence;
  - (b) if the application is for the grant of a water extraction licence – the following details:
    - (i) whether the applicant proposes to take the water by means of extraction, diversion or instream use;
    - (ii) the name of the waterway from which the water will be taken;
    - (iii) the point of the waterway, or the bore, from which the water will be taken;
    - (iv) a description of the areas of land on which the waterway or bore is located and on which the water will be used;
    - (v) the proposed beneficial uses of the water;
    - (vi) the maximum quantity of water in megalitres proposed to be taken annually for each beneficial use;
  - (c) if the application is for the amendment or modification of a water extraction licence – the details of the proposed changes to the licence in relation to any of the matters mentioned in paragraph (b)(i) to (vi);
  - (d) any other information, available to the Controller about the relevant water resource, that the Controller considers relevant to the application, including the following:
    - (i) the total quantity of water that currently may be taken from the water resource under water extraction licences;
    - (ii) the total quantity of water that currently is taken from the water resource under water extraction licences;
    - (iii) the estimated total sustainable yield of water of the water resource.

- (4) The notice must include an invitation to make written comments about the application to the Controller, at a specified address, within 30 days after publication of the notice.
- (5) The applicant for the water extraction licence decision must pay the costs of publishing the notice.
- (6) The Controller must give a copy of the notice to the owners and occupiers of land immediately adjacent to:
  - (a) the land from which the water will be taken; and
  - (b) the land on which the water will be used.

### **71C Making water extraction licence decision**

- (1) The Controller must make a water extraction licence decision as soon as practicable after the end of the period allowed for comments (if possible, within 30 days after the end of that period).
- (2) In making the decision, the Controller must take into account all the comments about the relevant application made in accordance with section 71B(4).
- (3) A copy of the full decision must be available to the public and must include the reasons for the decision and the way in which the Controller has taken into account:
  - (a) the comments mentioned in subsection (2); and
  - (b) any relevant factors mentioned in section 90(1).

### **71D Notice of water extraction licence decision**

- (1) Within 30 days after making a water extraction licence decision, the Controller must:
  - (a) give a notice of the decision to the applicant and, if applicable, grant, amend or modify the licence under section 45 or 60; and
  - (b) publish a notice of the decision in the same newspaper (or newspapers) in which notice of the relevant application was given.
- (2) A notice given or published under subsection (1) must include a brief statement:
  - (a) of the reasons for the water extraction licence decision; and

- (b) advising where a person may read or obtain a copy of the full decision; and
- (c) that a person who is aggrieved by the decision may apply for a review under section 30.

**71E Notice of substituted or varied water extraction licence decision**

- (1) This section applies if a water extraction licence decision (***the original decision***) is reviewed under section 30 and one of the following decisions (***the review decision***) is made:
  - (a) a decision by the Minister under section 30(3)(a)(ii) in substitution for the original decision;
  - (b) a decision by the Controller, following a referral by the Minister under section 30(3)(a)(iii), that is substantially different from the original decision.
- (2) Within 10 days after the review decision is made, the Controller must publish a notice of the decision in the same newspaper (or newspapers) in which the original decision was published.
- (3) The notice must include a brief statement:
  - (a) of the reasons for the review decision; and
  - (b) advising where a person may read or obtain a copy of the full review decision.
- (4) The review decision must include the reasons for the decision and the way in which the Minister or Controller has taken into account:
  - (a) the comments made in accordance with section 71B(4); and
  - (b) any relevant factors mentioned in section 90(1).

**Part 7 Water quality**

**72 Definition**

In this Part, ***water*** means:

- (a) water flowing or contained in a waterway;
- (b) ground water; or
- (c) tidal water.

**73 Water quality standards**

- (1) The Administrator may, by notice in the *Gazette*, declare, either generally or for an area specified in the notice, the beneficial uses, quality standards, criteria or objectives which apply to or in relation to any:
  - (a) waste or class of waste; or
  - (b) water or class of water.
- (2) Subject to subsection (3), where a notice under subsection (1) is in force, every licence, permit or consent granted under this Act before or after the publication of the notice is, except to the extent that the licence, permit or consent otherwise provides, subject to the condition that nothing shall be done or suffered or permitted to be done under the licence, permit or consent which prejudices the beneficial use, quality, standard, criteria or objective specified in the notice in the area to which it applies.
- (3) Where immediately before the date of a notice under subsection (1) a person was, in accordance with this or any other Act, causing, suffering or permitting:
  - (a) waste to come into contact with water; or
  - (b) water to be otherwise polluted,

in a manner that would, but for this section, be an offence for breach of a condition referred to in subsection (2) or otherwise under this Act, the person may continue to do so for:

  - (c) 3 months after that date;
  - (d) such longer period as the Controller from time to time, in writing, allows; or
  - (e) subject to subsection (4), until the Controller determines an application referred to in that subsection,

whichever is the longer period, but subject to any directions the Controller gives.
- (4) Where within a period referred to in subsection (3)(c) or (d) a person referred to in subsection (3) makes an application under section 74 in relation to waste or pollution and the Controller refuses to grant the licence, the person may continue to do or suffer the thing the subject of the application to be done in that manner for 3 months after the Controller's refusal, but subject to any directions the Controller gives.

**74 Grant of waste discharge licence**

- (1) Subject to this Act, the Controller may, of his or her own motion or on application in the prescribed manner and form, grant to a person a licence to carry out an action which would otherwise be an offence against this Act by virtue of section 73.
- (2) A licence may be granted under subsection (1) subject to such terms and conditions, if any, as are specified in the licence document.
- (3) Subject to subsection (4), a licence shall be granted for such period, not exceeding 2 years, as is specified in the licence document.
- (4) The Controller may, where in the opinion of the Minister there are special circumstances that justify so granting the licence, grant a licence for such period exceeding 2 years as is specified in the licence document.

**74A Actions may be carried out under approval, &c., under *Waste Management and Pollution Control Act***

An action carried out under an environment protection approval, environment protection licence or best practice licence within the meaning of the *Waste Management and Pollution Control Act* does not constitute an offence against this Act by virtue of section 73.

**75 Further information**

The Controller may, by notice in writing served on an applicant for a licence under section 74(1), require the applicant to furnish to the Controller, within the time specified in the notice, such information and such reports, plans and specifications as the Controller considers necessary and relevant to the application and specifies in the notice.

**76 Breach of terms or conditions of licence**

- (1) The holder of a licence granted under section 74(1) shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a term or condition to which the licence is subject.
- (2) An offence against this section is an environmental offence level 3.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

**77            Monitoring**

- (1) A licence granted under section 74(1) may be subject to a condition that the licensee shall, at the licensee's own expense, conduct a monitoring program designed to provide the Controller with information about the characteristics, volume and effects of any waste or water in respect of which the licence is issued.
- (2) All data and information recorded in a program referred to in subsection (1) shall be supplied to the Controller at such times and in such form, and after such analysis, if any, as is prescribed or is specified in the licence document.
- (3) Without limiting the generality of section 20, the Controller may enter and remain on land, other than a dwelling house, for the purpose of:
  - (a) examining and inspecting any apparatus, equipment or works used for or in connection with the discharge or treatment of waste;
  - (b) taking and removing samples, of water or waste that is being or is likely to be, or is of a kind that is usually, discharged from the land, or of water into which such water or waste is being or is likely to be discharged; or
  - (c) taking and removing such samples, and making such examinations and inquiries and tests on the samples, as the Controller considers necessary to ascertain whether this Act is being complied with.

**Part 8            Water resource development**

**Division 1        Preliminary**

**78            Definition**

In this Part **water** means:

- (a) the water flowing or contained in a waterway; or
- (b) ground water.



## **Division 2 Development works**

### **79 Power to construct works, &c.**

- (1) The Minister may arrange for the acquisition or construction, maintenance, repair, alteration, operation or removal of such works as the Minister thinks fit:
  - (a) for investigating, observing, measuring or assessing waste or water;
  - (b) for conserving water or protecting or enhancing its quality;
  - (c) for irrigating or draining land;
  - (d) for the use of water for recreation purposes;
  - (e) for controlling flooding; or
  - (f) in connection with the administration of this Act.
- (2) The Minister may authorise a person to construct, maintain, repair, alter, operate or remove works for a purpose described in subsection (1) on such terms and conditions, if any, as are specified in the instrument of authorisation.
- (3) A person shall not, unless authorised under and in accordance with subsection (2) or under and in accordance with this or any other Act, construct, maintain, repair, alter, operate or remove works for a purpose described in subsection (1), or cause, suffer or permit another person to do so.

Penalty: In the case of a natural person – not less than \$500 or more than \$5,000 or imprisonment for 12 months.

Default penalty: \$200.

In the case of a body corporate – not less than \$5,000 or more than \$25,000.

Default penalty: \$1,000.

- (4) It is a condition of every authorisation under subsection (2) that the authorised person will comply with all directions given by the Minister or the Controller in relation to the works.

**80 Information and advice**

- (1) The Controller may provide information or advice to a person on a matter concerning the development or improvement of water supplies or drainage for land, subject to such terms and conditions, if any, as are agreed between the Controller and that person or are prescribed.
- (2) The Controller may impose such charges for the provision of the information or advice under subsection (1) as are prescribed.

**Division 3 General**

**81 Use of bore where costs borne by Territory**

- (1) A person shall not, without the approval in writing of the Controller, use for any purpose a bore the costs of which before or after the commencement of this Act have been borne by the Territory.

Penalty: \$2,000.

Default penalty: \$200.

- (2) Subject to this Act, the Controller may approve the use of a bore the costs of which have been borne by the Territory, either absolutely or subject to such conditions, if any, relating to payment or otherwise as the Controller thinks fit.

**82 No liability for information or advice**

No liability shall attach to, and no costs shall be borne by, the Controller, the Territory or an authorised officer in respect of any loss caused by or resulting from information or advice under Division 2.

**83 Duty to comply with Act and directions**

Nothing in this Part shall be construed as permitting a person to construct or use works otherwise than in accordance with such:

- (a) licences, permits or consents as are required under this Act for the construction or use of those works; or
- (b) lawful directions, if any, as are given by the Minister or Controller in relation to such works.

## **Part 9                    Fees and charges**

### **84                    Power to recover unpaid moneys**

Where a fee or charge imposed under this Act remains unpaid for 30 days after the date on which it is due and payable:

- (a) an authorised officer may issue proceedings in a court of competent jurisdiction and may recover the amount of the fee or charge and the costs incurred in its recovery, and may take such further action, if any, as is prescribed; and
- (b) the Controller may:
  - (i) suspend a permit or licence;
  - (ii) cease to provide a service to which the unpaid fees or charges relate; or
  - (iii) cease to provide or refuse to provide any other service which may be provided under this Act to a person to whom, or to any land in respect of which, the fee or charge relates,

until such time as the fee or charge is paid or recovered.

## **Part 10                General provisions**

### **Division 1            General**

#### **86                    Interpretation**

In this Part **licence** means a licence, permit or consent.

#### **87                    Compensation and liability**

- (1) Where in the performance of the Controller's duty under section 34 damage is caused to land, the Territory shall pay to the owner or the occupier of the land, as the case requires, such amount, if any, as is determined by the Controller to be the amount of the damage.
- (2) Except as provided by subsection (1), but subject to section 107, the Territory shall not be liable to pay compensation to a person as a result of the operation of, or of the due exercise of a power, function, authority or discretion conferred by, this Act.

- (3) Where in the exercise of a power conferred by a permit granted under section 36 damage is caused to land, the holder of the permit is liable to pay compensation for the damage to the owner or occupier of the land, as the case requires.
- (4) For the purpose of this section, damage to land includes loss suffered as a result of:
  - (a) deprivation of the possession of the surface of the land;
  - (b) damage to the surface of the land or to improvements on the land;
  - (c) damage to a crop on the land;
  - (d) damage to stock on the land; and
  - (e) all consequential damage.

**88      Power to require records, &c.**

- (1) The Controller may, by notice in the *Gazette* or served on a person, require persons of a class specified in the notice, or the person on whom the notice is served, to:
  - (a) keep and maintain such records;
  - (b) install, operate and maintain such equipment; and
  - (c) provide such information to such person,  
  
relating to the investigation, use, control, protection, management or administration of water or concerning waste, and:
    - (d) take such samples of water or waste, dispose of them in such manner and submit them to such analysis by such person or a member of a class of persons,  
  
as specified in the notice.
- (2) Anything required to be done pursuant to a notice under subsection (1) shall be done at the expense of the person to whom the notice applies, unless the Controller otherwise directs.
- (3) A person shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a notice under subsection (1).

Penalty:      \$2,000.

Default penalty: \$200.

**89            False or misleading information**

A person shall not, in furnishing information pursuant to this Act, make or cause to be made a statement or representation that is to the person's knowledge false or misleading in a material particular.

Penalty:        \$1,000.

**Division 2            Powers concerning licences and rights of use**

**90            Factors to be considered**

- (1) In deciding whether to grant, amend or modify a permit, licence or consent under section 36, 41, 57, 63, 65, 67, 74 or 93(1), or in making a water extraction licence decision, the Controller must take into account any of the following factors that are relevant to the decision:
- (a) the availability of water in the area in question;
  - (ab) any water allocation plan applying to the area in question;
  - (b) the existing and likely future demand for water for domestic purposes in the area in question;
  - (c) any adverse effects likely to be created as a result of activities under the permit, licence or consent on the supply of water to which any person other than the applicant is entitled under this Act;
  - (d) the quantity or quality of water to which the applicant is or may be entitled from other sources;
  - (e) the designated beneficial uses of the water and the quality criteria pertaining to the beneficial uses;
  - (f) the provisions of any agreement made by or on behalf of the Territory with a State of the Commonwealth concerning the sharing of water;
  - (g) existing or proposed facilities on, or in the area of, the land in question for the retention, recovery or release of drainage water, whether surface or sub-surface drainage water;
  - (h) the adverse effects, if any, likely to be created by such drainage water resulting from activities under the licence on the quality of any other water or on the use or potential use of any other land;

- (j) the provisions under the *Planning Act* relating to the development or use of land in the area in question;
  - (k) other factors the Controller considers should be taken into account or that the Controller is required to take into account under any other law in force in the Territory.
- (2) In subsection (1)(c) and (d) **applicant** includes the person to whom the permit, licence or consent is or is to be granted where the Controller acts of his or her own motion, no application having been made.

## **91        Agreement with State**

- (1) No licence shall be granted under this Act where to do so would be contrary to an agreement made by or on behalf of the Territory with a State of the Commonwealth concerning the sharing of water.
- (2) The Review Panel shall not give advice under this Act that is contrary to an agreement referred to in subsection (1).

## **92        Transfer of permit or licence**

Where a licence is granted to a person in relation to the person's use of land and, during the period of the licence, the person's interest in the land is transferred to another person, the licence shall be deemed to have also been transferred to the other person at the time of the transfer of the interest in the land and shall continue in force accordingly as if originally granted to that other person.

## **93        Power to amend, modify or revoke licence**

- (1) Subject to subsections (3) and (4), the Controller may, during the currency of a licence, by notice served on the holder of the licence, amend or modify its terms and conditions in such manner as is specified in the notice.
- (2) Without limiting the Controller's powers under subsection (1), but subject to subsection (3), where the Controller is satisfied that the holder of the licence has contravened or failed to comply with a term or condition of the licence or of any other licence previously held by the person for a similar purpose during the 12 months immediately preceding the grant of the first-mentioned licence, the Controller may, by notice served on the holder of the licence:
- (a) revoke the licence; or
  - (b) suspend the licence for such period as is specified in the notice.

- (3) Where an order is made by the Supreme Court under section 5 of the *Environment Protection (Northern Territory Supreme Court) Act 1978* of the Commonwealth, the Controller shall revoke, suspend, modify or alter the licence of the holder affected by the order in such manner as is necessary to give effect to the order.
- (4) The Controller must not amend the terms and conditions of a licence under subsection (1) in a manner that will result in an increase in the quantity of water permitted to be taken or used.

#### **94            Power to surrender licence**

The holder of a licence may, at any time, surrender the licence.

#### **95            Registers**

- (1) The Controller must keep registers of licences.
- (2) There must be a register of water extraction licences.
- (3) The register of water extraction licences:
  - (a) must be publicly available on the Agency's website; and
  - (b) must contain information required by the Regulations.
- (4) If the Controller is satisfied, on application by the holder of a water extraction licence, that information relating to the licence should be suppressed from publication on the grounds of commercial confidentiality, the Controller may suppress the information from the register of water extraction licences.

#### **96            Emergency powers to limit rights to take water**

- (1) Where water is taken or available to be taken pursuant to section 10, 11 or 14 or the *Mining Act*, the Minister may, either generally or in a particular case, by notice:
  - (a) in the *Gazette*;
  - (b) in a newspaper circulating in the area to which the notice relates;
  - (c) by radio or television; or
  - (d) served on the owner or occupier of land to which the notice relates,

as the Minister thinks fit,

- (e) specify the place or the places from which, the manner in which and the times at which such water may be taken or may not be taken;
  - (f) in times of actual or likely shortage of water, fix the amount of water which, and purposes for which, such water may be taken; or
  - (g) temporarily or permanently prohibit the taking or use of water from a source for such purposes when, in the opinion of the Controller, the taking of the water would be dangerous to health.
- (2) Notwithstanding anything in this Act or any other law in force in the Territory, the Minister may, either generally or in a particular case, by notice:
- (a) in the *Gazette*;
  - (b) in a newspaper circulating in the area to which the notice relates;
  - (c) by radio or television; or
  - (d) served on the owner or occupier of land to which the notice relates,
- as the Minister thinks fit:
- (e) in times of actual or likely shortage of water, regulate, restrict or prohibit the doing of an act in pursuance of:
    - (i) a licence; or
    - (ii) so far as it relates to water, the *Mining Act*; or
  - (f) temporarily or permanently prohibit the doing of an act in pursuance of a licence (or as far as it relates to water, the *Mining Act*) when, in the opinion of the Controller, the doing of the act would be dangerous to health.
- (3) Except in an emergency or otherwise for the reasonable protection of life or property, a person shall not contravene or fail to comply with, or cause, suffer or permit a person to contravene or fail to comply with, a notice under subsection (1) or (2), notwithstanding that the contents of the notice differ from, are inconsistent with or are contrary to, a term or condition to which a licence granted or an agreement or advance made under, or a right or authority given by



or under, this or any other Act is subject.

Penalty:        \$2,000.

Default penalty: \$200.

## **97        Emergency powers to control pollution**

- (1) Notwithstanding anything in this Act or any other law in force in the Territory, the Minister may, in circumstances which the Controller considers to constitute an emergency, by notice in writing served on a person and in relation to the period specified in the notice:
  - (a) authorise the person, subject to such conditions, if any, as are specified in the notice, to discharge into water, or to place in or on land, such waste as is specified in the notice; or
  - (b) prohibit the person from discharging into water, or from placing on land, such waste as is specified in the notice either absolutely or otherwise than in accordance with the conditions, if any, specified in the notice.
- (2) A person who discharges waste into water or places waste on land in accordance with a notice under subsection (1) is not guilty of an offence against this Act by reason only of so doing.
- (3) A person who discharges waste into water or places waste on land in contravention of a notice under subsection (1) is guilty of an offence notwithstanding that the contents of the notice differ from, are inconsistent with or are contrary to a term or condition to which a licence granted, consent issued, or an agreement made, under this or any other Act is subject.
- (3A) An offence against subsection (3) is an environmental offence level 3.

Default penalty: \$500 or, in the case of a body corporate, \$2,500.

- (4) The Controller may, in circumstances that he or she considers constitute an emergency, take such action as the Controller considers necessary for the prevention, abatement or mitigation of water pollution and may recover the reasonable cost of so doing as a debt due and payable to the Territory by the person whose action or omission caused, or was one of the causes of, that pollution.

### **Division 3      Offences and penalties**

#### **98      Destruction of works**

A person shall not cause, suffer or permit, or attempt to cause, any works constructed or used in pursuance of a licence granted or power conferred under this Act to be interfered with, damaged or destroyed, except as provided by this Act.

Penalty:      For a first offence – \$5,000 or imprisonment for 12 months.

For a subsequent offence – not less than \$5,000 or more than \$10,000 or imprisonment for 2 years.

#### **99      Interference with supply and drainage**

A person shall not interrupt or interfere with, or attempt to interrupt or interfere with, or cause, suffer or permit a person to interrupt or interfere with:

- (a) the taking of water;
- (b) the discharge or disposal of water or waste; or
- (c) the drainage of land,

in pursuance of a licence granted, a power conferred or an arrangement made under this Act, or the performance of an act authorised under section 97.

Penalty:      For a first offence – \$5,000 or imprisonment for 12 months.

For a subsequent offence – not less than \$5,000 or more than \$10,000 or imprisonment for 2 years.

#### **100      Prohibition of waste**

- (1) A person shall not waste, or cause, suffer or permit a person to waste, water or permit water to run to waste.

Penalty:      \$2,000.

Default penalty: \$200.

- (2) For the purposes of this section, water is wasted where, irrespective of intention:
- (a) more water is used than is reasonably necessary for the immediate purpose for which water is taken, including used for irrigation;
  - (b) an unnecessary or excessive flow or flood of water is allowed to occur; or
  - (c) water is taken without adequate control or supervision of its taking.

**101      Obstruction of officers, &c.**

- (1) A person who assaults, threatens, resists, obstructs, hinders or delays, or who entices or encourages another person to assault, threaten, resist, obstruct, hinder or delay, another person in the performance of that other person's functions or exercise of that person's powers under this Act is guilty of an offence.

Penalty:      \$2,000.

- (2) Where a person is found guilty of an offence against subsection (1), the court may, in addition to a penalty imposed under that subsection, order and award against that person an amount sufficient to compensate for any damages which a person has suffered by the assault, threatening, resistance, obstruction, hindrance or delay constituting the offence and an amount so awarded is a debt due and payable by the person found guilty to the person to be compensated.

**102      Offences against Act**

- (1) A person who contravenes or fails to comply with, or causes, suffers or permits a person to contravene or fail to comply with, a provision of this Act in respect of which no penalty, other than by this section, is provided is guilty of an offence.

Penalty:      \$1,000 or imprisonment for 3 months.

- (2) Where an employee, agent or officer of a body corporate is found guilty of an offence against this Act for an act performed or omitted to be performed in the course of his or her employment by, or duties to, the body corporate, the body corporate shall be deemed also to have committed the offence and may be convicted of it.

### **103      Evidentiary**

- (1) In a proceeding for an offence against this Act, an allegation in a complaint that:
  - (a) a person is an authorised officer;
  - (b) a person is the owner or occupier of land specified in the complaint; or
  - (c) a person is or at a particular time was, or was not, the holder of a permit, licence or consent,is prima facie evidence of that fact.
- (2) A document purporting to be, or to set out the contents of, a permit, licence, consent or notice under this Act and purporting to be signed by the Minister, the Controller or an authorised officer is admissible and is prima facie evidence of the contents of the permit, licence, consent or notice.
- (3) In an action brought to recover a fee or charge payable under this Act, a certificate purporting to be signed by the Controller or an authorised officer to the effect that the amount of the fee or charge is due and payable is prima facie evidence of that fact.
- (4) In a proceeding for an offence against this Act, an averment in the complaint that the defendant was, at the relevant time, the employee or agent, or an officer (within the meaning of section 101), of a body corporate is prima facie evidence that the defendant held at that time that office or status.

### **104      Definition of default penalty**

- (1) Where in, or at the foot of, a section or part of a section there appears the expression **default penalty**, it signifies that a person who is found guilty of an offence against this Act in relation to that section or part is guilty of a further offence against this Act if the offence continues after a complaint alleging the commission of that offence has been issued and is liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.
- (2) Where an offence is committed by a person by reason of the person's failure to comply with a provision of this Act by or under which the person is required or directed to do something within a particular period or by a particular time, that offence, for the purposes of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by the person remains

undone, notwithstanding that the period has elapsed or time has passed.

### **105 Proceedings for offences**

- (1) Proceedings for an offence against this Act:
  - (a) shall not be commenced without the consent in writing of the Controller; and
  - (b) may be commenced within 12 months after the discovery by the Controller of the offence.
- (2) A document purporting to record the consent of the Controller to proceedings for an offence against this Act and to be signed by the Controller is admissible and is prima facie evidence of the Controller's consent to the commencement of the proceedings.

### **105A Alternative verdicts**

- (1) In a proceeding for an environmental offence level 1 against a section of this Act, the person charged with the offence may be found guilty alternatively of an environmental offence level 2, or an environmental offence level 3, that is an offence against that same section.
- (2) In a proceeding for an environmental offence level 2 against a section of this Act, the person charged with the offence may be found guilty alternatively of an environmental offence level 3 that is an offence against that same section.
- (3) In a proceeding for an environmental offence level 3 against a section of this Act, the person charged with the offence may be found guilty alternatively of an environmental offence level 4 that is an offence against that same section.

## **Part 11 Miscellaneous**

### **106 Service of document**

- (1) Where an application, notice or other document is permitted or required by this Act to be served on the owner or occupier of land held by an Aboriginal Land Trust for an estate in fee simple pursuant to the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, service may be effected by serving the application, notice or other document on the Aboriginal Land Trust and a copy thereof on the Aboriginal Land Council for the area in which the land is situated.

- (2) An application, notice or other document permitted or required by this Act to be given or served on a person may be given or served by:
- (a) delivering it to that person;
  - (b) leaving it at the person's usual or last-known place of residence or business with some person who has apparently attained the age of 16 years; or
  - (c) sending it by certified mail addressed to the person at his or her usual or last-known place of residence or business or postal address.
- (3) An application, notice or other document permitted or required by this Act to be given to or served on a person may, in addition to any other method provided by the Corporations Act 2001, if the person is a body corporate, be given or served by:
- (a) delivering it to the manager or secretary of the body corporate;
  - (b) leaving it at the office or place of business of the body corporate with some person who has apparently attained the age of 16 years; or
  - (c) sending it by certified mail to the body corporate at its office or place of business or postal address.
- (4) Where an application, notice or other document is permitted or required by this Act to be given to or served on a person whose address is unknown, it may be given or served by publishing it, or a notice substantially to the same effect, in the *Gazette*.

#### **107 Just compensation to be paid**

To the extent that the operation of this Act or the due exercise or performance of a power, function, authority or discretion conferred by this Act constitutes an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the property shall be acquired on just terms.

#### **108 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) Without limiting the generality of subsection (1), the Regulations may:
- (a) prescribe forms or provide for them to be approved by the Controller;
  - (b) prescribe charges or fees in connection with the issuing of a permit, licence or consent or the supply of water or the provision of a service, including charges by way of contribution to the capital costs of works associated with the supply of water or provision of services, and provide for the recovery of those charges or fees;
  - (c) prescribe and provide for charges for taking a quantity of water exceeding that specified in the terms or conditions of a licence, and the recovery of those charges;
  - (d) prescribe and provide for the classification of water by reference to its quantity, quality or possible use;
  - (e) provide for the prevention of the propagation of, or the eradication or control of, a plant likely to obstruct a waterway or otherwise injuriously affect water;
  - (f) regulate or prohibit a matter or thing in connection with the collection, storage, disposal, dispersion or discharge of water or waste;
  - (g) prohibit, regulate or control access to, along or over, or the use of, water or water of a class of water for recreational purposes and impose fees or charges relating thereto;
  - (h) prescribe the powers and functions of an Advisory Committee, either generally or in a particular area or in relation to a particular purpose;
  - (j) prescribe different types of licences which may be granted under section 49 and the qualifications which applicants for each type of licence must possess;
  - (k) prescribe the permits, licences (except a water extraction licence) or consents the applications for which must be advertised or notified and the manner in which they should be advertised, the information to be provided in the advertisement and the person on whom particular notice should be served;
  - (m) prescribe those permits, licences (except a water extraction licence) or consents against the proposed granting or granting of which objections may be lodged and the persons or classes of persons who may lodge such objections, and the manner in

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which, and persons by whom, such objections shall be heard, otherwise considered or dealt with;

- (n) provide for the giving of notice of intention to apply to the Minister for a review of a decision or action of the Controller and the time within which the application should be lodged;
- (p) prescribe those permits, licences or consents against the granting of which an application for review may be made and the persons or members of classes of persons who may make such an application;
- (q) provide for the granting of:
  - (i) a permit under section 41 or 57;
  - (ii) a licence under section 45, 60, 63, 67 or 74; or
  - (iii) a consent under section 66,to more than one person jointly;
- (r) provide for the manner of making, and the consideration of, joint applications and of objections to joint applications;
- (s) prescribe terms and conditions which govern the rights and duties of joint applicants between themselves;
- (t) prescribe terms and conditions to which interests granted jointly are subject;
- (u) provide for the consequences of a failure by one or more joint holders to comply with a term or condition to which an interest granted jointly is subject or with this Act; and
- (v) prescribe penalties and default penalties, not exceeding \$2,000 and \$200 respectively, for a contravention of, or failure to comply with, the Regulations.

## **109 Transitional**

- (1) Except as provided in this section, a licence issued under the *Control of Waters Act* and in force immediately before the commencement of the relevant Part of this Act shall, on and from that commencement and during the currency of that licence, have effect in all respects as if it were a licence for a like purpose granted pursuant to that Part, and this Act, with the necessary changes, applies and has effect accordingly.



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- (2) A person who immediately before the commencement of Part 7 was subject to the requirements of a notice given pursuant to section 16M of the *Control of Waters Act* shall, on and from that commencement and during any period specified in the notice or, if no such period is specified, during a period of 12 months from that commencement, be deemed to be the holder of a licence granted pursuant to that Part subject to the terms and conditions specified in the notice, and this Act, with the necessary changes, applies and has effect accordingly.
  - (3) Notwithstanding subsections (1) and (2), the Controller may at any time, of his or her own motion, cancel and replace a licence or notice issued, or permission granted, under the Control of Waters Act with a licence issued under this Act.
  - (4) A person whose rights are continued by subsection (1) or (2) may at any time apply for a licence for a like purpose under this Act and on and from the grant of any such licence the rights so continued shall cease to exist.
  - (5) A person who immediately before the commencement of section 3 was the holder of a permit granted under section 16J of the *Control of Waters Act* shall, on and from that commencement and during any period specified in the permit, or if no such period is specified during a period of 12 months from that commencement, be deemed to be the holder of an extractive mineral permit granted under section 112 of the *Mining Act* subject to the terms and conditions specified in the first mentioned permit, and the *Mining Act*, with the necessary changes, applies and has effect accordingly.
  - (6) Where immediately before the commencement of Part 8 a person had, in pursuance of the *Water Supplies Development Act* as then in force or under the conditions to which an advance or advice under that Act was subject, the right to drill a bore within any period extending beyond 30 June 1992, that right shall be deemed to extend only to 30 June 1992 and any documentation evincing the conditions shall be construed accordingly.
  - (7) A certificate of registration granted under section 16H of the *Control of Waters Act* and in force immediately before the commencement of Part 6 shall, on and from that commencement and, notwithstanding the period of the certificate, until 31 December 1994, have effect as if it were a drilling licence granted under section 49 of this Act and this Act, with the necessary changes, applies and has effect accordingly.
  - (8) For the purposes of section 48, a certificate of registration granted under section 16H of the *Control of Waters Act* to a body corporate by whom a person is employed and in force immediately before the

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commencement of Part 6 shall, on and from that commencement and for the period of the certificate or for 12 months after that commencement, whichever is the greater, or until that person sooner ceases to be employed by that body corporate, be deemed to be the drilling licence of that person and, subject to subsection (9), this Act, with the necessary changes, applies and has effect accordingly.

- (9) This Act applies to both the person and the body corporate referred to in subsection (8) and any act or omission by the person shall, for the purposes of this Act, be deemed to be the act or omission of the body corporate and vice versa.
- (10) A person who, immediately before the prescription of any works pursuant to section 40, was the owner or occupier of land affected by such prescription on which prescribed works are situated and in relation to which permission has been granted under section 12 of the *Control of Waters Act* as in force at the time the permission was granted shall, on and from the date of such prescription, be deemed to have constructed such works in pursuance of a permit granted under section 41 and this Act, with the necessary changes, applies and has effect accordingly.
- (11) A reference in any law of the Territory to the *Control of Waters Act* or in any licence, permit, advice, authorisation or other document relating to powers, functions, authorities, discretions or duties conferred by or arising under that law shall, from the commencement of this Act, be deemed to be a reference to this Act and this Act, with the necessary changes, applies and has effect accordingly.
- (12) A reference in a licence, permit, consent, declaration, agreement or other instrument granted, issued or made under this Act, as in force immediately before the commencement of the *Water Amendment Act 2003*, to the beneficial use of **manufacturing industry** or **riparian** is taken to be a reference to the beneficial use of **industry** or **rural stock and domestic** respectively specified in section 4(3)(f) or (g).

#### **110 Transitional matters for *Water Amendment Act 2007***

- (1) This section applies in relation to an application for the grant, amendment or modification of a water extraction licence that is lodged with the Controller but not decided before the commencement day (an **existing application**).
- (2) Subject to this section, Part 6A applies in relation to a decision of the Controller about an existing application.

- (3) The Controller must publish a notice under section 71B about an existing application within 7 days after the commencement day.
- (4) The Controller may publish a single notice under section 71B that relates to more than one existing application and, if the Controller does so, the Agency must pay the costs of publication.
- (5) In this section:

**commencement day** means the day on which the *Water Amendment Act 2007* commences.

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**Schedule**

section 3

**Part A – Acts of South Australia Repealed**

The Water Conservation Amendment Act, 1889	No. 463, 1889
The South-Eastern Drainage Act Amendment Act, 1895	No. 629, 1895
The Water Conservation Amendment Act, 1900	No. 736, 1900
The Irrigation and Reclaimed Lands Act, 1908	No. 953, 1908
The Irrigation and Reclaimed Lands Act Amendment Act, 1909	No. 979, 1909
The Irrigation and Reclaimed Land Act Further Amendments Act, 1910	No. 1022, 1910

**Part B – Acts and Ordinances Repealed**

<i>Control of Waters Ordinance 1938</i>	(No. 13 of 1938)
<i>Control of Waters Ordinance 1955</i>	(No. 8 of 1955)
<i>Control of Waters Ordinance 1959</i>	(No. 18 of 1959)
<i>Water Supplies Development Ordinance 1960</i>	(No. 14 of 1961)
<i>Control of Waters Ordinance 1961</i>	(No. 6 of 1962)
<i>Control of Waters Ordinance 1962</i>	(No. 24 of 1963)
<i>Water Supplies Development Ordinance 1963</i>	(No. 50 of 1963)
<i>Control of Waters Ordinance 1965</i>	(No. 17 of 1965)
<i>Water Supplies Development Ordinance 1967</i>	(No. 22 of 1967)
<i>Control of Waters Ordinance 1968</i>	(No. 33 of 1968)
<i>Water Supplies Development Ordinance 1968</i>	(No. 34 of 1968)
<i>Control of Waters Ordinance (No. 2) 1968</i>	(No. 55 of 1968)
<i>Water Supplies Development Ordinance (No. 2) 1968</i>	(No. 64 of 1968)

<i>Water Supplies Development Ordinance 1971</i>	(No. 14 of 1971)
<i>Control of Waters Ordinance 1971</i>	(No. 28 of 1971)
<i>Water Supplies Development Ordinance 1973</i>	(No. 11 of 1973)
<i>Control of Waters Act 1978</i>	(No. 12 of 1979)

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Water Act 1992 (Act No. 19, 1992)***

Assent date	30 April 1992
Commenced	1 July 1992 ( <i>Gaz S35, 30 June 1992</i> )

***Statute Law Revision Act 1993 (Act No. 6, 1993)***

Assent date	18 March 1993
Commenced	18 March 1993

***Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)***

Assent date	9 November 1993
Commenced	9 November 1993

***Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)***

Assent date	31 December 1993
Commenced	1 June 1994 (s 2, s 2 <i>Local Government Act 1993 (Act No. 83, 1993)</i> and <i>Gaz S35, 20 May 1994</i> )

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date	20 September 1994
Commenced	20 September 1994

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 <i>Financial Management Act 1992 (Act No. 4, 1995)</i> and <i>Gaz S13, 31 March 1995</i> )

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995 (Act No. 39, 1995)</i> and <i>Gaz S15, 13 June 1996</i> )

**Water Amendment Act 1996 (Act No. 66, 1996)**

Assent date 31 December 1996  
 Commenced 19 February 1997 (s 2, s 2 *Environmental Offences and Penalties Act 1996* (Act No. 60, 1996) and Gaz G7, 19 February 1997, p 2)

**Water Amendment Act 1998 (Act No. 61, 1998)**

Assent date 3 September 1998  
 Commenced 3 September 1998

**Waste Management and Pollution Control (Consequential Amendments) Act 1999 (Act No. 72, 1998)**

Assent date 28 September 1998  
 Commenced 9 June 1999 (Gaz G22, 9 June 1999, p 7)

**Planning (Consequential Amendments) Act 1999 (Act No. 56, 1999)**

Assent date 14 December 1999  
 Commenced 12 April 2000 (s 2, s 2 *Planning Act 1999* (Act No. 55, 1999) and Gaz S15, 12 April 1999)

**Water Amendment Act 2000 (Act No. 20, 2000)**

Assent date 6 June 2000  
 Commenced 6 June 2000

**Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)**

Assent date 12 September 2000  
 Commenced 1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and Gaz G38, 27 September 2000, p 2)

**Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)**

Assent date 29 June 2001  
 Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

**Water Amendment Act 2003 (Act No. 57, 2003)**

Assent date 22 October 2003  
 Commenced 14 January 2004 (Gaz G2, 14 January 2004, p 2)

**Water Amendment Act 2007 (Act No. 33, 2007)**

Assent date 12 December 2007  
 Commenced 26 November 2008 (Gaz G47, 26 November 2008, p 6)

**Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)**

Assent date 14 November 2008  
 Commenced 1 July 2008 (s 2)

**Statute Law Revision Act 2009 (Act No. 25, 2009)**

Assent date 1 September 2009  
 Commenced 16 September 2009 (Gaz G37, 16 September 2009, p 3)

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**3****LIST OF AMENDMENTS**

lt	amd No. 20, 2000, s 3
s 4	amd No. 6, 1993, ss 6 and 8; No. 84, 1993, s 6; No. 66, 1996, s 4; No. 61, 1998, s 2; No. 20, 2000, s 4; No. 57, 2003, s 4; No. 33, 2007, s 4; No. 28, 2008, s 20
s 5	amd No. 6, 1993, s 8
s 7	sub No. 57, 2003, s 5
s 8	amd No. 84, 1993, s 6; No. 50, 1994, s 16 sub No. 28, 2008, s 21
s 12	amd No. 45, 2000, s 11
s 13	amd No. 25, 2009, s 10
s 16	amd No. 66, 1996, s 5
s 22	amd No. 6, 1993, s 8
s 22A	ins No. 20, 2000, s 5
s 22B	ins No. 20, 2000, s 5 amd No. 57, 2003, s 6
s 23	amd No. 20, 2000, s 6
s 24	amd No. 70, 1993, s 8
pt 3	
div 3 hdg	amd No. 33, 2007, s 5
s 30	amd No. 6, 1993, s 8
s 40	amd No. 25, 2009, s 10
s 44	amd No. 20, 2000, s 7
s 45	amd No. 20, 2000, s 8
s 60	amd No. 20, 2000, s 9
s 62	amd No. 66, 1996, s 6
s 64	amd No. 66, 1996, s 7
s 65	amd No. 66, 1996, s 8
pt 6A	ins No. 33, 2007, s 6
ss 71A – 71E	ins No. 33, 2007, s 6
s 73	amd No. 6, 1993, s 8
s 74A	ins No. 72, 1998, s 4
s 76	amd No. 66, 1996, s 9
s 85	rep No. 5, 1995, s 19
s 90	amd No. 56, 1999, s 3; No. 20, 2000, s 10; No. 33, 2007, s 7
s 93	amd No. 33, 2007, s 8
s 95	sub No. 33, 2007, s 9
s 97	amd No. 66, 1996, s 10
ss 101 – 102	amd No. 17, 1996, s 6
s 104	amd No. 17, 1996, s 6
s 105A	ins No. 66, 1996, s 11
s 106	amd No. 17, 2001, s 21
s 108	amd No. 6, 1993, s 8; No. 33, 2007, s 10
s 109	amd No. 70, 1993, s 5; No. 57, 2003, s 7
s 110	ins No. 33, 2007, s 11