

**NORTHERN TERRITORY OF AUSTRALIA**

**WATER ACT 1992**

As in force at 20 November 2020

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 November 2020

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## WATER ACT 1992

**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 1992*.

#### **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Australia specified in Part A of the Schedule, in their application to the Territory as laws of the Territory, are repealed.
- (2) The Act and Ordinances specified in Part B of the Schedule are repealed.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:

**Aboriginal economic development** means economic development by or for the benefit of eligible Aboriginal people.

**Aboriginal water reserve** means a reserve of water allocated in a water allocation plan for Aboriginal economic development in respect of eligible land designated under section 22C.

**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 natural or constructed hole in the ground that is used, or could reasonably be used, for any of the following purposes:

- (a) taking groundwater;
- (b) investigating the behaviour, occurrence and availability of groundwater;
- (c) monitoring the condition of groundwater;
- (d) injecting water to recharge an aquifer;
- (e) disposing waste directly or indirectly into groundwater.

**bore work** means any of the following:

- (a) drilling, decommissioning, constructing, altering, deepening, plugging, backfilling or sealing off a bore;
- (b) removing, replacing, altering, slotting or repairing the casing, lining or screen of a bore.

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

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

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

**drilling licence** means a drilling licence granted under section 49.

**eligible Aboriginal people** are Aboriginal people who have a legal entitlement to access water resources because of their ownership of or interest in eligible land.

**eligible land**, see section 4B.

**environment** means all aspects of the surroundings of humans, 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.

**groundwater** 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.

**hydraulic fracturing** means the underground petroleum extraction process involving the injection of fluids at high pressure into a geological formation to induce fractures that conduct petroleum for extraction.

**hydraulic fracturing waste**, see section 4A.

**interfere with a waterway** means any of the following:

- (a) cause a material change to the shape of a waterway;
- (b) cause a material change to the volume, speed or direction of the flow or likely flow of water in or into a waterway;
- (c) cause an alteration to the stability of the bed or banks of a waterway, including by the removal of vegetation.

**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; or

- (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 activity** means a mining activity as defined in section 4 of the *Mining Management Act 2001*, including another activity for a purpose ancillary to that activity.

**mining site** has the same meaning as in the *Mining Management Act 2001*.

**occupier**, in relation to land, means:

- (a) a person occupying the land (under whatever title or permission, or without title or permission); or
- (b) a person entitled to occupy the land, whether or not the person is actually occupying 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; and
- (b) in relation to land held under a lease granted by the Crown – the lessee; and
- (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 activity** means exploration, extraction or processing of petroleum under an Act or an Act of the Commonwealth, including another activity for a purpose ancillary to one of those activities.

**petroleum site** means:

- (a) an access authority area, licence area or permit area, each as defined in the *Petroleum Act 1984*, on which petroleum activity occurs; 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; or  
(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 2008*.

**remediation notice**, see section 33A(2).

**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; or  
(b) results in actual or potential loss or damage to the value of more than \$50,000; or  
(c) damages an aspect of the environment that is of a high conservation value or of special significance; or  
(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.

**tidal water** means:

- (a) water within the geographical area constituting the Territory that is directly affected by the tide; and
- (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.

**waste discharge licence**, see section 74(1).

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

**water allocation plan** means a plan declared under section 22B.

**water extraction licence** means:

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

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

**waterway** means any of the following:

- (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;
- (ga) shallow groundwater immediately underlying the bed or banks of a waterway;
- (h) land declared under section 5(1) to be a waterway.

*Note for subsection (1)*

*The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.*

- (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 other industry uses not mentioned elsewhere in this subsection;
- (g) rural stock and domestic – to provide water for the purposes permitted under sections 10, 11 and 14;
- (h) mining activity – to provide water for a mining activity;
- (i) petroleum activity – to provide water for a petroleum activity;
- (j) Aboriginal economic development – to provide water for Aboriginal economic development.

#### **4A Meaning of *hydraulic fracturing waste***

- (1) ***Hydraulic fracturing waste*** is any of the following that is leftover from, surplus to or an unwanted by-product of hydraulic fracturing, whether it has been treated or is untreated:
  - (a) a solid, liquid or gas;
  - (b) a mixture of those substances.
- (2) In addition, hydraulic fracturing waste includes a substance or a class of substances prescribed by regulation.

#### **4B Meaning of *eligible land***

- (1) ***Eligible land*** means the following:
  - (a) Aboriginal land as defined in section 3(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*;
  - (b) land in relation to which, under the *Native Title Act 1993 (Cth)*, a determination of native title was made that native title rights and interests to possess, occupy, use and enjoy land and waters to the exclusion of all others exist on the land and those rights and interests were not subsequently extinguished;
  - (c) freehold land, land held under a lease in perpetuity or land held under a lease for a term that expires on or after the expiry of the water allocation plan:
    - (i) if the title holder of the land or lease is one of the following:
      - (A) an incorporated association under the *Associations Act 2004*;



- (B) an Aboriginal and Torres Strait Islander Corporation established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
  - (C) a trust established under a law of the Territory; and
- (ii) to which at least one of the following applies:
- (A) the land or lease is granted under a law of the Territory as part of the settlement of a land claim under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);
  - (B) the title to the land or lease is expressly held by or for the benefit of Aboriginal people and a law of the Territory or a law of the Commonwealth imposes a restriction on the use, occupation or any dealing with the land for the purpose of ensuring the title to the land or lease is held by or for the benefit of Aboriginal people.
- (2) In this section:
- lease*** does not include a sublease.

## **5 Declarations of waterways**

- (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 activity 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 activity 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.
- (4) Part 6, Division 5 applies to the disposal underground of waste in the course of carrying out a mining activity 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.

**8A Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act, other than an offence against section 16, 62, 64, 65, 76 or 97.

*Note for section 8A*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2            General provisions relating to natural water, pollution and hydraulic fracturing waste**

### **Division 1        Rights related to water and waterways**

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

- (1) In this Division, **water** means:
- (a) the water flowing or contained in a waterway; or
  - (b) groundwater.
- (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 2000*, 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 2000*.

**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 1969* and section 79 of the *Pastoral Land 1992*, 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 groundwater for certain purposes**

Subject to sections 70 and 99, the owner or occupier of land may take groundwater 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            Rights of owner or occupier to drain land or retain water**

Despite section 9(2), the owner or occupier of land may, if it does not materially diminish or increase the flow or likely flow of water in or into a waterway:

- (a) drain the land in accordance with this Act and the *Soil Conservation and Land Utilisation Act 1969*; 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.

## **Division 2            Pollution**

### **16            Prohibition of pollution**

- (1) In this section, **water** means:
  - (a) water flowing or contained in a waterway;
  - (b) groundwater; 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,



- (ii) serious environmental harm; and
- (c) the person has knowledge of the result.

Penalty:                    environmental offence level 1.

(2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in, directly or indirectly:
  - (i) hydraulic fracturing waste coming into contact with water; and
  - (ii) serious environmental harm; and
- (c) the person is reckless in relation to the result.

Penalty:                    environmental offence level 2.

(3) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in, directly or indirectly:
  - (i) hydraulic fracturing waste coming into contact with water; and
  - (ii) material environmental harm; and
- (c) the person has knowledge of the result.

Penalty:                    environmental offence level 2.

(4) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in, directly or indirectly:
  - (i) hydraulic fracturing waste coming into contact with water; and
  - (ii) material environmental harm; and
- (c) the person is reckless in relation to the result.

Penalty:                    environmental offence level 3.



- (5) A person commits an offence if the person engages in conduct that results in, directly or indirectly, hydraulic fracturing waste coming into contact with water.

Penalty:                            environmental offence level 4.

- (6) Strict liability applies to subsection (5).

- (7) In this section:

**water** means:

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

#### **17B        Application of section 17A**

- (1) Section 17A does not apply if:

- (a) hydraulic fracturing waste is produced water or flowback fluid; and
- (b) the hydraulic fracturing waste comes into contact with water that is contained in the geological formation being targeted by the process of hydraulic fracturing.

- (2) In this section:

**flowback fluid** means fluid that is a mixture of hydraulic fracturing fluid and formation fluid that is allowed to flow from the well following hydraulic fracturing.

**produced water** means naturally occurring water that is extracted from a geological formation following hydraulic fracturing.

#### **17C        Evidentiary matters**

In a proceeding for an offence against section 17A, proof of the existence on land, where hydraulic fracturing has occurred or is occurring, of any of the following things is evidence that hydraulic fracturing waste came into contact with water at the time the thing existed:

- (a) a drain;
- (b) a pond;

- (c) a dump;
- (d) any other means (including mechanical means) by which hydraulic fracturing waste is capable of being conveyed, retained or deposited so that it may, directly or indirectly, come into contact with water.

## **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 the Controller or officer under subsection (1), take such measures or construct, maintain, repair, alter or remove such works as the Controller or officer 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) If the Controller or an authorised officer intends to enter land for a purpose mentioned in subsection (1) or (2), the Controller or officer must give the owner or occupier of the land written notice of the intention to enter the land, unless one of the following applies:
  - (a) entry is required in circumstances the Controller or officer considers an emergency;
  - (b) the purpose of entry is to ascertain whether a breach of this Act (including compliance with a term or condition of a licence, permit or consent granted under this Act) has occurred;
  - (c) entry is required for routine monitoring purposes.
- (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 a remediation notice, 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 on to the land such plant, machinery, equipment and materials; and
  - (c) take such photographs,

as the Controller or authorised officer thinks necessary or expedient in the circumstances.

## **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 must give an authorised officer an identity card stating the person's name and that the person is an authorised officer.
- (3) The card must be signed by the authorised officer.
- (4) The authorised officer must show the card to any person who requests to know the identity of the officer in the performance of the 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**

- (1) The Administrator may, by notice in the *Gazette*, declare the beneficial uses of the water in a water control district.
- (2) Each of the following is a beneficial use of water in a water control district:
  - (a) environment;
  - (b) Aboriginal economic development.

### **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 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.
- (7) An allocation under subsection (5)(a) is to include an Aboriginal water reserve if any of the land in the water control district to which the water allocation plan relates is eligible land.

**22C Designation of eligible land for Aboriginal water reserve in water allocation plan**

- (1) A water allocation plan may designate eligible land as land in respect of which an Aboriginal water reserve applies if:
- (a) the land is of more than 1 hectare; and
  - (b) there are water resources on, under or adjacent to the land.
- (2) Before declaring a water allocation plan that designates land as mentioned in subsection (1), the Minister must consult with the relevant Aboriginal Land Council in relation to the land.
- (3) A water allocation plan must not designate land under subsection (1) that is held under a lease that permits the lessee to use the land solely or primarily for residential purposes.

**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, the Minister may, in writing:
  - (a) establish, and appoint the members of, a Water Advisory Committee for the plan; 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, in writing, establish a Water Resources Review Panel to advise the Minister in reviewing the Minister's actions or those of the Controller.
- (2) The Review Panel consists of:
  - (a) a Chairperson; and
  - (b) for a matter referred to the Review Panel under section 30(3)(b) – not less than 2 persons nominated by the Chairperson from a group appointed under subsection (3).
- (2A) The Chairperson:
  - (a) is appointed by the Minister; and
  - (b) holds office, subject to this Division, for 3 years; and
  - (c) is eligible for reappointment.

- (2B) The persons mentioned in subsection (2)(b) hold office as members of the Review Panel for as long as the Chairperson considers necessary to deal with the matter for which the members were nominated.
- (3) The Minister must, in writing, appoint a group of 8 persons:
- (a) from whom the persons mentioned in subsection (2)(b) are nominated; and
  - (b) who must, in the Minister's opinion, have relevant qualifications or experience respectively in the following:
    - (i) bore drilling;
    - (ii) primary industry;
    - (iii) secondary industry;
    - (iv) Aboriginal affairs;
    - (v) public health;
    - (vi) environmental management;
    - (vii) fisheries;
    - (viii) mining.
- (4) When nominating persons under subsection (2)(b), the Chairperson must choose the members of the group who, in the Chairperson's opinion, are best qualified and available to constitute the Review Panel for the consideration of the 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 Chairperson or other member of the Review Panel or of the group appointed under section 24(3) may resign office by writing signed by the person and delivered to the Minister.
- (2) A resignation under subsection (1) has no effect until it is accepted by the Minister.

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

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

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

**27 Offence to disclose certain information**

(1) A person commits an offence if:

- (a) the person is a member of the Review Panel (including the Chairperson); and
- (b) the person obtains information in the course of performing a function as a member; and
- (c) the information is confidential; and
- (d) the person intentionally engages in conduct; and
- (e) the conduct results in the disclosure of the information and the disclosure is not:
  - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
  - (ii) to a person who is otherwise entitled to the information; and
- (f) the person is reckless in relation to the result and circumstance mentioned in paragraph (e).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a), (b) and (c).



- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

*Example for subsection (3)*

*A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.*

*Note for section 27*

*In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

## **28 Disclosure of interest**

- (1) The Chairperson 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 the Chairperson or member is not a director) must, as soon as possible after the relevant facts have come to the Chairperson or member's knowledge, disclose the nature of the interest at that meeting.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Review Panel and the Chairperson or member must not, while the Chairperson or member 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 Chairperson of the Review Panel must, 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) If a matter has been referred under subsection (3)(b) to the Review Panel, the Review Panel must consider it and advise the Minister accordingly and the Minister must take such action under subsection (3)(a)(i) or (ii) as the Minister thinks fit.

### **31 Powers of Review Panel**

- (1) The Review Panel may do any of the following to enable it to advise the Minister on a matter referred to it under section 30(3)(b):
  - (a) by notice signed by its Chairperson – require a person to appear before the Review Panel;
  - (b) by notice signed by its Chairperson – require a person to produce any relevant documents to the Review Panel;

- (c) in relation to a document produced under paragraph (b):
  - (i) inspect and copy the document; and
  - (ii) keep the document for a reasonable period that the Review Panel considers appropriate;
- (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 another person appearing before it;
- (f) enter and inspect land, or authorise a person to enter and inspect land, for the purposes of a proceeding before the Review Panel.

*Note for subsection (1)(c) and (f)*

*Refusing to allow a person to enter or inspect places or things as required by this subsection may amount to obstruction for section 101.*

- (2) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct contravenes a notice or requirement made under subsection (1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsection (2)(b).

### **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 from liability**

### **33 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function connected with the administration of this Act.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **Division 5 Remediation notices**

### **33A Power to give remediation notice**

(1) This section applies if the Controller believes on reasonable grounds that:

(a) a person is contravening or has contravened section 37(1), 40(1), 42(1), 44(1), 46(1), 48(1), 50(1), 55(2), 56(1), 58(1), 59(1), 61(1), 66(1), 68(1), 71(1), 79(3), 81(1) or 96(3) in circumstances that make it likely the contravention will continue or be repeated; and

(b) a matter relating to the contravention is reasonably capable of being rectified; and

(c) it is appropriate to give the person an opportunity to rectify the matter.

(2) The Controller may give the person a notice (a **remediation notice**) requiring the person to take reasonable steps to rectify the matter and, if relevant, requiring the person to refrain from doing an act.

### **33B Requirements for remediation notice**

A remediation notice must specify the following:

(a) that the Controller believes the person is contravening or has contravened a provision mentioned in section 33A(1)(a) in circumstances that make it likely the contravention will continue or be repeated;

(b) the provision the Controller believes is being, or has been contravened;

(c) briefly, how it is believed the provision is being, or has been contravened;

(d) the matter relating to the contravention that the Controller believes is reasonably capable of being rectified;

- (e) the reasonable steps the person must take to rectify the matter;
- (f) that the person must take the steps within a specified reasonable period;
- (g) that the person may apply under section 30 for review of the decision to give the notice within 14 days after the day the notice is given;
- (h) how the person may apply for review;
- (i) if the notice requires the person to do an act involving the carrying out of work – details of the work involved;
- (j) if the notice requires the person to refrain from doing an act:
  - (i) a period for which the requirement applies; or
  - (ii) that the requirement applies until further notice.

### **33C Failure to comply with remediation notice**

- (1) A person commits an offence if the person:

- (a) is given a remediation notice; and
- (b) fails to comply with the notice.

Maximum penalty: The maximum penalty that may be imposed for the offence provision specified in the notice.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

### **33D Power to take action and recover costs**

- (1) If a person is given a remediation notice and fails to comply with the notice, the Controller may take the action required by the notice and any reasonable expenses incurred are payable by the person as a debt to the Territory.
- (2) The Controller must give the person a notice stating the amount of any reasonable expenses incurred.

## **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 Controller's equipment 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, on the Controller's own initiative 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 water investigation permit**

- (1) A person commits an offence if the person:
- (a) holds a permit granted under section 36; and
  - (b) contravenes a term or condition of the permit.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

### **38 Notice where private land disturbed**

- (1) If in the exercise of a power by virtue of a permit under this Part the holder of the permit wishes to enter land, the holder must give written notice 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.

### **39 Access to confidential information**

- (1) This section applies if the holder of a mineral title under the *Mineral Titles Act 2010*, or a licence or permit under the *Petroleum Act 1984*, has given any of the following to a person as required by that Act:
- (a) water samples of, and data about, underground water encountered during exploration drilling;
  - (b) a geological sample, including a drill core and cutting;
  - (c) a report relevant to the mineral title, licence or permit.

- (2) The Controller may do any of the following:
- (a) have access to anything mentioned in subsection (1)(a) to (c);
  - (b) arrange for an analysis of a sample mentioned in subsection (1)(a) or (b);
  - (c) obtain copies of reports mentioned in subsection (1)(c).
- (3) Subsection (2) applies:
- (a) regardless of any provision in the *Mineral Titles Act 2010* or *Petroleum Act 1984* relating to confidentiality; and
  - (b) without the need to obtain the permission of the holder of the mineral title, licence or permit.
- (4) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
  - (b) the information is confidential and the person is reckless in relation to that circumstance; and
  - (c) the person intentionally engages in conduct; and
  - (d) the conduct results in the disclosure of the information and the disclosure is not:
    - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
    - (ii) to a person who is otherwise entitled to the information; and
  - (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (4A) Strict liability applies to subsection (4)(a).



- (4B) If the information mentioned in subsection (4) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

*Example for subsection (4B)*

*A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.*

*Note for subsections (4) to (4B)*

*In addition to the circumstances mentioned in these subsections, a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

- (5) In this section:

**licence**, see section 5(1) of the *Petroleum Act 1984*.

**mineral title** means:

- (a) a mineral title as defined in section 11(1) of the *Mineral Titles Act 2010*; or
- (b) a non-compliant existing interest as defined in section 204(1) of the *Mineral Titles Act 2010*.

**permit**, see section 5(1) of the *Petroleum Act 1984*.

## **Part 5            Surface water**

### **Division 1        Works**

#### **40            Interfering with waterway without authorisation**

- (1) A person commits an offence if the person:
- (a) engages in conduct that interferes with a waterway; and
  - (b) is not authorised under this Act to interfere with the waterway.

Maximum penalty:        500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A person commits an offence if:
- (a) the person intentionally engages in conduct; and



## **42            Breach of permit to interfere with waterway**

- (1) A person commits an offence if the person:
- (a) holds a permit granted under section 41; and
  - (b) contravenes a term or condition of the permit.
- Maximum penalty:        500 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

## **Division 2            Taking surface water**

### **43            Definition**

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

### **44            Taking surface water without authorisation**

- (1) A person commits an offence if the person:
- (a) takes water; and
  - (b) is not authorised under this Act to take the water.

Maximum penalty:        500 penalty units.

*Note for subsection (1)*

**Take**, in relation to water, is defined in section 4(1).

- (2) A person commits an offence if the person:
- (a) intentionally takes water; and
  - (b) is not authorised under this Act to take the water.

Maximum penalty:        1 000 penalty units or imprisonment for  
2 years.

*Note for subsection (2)*

**Take**, in relation to water, is defined in section 4(1).

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of a channel or other means (including mechanical means) by which water may be taken is evidence that water was taken while the channel or other means existed.
- (7) Subsections (1) and (2) do not apply if the Administrator declares under subsection (8) that they do not apply.
- (8) The Administrator may, on the recommendation of the Minister, declare by *Gazette* notice that subsections (1) and (2) do not apply to taking water:
  - (a) of a specified class, kind, description or volume; or
  - (b) at a specified rate or for a specified purpose.

#### **45            Licence to take water**

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

#### **45A          No licence to take water for petroleum activity**

The Controller must not grant a licence under section 45 if the proposed beneficial use of water under the licence is petroleum activity.

**46            Breach of licence to take surface water**

- (1) A person commits an offence if the person:
- (a) holds a licence granted under section 45; and
  - (b) contravenes a term or condition of the licence.
- Maximum penalty:        500 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**Part 6            Groundwater**

**Division 1        General**

**47            Declaration of exemptions**

- (1) 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.
- (2) A declaration under subsection (1) must not exempt the application of the following provisions:
- (a) section 60A;
  - (b) section 67(4).

**Division 2        Drilling licences**

**48            Doing bore work without licence**

- (1) A person commits an offence if the person:
- (a) does bore work; and

(b) does not hold a drilling licence that authorises the bore work.

Maximum penalty:     500 penalty units.

*Note for subsection (1)*

*General rights to take water or do bore work under section 57 do not authorise unlicensed bore work, but this offence does not apply if the bore is subject to an exemption declared under section 47.*

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) Subsection (1) does not apply if, at all times, the defendant does the bore work in the presence of a person who holds a drilling licence that authorises the bore work.

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

- (1) Subject to this Act, the Controller may:
  - (a) on the Controller's own initiative 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 drilling licence**

- (1) A person commits an offence if the person:
  - (a) holds a drilling licence; and
  - (b) contravenes a term or condition of the licence.

Maximum penalty:     500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**51            Surrender of licence**

The holder of a drilling licence to whom notice has been given in accordance with section 93 must, 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 must, if required to do so by the Controller, produce within a reasonable time to the Controller:

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

**53            Power to require drilling information and samples**

- (1) The Controller may, by written notice, require a holder of a drilling licence to provide the information and samples prescribed by regulation in the form and within the period specified in the notice.
- (2) A person commits an offence if the person:
  - (a) is given a notice under subsection (1); and
  - (b) fails to comply with a requirement of the notice.

Maximum penalty:        30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).

**54            Drillers' Qualifications Advisory Committee**

- (1) There is a Drillers' Qualifications Advisory Committee.
- (2) The Drillers' Qualifications Advisory Committee:
  - (a) is constituted by a chairperson and the prescribed number of other members; and
  - (b) has powers and functions as prescribed.
- (3) The chairperson and members of the Drillers' Qualifications Advisory Committee must be appointed by the Minister and hold office at the Minister's pleasure.

**Division 3            Bore work permits**

**55            Power to require information about bore**

- (1) The Controller may, by *Gazette* notice, require an owner or occupier of land or land of a specified class, either generally or within a specified area:
  - (a) to provide information in relation to any bores situated on the land; and
  - (b) to provide the information within a specified time or as soon as practicable after the completion of bore work.
- (2) A person commits an offence if the person:
  - (a) is required by a notice under subsection (1) to provide information; and
  - (b) fails to comply with the requirement.

Maximum penalty:        30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).



**56            Doing bore work without authorisation**

- (1) A person commits an offence if:
- (a) the person does bore work; and
  - (b) the bore work is not authorised by a permit granted under section 57.

Maximum penalty:        500 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally does bore work; and
  - (b) the bore work is not authorised by a permit granted under section 57.

Maximum penalty:        1 000 penalty units or imprisonment for  
2 years.

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if:
- (a) the bore work was done:
    - (i) to prevent pollution or deterioration of the water in a bore; or
    - (ii) to provide urgent water supply for the benefit of public health, animal welfare or the environment; and
  - (b) it was not reasonably practicable to apply for a permit under section 57; and
  - (c) the defendant took reasonable steps to inform the Controller of the bore work; and
  - (d) the defendant complied with any regulations that apply to the bore work done for a purpose mentioned in paragraph (a).
- (5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (6) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4) or (5).

**57            Grant of bore work permit**

- (1) Subject to this Act, the Controller may, on the Controller's own initiative or on application in the prescribed manner and form, grant to a person a permit in the prescribed form to carry out bore work.
- (2) A permit may be granted under subsection (1) subject to any terms and conditions specified in the permit document.
- (3) A permit must be granted for a period, not exceeding 2 years, as is specified in the permit document.

**58            Breach of permit to do bore work**

- (1) A person commits an offence if the person:
  - (a) holds a permit granted under section 57; and
  - (b) contravenes a term or condition of the permit.

Maximum penalty:        500 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**Division 4            Extraction of groundwater**

**59            Taking groundwater without authorisation**

- (1) A person commits an offence if the person:
  - (a) takes water from a bore; and
  - (b) is not authorised under this Act to take the water.

Maximum penalty:        500 penalty units.

*Note for subsection (1)*

**Take**, in relation to water, is defined in section 4(1).

- (2) A person commits an offence if the person:
  - (a) intentionally takes water from a bore; and

(b) is not authorised under this Act to take the water.

Maximum penalty:        1 000 penalty units or imprisonment for  
2 years.

*Note for subsection (2)*

**Take**, in relation to water, is defined in section 4(1).

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of pumping equipment or other prescribed means by which water may be taken from a bore is evidence that water was taken in contravention of this section at the time the equipment or those means are proved to have existed.

## **60            Grant of licence to take groundwater**

- (1) Subject to this Act, the Controller may, on the Controller's own initiative 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.

**60A        Licence to take groundwater for hydraulic fracturing**

- (1) This section applies in relation to an application for a licence, or a licence proposed to be granted on the Controller's own initiative, to take water from a bore if:
- (a) the proposed beneficial use of water under the licence is petroleum activity that includes hydraulic fracturing; and
  - (b) one or more designated bores are located within 1 km of the bore.
- (2) The Controller must not grant the licence unless:
- (a) the owner of each designated bore mentioned in subsection (1)(b) consents to the grant of the licence; or
  - (b) the Controller is satisfied that hydrogeological investigations and groundwater modelling indicate that the activities under the licence will not have any adverse effect on the supply of water to any designated bore mentioned in subsection (1)(b).
- (3) In this section:

***designated bore*** means any of the following:

- (a) a bore used for rural stock and domestic beneficial use;
- (b) a bore in relation to which a water extraction licence has been granted;
- (c) a proposed bore in relation to which the Controller has received but not yet decided an application for a bore work permit under section 57(1) that is proposed to be used for:
  - (i) rural stock and domestic beneficial use; or
  - (ii) a use that requires the grant of a water extraction licence;
- (d) a proposed bore in relation to which a bore work permit under section 57(1) is in force that is proposed to be used for:
  - (i) rural stock and domestic beneficial use; or
  - (ii) a use that requires the grant of a water extraction licence.

**owner**, of a designated bore, means:

- (a) if a permit or licence under this Act is in force in relation to the bore – the holder of the permit or licence; or
- (b) if the designated bore is a proposed bore in relation to which the Controller has received an application under section 57(1) – the person who has made the application to construct the bore; or
- (c) if a bore exists but there is no permit or licence under this Act in force in relation to the bore – the person who uses or maintains the bore.

## **61 Breach of licence to take groundwater**

(1) A person commits an offence if the person:

- (a) holds a licence granted under section 60; and
- (b) contravenes a term or condition of the licence.

Maximum penalty:        500 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

## **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.

Maximum default penalty:        4 penalty units or, in the case of a  
body corporate, 20 penalty units.

### **63            Grant of underground waste disposal licence**

- (1) Subject to this Act, the Controller may, on the Controller's own initiative 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.

Maximum default penalty:        4 penalty units or, in the case of a  
body corporate, 20 penalty units.

## **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.

Maximum default penalty:      4 penalty units or, in the case of a body corporate, 20 penalty units.

## **Division 6            Recharge of aquifers**

### **66            Recharging aquifer without authorisation**

- (1) A person commits an offence if the person:
  - (a) engages in conduct that results in the increase of the volume of water in an aquifer; and
  - (b) is not authorised under this Act to increase the volume of water in the aquifer.

Maximum penalty:            500 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct results in the increase of the volume of water in an aquifer and the person is reckless in relation to the result; and
  - (c) the person is not authorised under this Act to increase the volume of water in the aquifer.

Maximum penalty:      1 000 penalty units or imprisonment for  
2 years.

- (3) Strict liability applies to subsections (1) and (2)(c).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of a means by which the volume of water contained in an aquifer is capable of being increased is evidence that the volume of water contained in an aquifer was increased in contravention of this section at the time those means are proved to have existed.

## **67        Grant of recharge licence**

- (1) Subject to this Act, the Controller may, on the Controller's own initiative 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.
- (4) The Controller must not grant a licence that permits the increase of water contained in an aquifer with water that is or contains hydraulic fracturing waste.



**68            Breach of recharge licence**

- (1) A person commits an offence if the person:
- (a) holds a licence granted under section 67; and
  - (b) contravenes a term or condition of the licence.
- Maximum penalty:        500 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

**Division 7            General**

**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 groundwater 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**

- (1) A person commits an offence if the person:
  - (a) is served with a notice under section 70; and
  - (b) contravenes a direction of the notice.

Maximum penalty: 50 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) For subsection (1), it is immaterial if the contents of the notice are inconsistent with or contrary to a term or condition of a licence, permit or other authorisation granted under this Act or another Act.

## **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 for either or both of the following:
  - (a) the grant of a water extraction licence;
  - (b) an amendment or modification of one or more water extraction licences involving an increase in the total quantity of water that may be taken under the licence or licences.

- (2A) However, this Part does not apply to either of the following:
- (a) an application for an amendment or modification of 2 or more water extraction licences to give effect to an agreement to trade an entitlement to take water between those licences if:
    - (i) the terms of the agreement are in accordance with a water allocation plan; and
    - (ii) the total quantity of water that may be taken under all licences held by the parties to the agreement would not increase if the application is granted;
  - (b) an application made because of the subdivision or consolidation of land which is the subject of one or more water extraction licences if:
    - (i) a development permit for the subdivision or consolidation is in force under the *Planning Act 1999*; and
    - (ii) the total quantity of water that may be taken under all licences relating to the subdivided or consolidated land would not increase if the application is granted.
- (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 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 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 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.

- (7) In addition, the Controller must:
- (a) use reasonable efforts to identify any occupiers of land immediately adjacent to the land mentioned in subsection (6)(a) and (b); and
  - (b) give a copy of the notice to the identified occupiers.

**71BA Consent required before extraction licence given in respect of Aboriginal water reserve**

- (1) The Controller must not grant a water extraction licence in relation to an Aboriginal water reserve unless the Aboriginal persons of a class prescribed by regulation have given consent.
- (2) The manner and form of consent required under subsection (1) is as prescribed by regulation.

**71C Making water extraction licence decision**

- (1) The Controller must make a water extraction licence decision for an application 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 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; or
- (b) groundwater; 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 is to 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, on the Controller's own initiative or on application in the prescribed manner and form, grant to a person a licence (a **waste discharge licence**) to carry out an action that would otherwise be an offence against this Act whether by virtue of section 73 or because the action is not and cannot be (but for this section) authorised by or under this Act.
- (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 is to 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 *Waste Management and Pollution Control Act 1998***

An action carried out under an environment protection approval, environment protection licence or best practice licence as defined in section 4(1) of the *Waste Management and Pollution Control Act 1998* does not constitute an offence against this Act by virtue of section 73.

#### **75 Further information**

The Controller may, by written notice given to an applicant for a waste discharge licence, 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 waste discharge licence must not contravene or cause, suffer or permit a person to contravene a term or condition to which the licence is subject.
- (2) An offence against this section is an environmental offence level 3.

Maximum default penalty: 4 penalty units or, in the case of a body corporate, 20 penalty units.

## **77 Monitoring**

- (1) A waste discharge licence may be subject to a condition that the licensee must, 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) must 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; or
  - (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) groundwater.

### **Division 2 Development works**

#### **79 Power to construct works**

- (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 commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct results in the construction, maintenance, repair, alteration, operation or removal of works for a purpose mentioned in subsection (1) and the person is reckless in relation to the result; and

(c) the person is not authorised to engage in the conduct.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3A) Strict liability applies to subsection (3)(c).

(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 commits an offence if:

(a) the person uses a bore; and

(b) the costs of the bore have been borne by the Territory, whether before or after the commencement of this Act, and the person is reckless in relation to that circumstance; and

(c) the person is not authorised under this Act to use the bore.

Maximum penalty: 50 penalty units.

(1A) Strict liability applies to subsection (1)(a) and (c).

(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            Powers of Controller**

- (1) The Controller may, by *Gazette* notice or notice served on a person, require persons of a class specified in the notice, or the person on whom the notice is served, to do the following things as specified in the notice:
  - (a) in relation to the investigation, use, control, protection, management or administration of water or in relation to waste:
    - (i) keep and maintain records; and

- (ii) install, operate and maintain equipment; and
    - (iii) provide information to a person;
  - (b) take or dispose of samples of water or waste;
  - (c) submit samples of water or waste to a person or member of a class of persons for analysis.
- (2) Anything required to be done under subsection (1) is done at the expense of the person to whom the notice applies unless the Controller otherwise directs.
- (3) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct contravenes a requirement of a notice under subsection (1).
- Maximum penalty:      50 penalty units.
- (4) Strict liability applies to subsection (3)(b).

## **89      Misleading information**

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person (the **recipient**); and
  - (b) the information is misleading and the person has knowledge of that circumstance; and
  - (c) the recipient is acting in an official capacity and the person has knowledge of that circumstance.
- Maximum penalty:      200 penalty units or imprisonment for 2 years.
- (2) A person commits an offence if:
- (a) the person intentionally gives a document to the recipient; and
  - (b) the document contains misleading information and the person has knowledge of that circumstance; and

- (c) the recipient is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the recipient's attention; and
- (b) to the extent to which the person can reasonably do so – gives the recipient the information necessary to remedy the misleading aspect of the document.
- (4) In this section:

***acting in an official capacity***, in relation to a recipient, means the recipient is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## 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 1999* 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 this section:

***applicant*** includes the person to whom a permit, licence or consent is or is to be granted when the Controller acts on the Controller's own initiative without an 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 total quantity of water permitted to be taken.

**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) If water is taken or available to be taken under section 10, 11 or 14, the Minister may, by notice, do any of the following as the Minister considers appropriate:
  - (a) specify the places from which, the manner in which and the times at which water may or may not be taken;
  - (b) in times of actual or likely shortage of water – fix the amount of water which may be taken and the purposes for which water may be taken;
  - (c) temporarily or permanently prohibit taking water from a source when, in the opinion of the Controller, taking water would be dangerous to health.
- (2) Despite anything in this Act or any other law of the Territory, the Minister may, by notice, do any of the following as the Minister considers appropriate:
  - (a) in times of actual or likely shortage of water – regulate, restrict or prohibit the doing of an act under a licence;
  - (b) temporarily or permanently prohibit the doing of an act under a licence if, in the opinion of the Controller, the doing of the act would be dangerous to health.
- (3) A person commits an offence if the person contravenes a notice made under subsection (1) or (2).

Maximum penalty: 50 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) For subsection (3), it is immaterial if the contents of the notice are inconsistent with or contrary to a term or condition of a licence, permit or other authorisation granted under this or another Act.
- (6) It is a defence to a prosecution for an offence against subsection (3) if the defendant contravened a notice for the reasonable protection of life or property.
- (7) It is also a defence to a prosecution for an offence against subsection (3) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (6) or (7).

(9) In this section:

**by notice** means any of the following:

- (a) by *Gazette* notice;
- (b) by notice in a newspaper circulating in the area to which the notice relates;
- (c) by notice by radio or television;
- (d) by notice served on the owner or occupier of land to which the notice relates.

## **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.

Maximum default penalty: 4 penalty units or, in the case of a body corporate, 20 penalty units.

- (4) The Controller may, in circumstances the Controller considers constitute an emergency, take the action that 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**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct results in:
    - (i) works constructed or used, under a licence granted or power given under this Act, being damaged or destroyed; or
    - (ii) benefits required or derived from those works being diminished.

Maximum penalty:      100 penalty units.

- (2) Strict liability applies to subsection (1)(b).

#### **99      Interference with rights**

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
  - (b) the conduct results in materially diminishing another person's enjoyment of:
    - (i) a right mentioned in section 10, 11 or 14; or
    - (ii) a licence granted, power given or arrangement made under this Act; and
  - (c) the person is reckless in relation to the result mentioned in paragraph (b).

Maximum penalty:      100 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and

- (b) the conduct results in interference with the performance of an act authorised under section 97; and
- (c) the person is reckless in relation to the result mentioned in paragraph (b).

Maximum penalty:      100 penalty units.

#### **100      Wasting water**

- (1) A person commits an offence if:
  - (a) the person intentionally engages in conduct; and
  - (b) the conduct results in:
    - (i) more water being used than is reasonably necessary for the immediate purpose for which the water is taken; or
    - (ii) an unnecessary or excessive flow or flood of water; or
    - (iii) water being taken without adequate control or supervision of its taking.

Maximum penalty:      50 penalty units.

- (2) Strict liability applies to subsection (1)(b).

#### **101      Obstruction of authorised officer**

- (1) A person commits an offence if:
  - (a) the person intentionally obstructs another person; and
  - (b) the other person is an authorised officer; and
  - (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty:      200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).

- (3) In this section:

***acting in an official capacity***, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

***obstruct*** includes hinder, resist, delay and threaten.

## **Division 4      Criminal liability for offences**

### **102      Liability of occupier**

- (1) An occupier of land must take reasonable steps and exercise due diligence, having regard to the nature and extent of the occupation, to prevent an offence under this Act occurring on the land.
- (2) An occupier of land is taken to have committed a relevant offence if:
  - (a) a person (the **offender**) commits a relevant offence; and
  - (b) the offence occurs wholly or partly:
    - (i) on or below the surface of the land or part of the land; or
    - (ii) on or in a waterway that is immediately adjacent to the land; or
    - (iii) on or in the bed or banks of a waterway that is immediately adjacent to the land.
- (3) It is a defence to a prosecution for an offence taken to have been committed under subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) This section does not affect the liability of the offender.
- (6) This section applies whether or not the offender is prosecuted for, or found guilty of, the relevant offence.
- (7) In this section:

**relevant offence** means an offence against section 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) or 68(1).

### **102A      Liability of owner**

- (1) For section 102, an owner of land is taken to be an occupier of the land unless the owner proves that at the time the offence was committed:
  - (a) the owner was not an occupier of the land; and
  - (b) the occupier was not an associated person of the owner.

(2) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (1).

(3) In this section:

**associated person** means an employee, agent, licensee, contractor or subcontractor.

### **102B      Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty:      The maximum penalty that may be imposed on an individual for the relevant offence.

(2) Strict liability applies to subsection (1)(b).

(3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.
- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (7) In this section:

**declared provision** means:

- (a) section 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) or 68(1); or
- (b) a provision of the Regulations prescribed by regulation.

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

#### **102C      Criminal liability of executive officer of body corporate – legal burden of proof on defence**

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty:      The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
  - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
  - (b) took reasonable steps to prevent the contravention; or
  - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).



- (5) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
    - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
    - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
    - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
  - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (6) Subsection (5) does not limit the matters the court may consider.
- (7) This section does not affect the liability of the body corporate.
- (8) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (9) In this section:

**declared provision** means:

- (a) section 40(3), 44(2), 56(2), 59(2) or 66(2); or
- (b) a provision of the Regulations prescribed by regulation.

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## **102D    Liability of joint approval holder**

- (1) If a joint holder of an approval commits an offence against this Act involving contravention of the approval, each other joint holder of the approval is taken to have committed the offence.

- (2) It is a defence to a prosecution for an offence taken to have been committed under subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (3) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (2).
- (4) In this section:  
**approval** means a licence, permit or other authorisation granted under this Act.

### **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 *maximum default penalty***

- (1) Where in, or at the foot of, a section or part of a section there appears the expression ***maximum 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 maximum 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.

## **Division 5      Legal proceedings**

### **104A      Continuing offence**

- (1) This section applies if a court has found a person guilty of an offence against this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the offence is charged.
- (3) If the offence continues after the person is found guilty, the court may:
  - (a) find the person guilty of a further offence; and
  - (b) in addition to any penalty imposed for the further offence – impose a penalty not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the person was first found guilty.
- (4) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

## **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.

## **105B      Additional orders on finding of guilt**

If a person is found guilty of an offence against this Act, the court may, in addition to any penalty that it may impose, and to any other order that it may make under this or another Act, make any of the following orders:

- (a) an order requiring the person to take an action to rectify or mitigate the consequences of the offence;
- (b) an order requiring the person to take an action or to cease taking action that is continuing the offence or exacerbating the consequences of the offence;
- (c) an order that the person pay to the Territory an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an

associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

### **105C Sentencing matters**

- (1) When imposing a penalty on a person for an offence against this Act, the court must have regard to the following to the extent that they are relevant:
  - (a) the impact of the offence on other persons' rights under this Act;
  - (b) the market value of any water that has been lost, misused or unlawfully taken because of the commission of the offence;
  - (c) the extent of the harm caused or likely to be caused to the environment by the commission of the offence;
  - (d) the practical measures that may be taken to prevent, control, abate or mitigate that harm;
  - (e) the extent to which the person could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence;
  - (f) the extent to which the person had control over the causes of the offence;
  - (g) the person's intentions in committing the offence;
  - (h) whether, in committing the offence, the person was complying with orders from an employer or supervising employee.
- (2) Subsection (1) does not limit the matters the court may consider.

## **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; or
  - (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 registered mail addressed to the person at the person's usual or last-known place of residence or business or postal address; or
  - (d) sending it by email to an email address notified to the sender by the person as an address at which service of documents under this Act will be accepted.
- (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; or
  - (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 registered mail to the body corporate at its office or place of business or postal address; or
  - (d) sending it by email to an email address notified to the sender by the person as an address at which service of documents under this Act will be accepted.
- (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.

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**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.
- (2) Without limiting the generality of subsection (1), the Regulations may:
  - (a) prescribe forms or provide for them to be approved by the Controller; and
  - (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; and
  - (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; and
  - (d) prescribe and provide for the classification of water by reference to its quantity, quality or possible use; and
  - (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; and
  - (f) regulate or prohibit a matter or thing in connection with the collection, storage, disposal, dispersion or discharge of water or waste; and
  - (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; and
  - (h) prescribe the powers and functions of an Advisory Committee, either generally or in a particular area or in relation to a particular purpose; and
  - (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; and

- (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; and
- (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 which, and persons by whom, such objections shall be heard, otherwise considered or dealt with; and
- (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; and
- (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; and
- (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 65,to more than one person jointly; and
- (r) provide for the manner of making, and the consideration of, joint applications and of objections to joint applications; and
- (s) prescribe terms and conditions which govern the rights and duties of joint applicants between themselves; and
- (t) prescribe terms and conditions to which interests granted jointly are subject; and
- (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 maximum penalties of 15 penalty units and maximum default penalties of 2 penalty units for a contravention of the Regulations; and



- (w) confer a function on Aboriginal Land Councils in relation to Aboriginal water reserves.

**Part 12 Transitional matters for Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010**

**109 Transitional matters for *Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010***

- (1) Except as provided in this section, a licence issued under the *Control of Waters Act 1938* 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.
- (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 1938* 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.
- (6) Where immediately before the commencement of Part 8 a person had, in pursuance of the *Water Supplies Development Act 1960* 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 1938* 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 1938* to a body corporate by whom a person is employed and in force immediately before the 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 1938* 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 1938* 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).

## **Part 13            Transitional matters for Water Amendment Act 2007**

### **110            Existing water extraction licence application**

- (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.

## **Part 14            Transitional matters for Water Amendment Act 2010**

### **111            Validation for actions before *Water Amendment Act 2010***

- (1) This section applies to a document (a **purported licence**) granted before the commencement of this section that purports to be a licence granted under section 74(1) to the extent the document is not a licence validly granted to carry out an action which would otherwise be an offence against this Act by virtue of section 73.
- (2) Each of the following is declared for this Act and any other Act in relation to a purported licence:
  - (a) the grant of the purported licence is, and is taken to have always been, a valid exercise of power by the Controller under section 74(1);

- (b) if the period specified in the purported licence:
- (i) has not ended – the purported licence is a valid waste discharge licence and is subject to the conditions purportedly applying to it immediately before the commencement; or
  - (ii) has ended – the purported licence was a valid licence under section 74 and was subject to the conditions that applied to it from time to time.
- (3) In this section:
- granted** includes amended and modified.

## **Part 15                    Transitional matters for Water Legislation Amendment Act 2018**

### **112            Definitions**

In this Part:

**commencement** means the commencement of the *Water Legislation Amendment Act 2018*.

**former Act** means this Act as in force immediately before the commencement.

**hydraulic fracturing** means the underground gas and oil extraction process involving the injection of fluids at high pressure into a geological formation to induce fractures that conduct hydrocarbons for extraction.

**offence provisions** means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

**transition period** means the period of 6 months on and from the commencement.

### **113            Application to mining and petroleum activity**

The former Act continues to apply in relation to a mining activity or petroleum activity if:

- (a) the activity is not related to hydraulic fracturing; and

- (b) the activity involves interfering with a waterway, taking surface water, taking groundwater, bore work or recharging an aquifer; and
- (c) the activity is conducted in accordance with:
  - (i) a mining management plan approved under the *Mining Management Act 2001*; or
  - (ii) an environment management plan approved under the *Petroleum Act 1984*; and
- (d) the activity started:
  - (i) before the end of the transition period; or
  - (ii) after the transition period, but the application for the management plan was made before the end of the transition period and was approved without change.

#### **114 Licences, permits and other authorisations**

- (1) A licence, permit or other authorisation granted before the commencement continues in force until it expires or is surrendered or revoked.
- (2) A construction permit granted under section 41 of the former Act continues in force and is taken to be a permit to interfere with a waterway mentioned in section 41.
- (3) A bore construction permit granted under section 57 of the former Act continues in force and is taken to be a permit to carry out bore work mentioned in section 57.

*Note for section 114*

*No licences, permits or authorisations were granted for petroleum activity under the former Act.*

#### **115 Offence provisions – before and after commencement**

- (1) The offence provisions, as amended by the *Water Legislation Amendment Act 2018*, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.

- (3) For this section, if any of the conduct constituting an offence occurred before commencement, the offence is taken to have been committed before commencement.

**116 Saving of exemption and declaration**

- (1) The exemption made under section 15(6) of the former Act and published in *Gazette* No. S35 of 30 June 1992 continues in force as if it had been made and published in the *Gazette* under section 40(10).
- (2) The declaration made under section 44(3) of the former Act and published in *Gazette* No. S63 of 6 July 2016 continues in force as if it had been made and published in the *Gazette* under section 44(8).

**Part 16 Transitional matters for Water Amendment Act 2019**

**117 Application of section 60A**

Section 60A applies in relation to an application under section 60(1) that was made but not decided by the Controller before the commencement of section 9 of the *Water Amendment Act 2019*.

**Part 17 Transitional matters for Water Legislation Miscellaneous Amendments Act 2019**

**118 Application of sections 71A and 71B**

- (1) Sections 71A and 71B as in force immediately before the commencement continue to apply in relation to an application for the grant of a water extraction licence made before the commencement.
- (2) In this section:

**commencement** means the day on which Part 2 of the *Water Legislation Miscellaneous Amendments Act 2019* commences.

**Part 18**                    **Transitional matters for Water Further  
Amendment Act 2019****119**            **Saving of beneficial uses declarations**

A declaration under section 22A in force immediately before the commencement of section 6 of the *Water Further Amendment Act 2019* continues in force after that commencement, subject to any amendment or revocation.

**120**            **Aboriginal water reserve not to apply to allocations made  
before commencement**

Section 22B(7) does not apply to a water allocation plan that was in force before the commencement of that subsection.

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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)



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<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)

**Mineral Titles (Consequential Amendments) Act 2010 (Act No. 37, 2010)**

Assent date 18 November 2010  
 Commenced 7 November 2011 (*Gaz G41*, 12 October 2011, p 5)

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***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and Gaz G7, 16 February 2011, p 4)

***Water Amendment Act 2010 (Act No. 48, 2010)***

Assent date 13 December 2010  
 Commenced 13 December 2010

***Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)***

Assent date 12 July 2013  
 Commenced 28 August 2013 (Gaz G35, 28 August 2013, p 2)

***Red Tape Reduction (Miscellaneous Amendments) Act 2016 (Act No. 12, 2016)***

Assent date 10 May 2016  
 Commenced 1 July 2016 (Gaz G26, 29 June 2016, p 2)

***Water Legislation Amendment Act 2018 (Act No. 29, 2018)***

Assent date 4 December 2018  
 Commenced 31 December 2018 (Gaz S107, 17 December 2018)

***Water Amendment Act 2019 (Act No. 19, 2019)***

Assent date 30 May 2019  
 Commenced 19 June 2019 (Gaz S44, 19 June 2019)

***Water Legislation Miscellaneous Amendment Act 2019 (Act No. 26, 2019)***

Assent date 2 September 2019  
 Commenced 25 September 2019 (Gaz G39, 25 September 2019, p 2)

***Water Further Amendment Act 2019 (Act No. 36, 2019)***

Assent date 6 November 2019  
 Commenced 8 July 2020 (Gaz G27, 8 July 2020, p 2)

***Statute Law Revision Act 2020 (Act No. 26, 2020)***

Assent date 19 November 2020  
 Commenced 20 November 2020 (s 2)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 12, 13, 15, 39, 74A, 90, 109 and 113.

### 4 LIST OF AMENDMENTS

It amd No. 20, 2000, s 3  
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