

**WATER SERVICES BILL 2011**  
**EXPLANATORY MEMORANDUM**

**Introduction**

The purpose of the *Water Services Bill 2011* is to consolidate and modernise existing water service legislation, make it clearer and easier to use, and improve regulatory processes and protection of water service customers.

The *Water Services Bill 2011* brings together laws dealing with water services which are currently found in various Acts. Many of these Acts contain duplicate provisions in regard to powers and functions of water service providers. Some provisions within these Acts are out of date and using these different Acts proves complex and costly in terms of compliance. The duplication and complexity in the water legislation has in part resulted from a failure of legislative amendments to keep pace with the major institutional changes that have taken place over the past 15 to 20 years in the water industry.

The intent of the Bill is to enable and regulate the provision of water services in a way that best serves the public interest.

The objectives of the Bill are:

- To enable the Minister to make regulations and codes, set conditions and standards and determine charges for water services provision that protect customers and are fair to water service providers.
- To ensure the safety, reliability, efficiency and quality of water services are maintained by means of regulatory and licensing requirements.
- To enable an effective, competitive and sustainable water services industry that is responsive to the needs of all Western Australians.

The Bill will deliver the following key changes;

- It will establish a Water Services Ombudsman scheme. This will ensure customer complaints are independent of the government agency responsible for policy development or the licences. The Ombudsman will have the power to make binding recommendations and take action to ensure the complaint is resolved satisfactorily. Having such a scheme is a key feature of effective utility regulation.
- Streamlining of regulatory arrangements will save time and money for licensed providers, and the Department of Water, particularly in the areas of extension powers to licenses, enforcement and price regulation.

The making of extension of enactment regulations under the *Water Services Licensing Act 1995* is currently the means by which water service providers are extended powers from the various Acts covering services legislation including works powers. These powers allow them to operate similarly to the Water Corporation. The preparation of regulations and laying them before Parliament as a disallowable instruction mechanism is rather cumbersome and takes time. It also a barrier to entry to the market for licensed providers. The *Water Services Bill 2011* will streamline licensing processes as all existing and potential water service providers will be brought under the same legislation and will have the same powers.

- The Act will allow the Minister to more readily make regulations for water service charges. Price regulation under the current legislation is achieved through by-laws made under section 34 of the *Water Agencies (Powers) Act 1984*. Currently only prices of the Water Corporation and the Water Boards are so regulated. For all other service providers an extension of enactment process would be required first and then by-laws would need to be made under section 34 of the *Water Agencies (Powers) Act 1984*.
- Through the introduction of code provisions the Minister will have the ability to set technical standards and a range of other requirements to be met by water service licensees. Codes will be considered Subsidiary Legislation for the purposes of the *Interpretation Act 1984*.
- Regulation of infrastructure contributions - standard headworks charges are charged by the Water Corporation to recover forty per-cent of the costs of major works such as reservoirs, water treatment stations, pumping stations etc., from developers. The remaining costs are recovered through on-going rates and charges for the water, wastewater and drainage services, and the payment of Community Services Obligation subsidies.

Currently the Water Corporation's headwork charges and minor works charges are charged under Part IV, s.67(8) of the *Water Agencies (Powers) Act 1984* and are not directly regulated by the Minister. This is different requirements that apply to Water Boards where Ministerial approval of the level and application of headworks charges is required.

The *Water Services Bill 2011* gives the Minister power to regulate headworks charges and minor works charges for all licensed service providers. These charges have been collectively named "infrastructure contributions" in the Bill. Therefore, the Bill brings infrastructure contributions under the same regulatory scheme as other water services charges.

- Supplier of last resort provisions will allow the Economic Regulation Authority to appoint a supplier of last resort in a designated area, in order to ensure continuity of service for the community where an existing provider fails to provide a service, or is forced to exit the market.

## **Part 1 – Preliminary**

This Part contains the title of the Act, and the relevant commencement provisions of the Act.

### **Clause 1: Short title**

This clause gives the short title of the Act which shall be used as its citation.

### **Clause 2: Commencement**

This clause sets out the commencement provisions of the Act. The Act is designed to commence in conjunction with the *Water Services Legislation Amendment and Repeal Bill 2011*. This is required as the *Water Services Legislation Amendment and Repeal Bill 2011* will carry out the repeal of legislation replaced by this Act.

### **Clause 3: Terms used in the Act**

This clause sets out definitions of terms used in the Act.

Clause 3(2) enables the Minister to make regulations specifying that some activities are, or are not, to be considered as a “water service” under the Act. Where necessary, this will allow the Minister to specify whether a particular type of water use or activity is or is not a service subject to the operation of the Act (ie if it requires to be either licensed or exempt from the licensing requirement, or if the Act does not at all apply to that type of service).

This provision is needed as it is possible that the definitions in the Bill may include some activities that should, for policy reasons, be excluded from the requirement to hold a licence or exemption. For example, a decision could be made that small schemes (in terms of volume or numbers of connections) should be excluded from the definition of a water service and the requirement to be licensed and regulated under the Act.

### **Clause 4: Crown bound**

This clause establishes that the Act binds the Crown. This means that if the Crown provides water services that must be in compliance with the requirements of this Act.

## **Part 2 – Licensing of water service providers**

Part 2 of the Bill details a scheme administered by the Economic Regulation Authority for the licensing of providers of water services. This part provides for the granting of licences by the Authority or granting of exemptions by the Minister from the requirement to hold a licence.

The primary purpose of the licensing scheme is to promote an effective, efficient and sustainable water services industry, to prevent water service providers from abusing their monopoly power and to ensure customers are provided with good quality

services. The licensing scheme enables minimum service and technical standards to be set and requires the monitoring of asset management practices. Further, it ensures that industry participants have the financial and technical capacity necessary to provide water services.

This part incorporates licensing provisions contained in the *Water Services Licensing Act 1995*. The water service provisions in the *Water Services Licensing Act 1995* will be repealed with the passage of the *Water Services Legislation Amendment and Repeal Bill 2011*.

Part 2 contains the classification of licences and operating areas, conditions of licences, statutory provisions, codes, enforcement, rules for the cancellation, renewal, amendment and transfer of licences and provides for the granting of exemptions from the licensing requirement.

### **Division 1 – Licensing requirement.**

This Division establishes the requirement to hold a licence and sets out the offence of providing a water service without a licence. The division also provides that the Minister may grant exemptions from the licensing requirement.

#### **Clause 5: Requirement for licences**

Clause 5, subclause (1) prohibits the provision of water services (see definition in Part 1) unless the person providing the service holds a licence for that particular service. Licences are to be granted by the Economic Regulation Authority.

The purpose of this clause is to ensure that persons providing water services are subject to the regulatory oversight of the Economic Regulation Authority, and thereby ensure customers receive the protection of the specified standards and monitoring provided by licensing.

The clause sets out a penalty of \$30,000 and a daily penalty of \$1,500 for providing a water service without a licence. The *Sentencing Act 1995* s.40 multiplies the \$30,000 by 5 to give a maximum penalty for a body corporate of \$150,000. The maximum penalty is comparable to the penalty originally determined for the same offence under the *Water Services Licensing Act 1995*, adjusted for movements in the CPI since that time.

Sub-clause (2) sets out an exception to the offence in sub-clause (1). The offence will not apply where a water service provider is a body corporate and it is providing the water service to another, related, body corporate. This is because such arrangements are considered to be a “self supply” arrangement where the protection of the customer provided by licensing is not required.

#### **Clause 6: Licensing extends to statutory providers**

This clause makes it clear that the obligation to hold a water services licence extends to organisations with powers to provide water services under other statutes such as a water corporation operating under the *Water Corporations Act 1995* or a local

government providing sewerage services. This provision is consistent with the licensing obligations that already apply to statutory providers under the *Water Services Licensing Act 1995*.

**Clause 7: Minister may grant exemptions**

The clause allows the Minister to exempt a service provider from the requirement to hold a licence under Clause 5(1). The clause allows the Minister to make an exemption order if he or she is satisfied that the order is not contrary to the public interest. For example, an exemption may be given where the cost of meeting licence requirements is greater than the benefit provided to the public by licensing. This could be due to there being a limited number of customers for whom the quality of service and price are set in contract. Reasons for the Minister's decision must be given to the exemption applicant and on request to any other person.

An exemption may be granted subject to conditions. This would enable the Minister to exempt a water service provider from the requirement of holding a licence if conditions are met such as providing regular reports on asset maintenance or that a works management system be established. Exemptions may be revoked by the Minister if it is in the public interest to do so.

The Minister must publish his/her decision on, and the terms and conditions of, an exemption in the prescribed manner. It is expected that exemptions will be published in the *Western Australian Government Gazette*.

A licence may continue but is of no effect for the duration of an exemption granted to the licensee for the provision of the service(s) authorised by the licence. Revocation of an exemption in these circumstances or failure to comply with the conditions of the exemption would result in the service provider being immediately subject to the licensing provisions of the Act.

**Division 2 – Licences**

This division contains provisions regarding the granting of licences. The provisions detail which services and areas the licence may cover, what information needs be included on application for a licence and the procedures for the renewal, transfer, cancellation and amendment of a licence.

**Clause 8: Classification of water services and licences**

This clause sets out four separate water service and corresponding licence classes. The licence may authorise the provision of one or more of the following classes of water services:

- (a) water supply services;
- (b) sewerage services;
- (c) irrigation services;
- (d) drainage services:

These water service activities are defined in Part 1 Section 3.

### **Clause 9: Operating Areas**

Operating areas describe the parts of the State to which the licensee proposes to provide water services. Clause 9 states that a licence must specify the area, or areas, of the State that the service is to be provided in. Subclause (1) states that more than one area of the state may be included in each licence and subclause (2) states that the licence can apply to areas that are not adjoining.

Subclause (3) provides that granting a licensee an operating area does not give exclusive rights to that area. Different licensees may provide the same service to a particular area. This will facilitate competition in the water services industry.

### **Clause 10: Application for a licence**

This clause requires that the licence application be in a form approved by the Authority and be accompanied by the prescribed application fee. The clause is modelled on section 22 of the *Water Services Licensing Act 1995* and section 10 of the *Electricity Industry Act 2004*. This clause enables the Authority to gather the information it needs to assess whether a water service licence should be granted and the conditions which should apply to it. This will enable the Authority to better assess the applicant's capacity to provide an ongoing water service.

Subclause (2) sets out the minimum information required from the applicant for the Authority to properly consider the application. The information requirements set out in subclause (2) include:

- the nature of the proposed water services;
- the proposed operating area or areas;
- the methods or principles that the applicant proposes to apply in providing the proposed services;
- the nature of the water services works to be used in the provision of the proposed water services;
- the standard terms and conditions of service; and
- the conditions of any proposed standard customer contract.

Only one application process is necessary for multiple types of licences.

### **Clause 11: Grant of a licence**

This clause is based on section 23 of the *Water Services Licensing Act 1995* and section 19 of the *Electricity Industry Act 2004*. The clause provides the Authority with the grounds on which to decide whether or not to grant a licence. Section 26 of the *Economic Regulation Authority Act 2003* also requires that the Authority have regard to certain matters in making its decision. In order to grant a licence, the Authority must be satisfied that the applicant either has, or will acquire, the technical and financial ability to provide the proposed water services. The Authority must also be satisfied that granting a licence would not be contrary to the public interest.

The purpose of this provision is to ensure that water service licences are only granted to persons with the financial and technical capacity to provide safe and viable water services.

A single licence may authorise the provision of multiple classes of water service. For example a single licence may authorise both water supply and sewerage services provision (clause 8(2)).

Subclause (2) allows the Authority, through licence conditions, to constrain the licensee to only providing services within the operating area designated in the licence. Otherwise the licensee may expand its services beyond its operating area. The purpose of this clause is to enable the Authority to grant licences that restrict the operations of service providers to a specified area where the Authority considers it in the public interest to do so. This could apply in the case of a small licensee which lacks the financial or technical capacity to operate beyond a prescribed area.

Subclause (3) states that the Authority can specify in the licence the water service works to be provided, operated or maintained for the provision of water services under the licence. This would enable the Authority to specify, for example, that certain treatment works or other works necessary for the provision of services be provided.

Subclause (4) states that the Authority must take reasonable steps to make a decision on granting the licence within 90 days of receipt of application. The purpose of this provision is to ensure licence applications are dealt with by the Authority in a timely manner.

#### **Clause 12: Conditions of a Licence**

This clause is modelled on section 24 and Schedule 1 of the *Water Services Licensing Act 1995* and sections 11, 12 and Schedule 1 of the *Electricity Industry Act 2004*.

The clause provides that a licence may be subject to such conditions as are determined appropriate by the Authority. It describes, without limiting the types of conditions that may be made, the kinds of matters that licence conditions may deal with. The conditions primarily relate to the protection of customers and setting of required standards of service.

Statutory conditions under other clauses of the Bill will also apply to all licences.

Subclause (2) states that the conditions imposed by the Economic Regulation Authority, under subclause (1), will have no effect to the extent to which they are inconsistent with any other licence terms and conditions imposed under the Act. Conditions made under the Act will also include Codes of Practice determined by the Minister and those prescribed by Regulations under clause 30. As licensees are bound by the provisions of the Codes, Regulations and conditions, it is necessary to have a mechanism that resolves inconsistencies between codes, regulations and the conditions determined by the Authority. Regulations prevail over Codes of Practice which are in turn prevail over conditions made by the Authority to the extent of any inconsistency, where these deal with the same thing.

**Clause 13: Renewal of a Licence**

This clause provides that the Authority may renew a licence if the Authority is satisfied that the licensee has the technical and financial ability to provide the services and if satisfied that it would not be contrary to the public interest to grant the renewal. Applications for licence renewals must be in a form approved by the Authority and be lodged with a prescribed application fee. This is to ensure the licensee has the ongoing capacity to provide the service.

**Clause 14: Duration of Licence**

This clause provides that the duration of a licence shall be for a maximum term of 25 years. This is consistent with the existing maximum term allowed under the *Water Services Licensing Act 1995*.

**Clause 15: Transfer of a Licence**

This clause provides that a licence can only be transferred by the Authority on its own initiative, or with the Authority's approval. As with the granting of a licence, the Authority is only able to transfer, or approve the transfer of, a licence if it is satisfied that the applicant has the financial and technical ability to provide the water services authorised by the licence; and it would not be contrary to the public interest. An application for a licence transfer must be made to the Authority, by the transferee, in a form approved by the Authority; and accompanied by the licensee's written consent and prescribed fee. The Authority cannot transfer a licence without the consent of the transferee and, if practicable, the licensee's agreement. The licensee will not need to agree to the transfer in cases where the Authority is transferring the licence and it is not practical to obtain the licensee's consent. This may occur, for example, where the licensee cannot be located or has been wound up. The purpose of the clause is to provide checks and balances in licence transfer decisions and protect the rights of the parties involved.

**Clause 16: Person who has provided water services becoming a licensee**

This clause deals with circumstances where a person has been providing water services before becoming a licensee. This could happen where a person had been exempted from the licensing requirement, or had been providing a service in contravention of the requirement.

The regulations made in these circumstances would deal with matters such as the ownership of works on land not owned by the licensee, and transitional arrangements regarding the application of licence conditions.

**Clause 17: Amendment of licence — on initiative of Authority**

This clause is modelled on section 31 of the *Water Services Licensing Act 1995* and section 22 of the *Electricity Industry Act 2004*.

The clause allows the Authority to amend the terms and conditions of a licence on its own initiative if it is satisfied that it would not be contrary to the public interest to do so. Such amendments may be needed to implement new standards or address other developments that may arise during the term of the licence.

The amendment can only be to a term or condition that was originally determined by the Authority. Some licence conditions are not determined by the Authority, for example, Codes established by the Minister, made under clause 27, or conditions prescribed by regulations under clause 30.

Subclause 3 provides that, where a procedure for amendment is specified in the licence, the Authority must follow it.

Subclause 4 sets out that the amended licence will take effect 14 days after the licensee is notified of the amendment.

**Clause 18: Amendment or cancellation of licence - on application of the licensee**

This clause provides that a licensee may apply to the Authority for amendment or cancellation of the licence. The application must be made in a form approved by the Authority and accompanied by the prescribed application fee.

This clause further provides that the Authority may only cancel a licence or grant an amendment application if satisfied that it is not contrary to the public interest to do so. The Authority is only able to amend a term or condition that was previously made by them. If the licence specifies a procedure to be followed in amending the licence then the Authority must follow this procedure, unless otherwise agreed.

**Clause 19: Effect of Water Resource Management Plans**

This clause provides that if the Authority makes a decision in this Division which is inconsistent with any prescribed relevant water resource management plan made under a written law that is in effect at the time of the decision, then the prescribed water resource management plan will prevail.

The intent of this clause is to ensure licence conditions are, as far as practicable, consistent with other relevant binding government policies expressed in water resource management plans. It is intended that these plans will be made under proposed future water resource management legislation and this provision will accommodate those when they are made in due course.

**Clause 20: Other Laws not Affected**

This clause provides that the holding of a licence does not affect a licensee's obligation to comply with any other written law. The mere holding of a licence will not offer a defence of lawful authority. The intent of this provision is to ensure that the capacity to do works, for example, will not be interpreted as empowering a service provider to take water or do other things without meeting the requirements for permits and licences under relevant legislation.

### **Division 3: Duties of licensees – statutory licence conditions**

This division outlines the obligations and conditions imposed on a licensee under the water services licence, including the provision of water services to customers, the requirement to provide service works and the need to maintain and manage assets and systems.

#### **Clause 21: Duty to provide services and do works**

This clause is modelled on section 32 of the *Water Services Licensing Act 1995* and provides some of the conditions that must be met by all licensees when providing water services. The licensee must provide the services authorised by the licence to persons entitled to receive those services and must not unreasonably refuse to provide the water services authorised by the licence to persons in the operating area of the licence. The licensee is also obliged to undertake, operate and maintain the water service works specified in the licence.

It would be reasonable for a licensee to refuse to provide a service which would not be technically or financially viable to provide, or where the person would not agree to meet the requirements for the provision of the service.

Subclause (3) allows a licensee to refuse to provide a water service under certain conditions. The conditions arise where the person: unreasonably refuses to comply with a reasonable requirement of the licensee; or the person unreasonably refuses to enter into an agreement with the licensee or to comply with a prescribed requirement relating to the provision of the service.

#### **Clause 22: Provision of water services outside operating areas**

This clause ensures that the Authority is informed if a licensee expands its services outside the operating area specified in the licence. This provision is needed as the Bill allows the Authority to grant licences that do not limit the operations of a service provider to a prescribed area.

#### **Clause 23: Works holding arrangements**

This clause describes a licence condition that must be met by all licensees in relation to their water service works. It provides for circumstances where a licensee does not hold the works it uses to provide services. Such arrangements are common in the irrigation industry. Works “held” by a licensee includes works that the licensee owns.

The clause specifies that where works are not held by the licensee the licensee must have an agreement with the holder of the works that ensures the licensee has access in order to operate and maintain the works to the extent necessary for the licensee to comply with their obligations under the licence and the Act.

This provision will ensure that in circumstances where the licensed service provider does not own the works used to deliver services, the service provider will retain the capacity to meet its licence obligations in matters such as, for example, ensuring

water service works are properly operated and maintained and meet the standards required by the licence.

**Clause 24: Asset management system**

The proper operation, maintenance and long term management of works are critical elements of ensuring water services are effectively provided.

This clause makes it a statutory condition of a licence that the licensee maintains an asset management system and gives details of the system to the Authority. The clause also requires that an independent expert is engaged by the Authority in consultation with the licensee to review and report on the effectiveness of the licensee's asset management system. Asset management reviews will be required at least once every 2 years or any longer period that the Minister allows for a licensee. The Authority can recover the cost of engaging and remunerating the independent expert from the licensee.

The asset management system is to set out the measures to be taken by the licensee to ensure proper maintenance of works and the undertaking and operation of the works necessary for the provision of the water service authorised by the licence.

The requirements of this clause match existing requirements in the *Water Services Licensing Act 1995*.

**Clause 25: Operational audit**

The purpose of this provision is to allow the Authority to assess the licensee's performance in complying with licence obligations and require remedial action where substandard performance is identified. The provision is modelled on section 37 of the *Water Services Licensing Act 1995* and section 13 of the *Electricity Industry Act 2004*. The licensee is required to provide the Authority, through an independent expert appointed by the Authority in consultation with the licensee, audits of operation at least once every two years (or other duration determined by the Authority). The report is to be financed by the licensee and is recoverable by the Authority as a debt due to the State.

An operational audit typically relates to the effectiveness of measures taken by the licensee to meet quality and performance standards but can relate to other aspects of the provision of services as agreed between the licensee and the Authority.

Subclause 2(b) provides that operational audits will also include an assessment of the extent to which a licensee has complied with their duties under the Act (see clause 26). This will enable the audit to examine these duties which may not be specified in the licence itself.

Subclause (5) provides that regulations may deal with the Authority reporting to the Minister in relation to audits. This will allow the specification of any information that the Minister may require to be provided with the audit report.

## **Clause 26: Compliance with codes of practice made by the Minister**

This clause enables the Minister to make codes of practice that may apply to a licensee, over and above the licence conditions determined by the Authority. However, the Minister may be required to undertake public consultation before making a code of practice, in order to ensure the code is technically feasible and consistent with best regulatory practice. The codes will provide the Minister for Water the capacity, as policy setter for water services, to impose and publish service and quality standards for the provision of services. The intent is that Government policies for water service provision can be more readily implemented than at present.

Subclause (2) details the matters with which a code of practice may address.

Clause 26 places a condition on every licence that the licensee must comply with each code made by the Minister under section 26 that applies to that licensee. This will enable compliance with the codes to be monitored and enforced by the Authority.

Subclause (4) allows a code of practice to require the licensee to pay persons affected where the licensee fails to meet a performance or technical standard. This clause replicates a capacity to make regulations on similar matters in the *Water Services Licensing Act 1995* and provides an ability to recompense customers affected by licensees that fail to meet a specified service standard.

Subclause (5) provides that certain sections of the *Interpretation Act 1984* will apply to the codes of practice as if they were regulations. This includes disallowance provisions in section 42 of the *Interpretation Act 1984*.

A disallowance resolution passed in either House will result in the code being inoperative from that date onward.

Subclause (11) provides for the Minister to review the operation and effectiveness of each code of practice 5 years after its commencement. This will ensure the codes are kept up to date and relevant.

## **Clause 27: Compliance with code of conduct made by Authority**

This clause enables the Authority to create a code of conduct to regulate the behaviour of licensees towards their customers. There is a similar capacity to make “customer codes” in the *Electricity Industry Act 2004*. In performing this function the Authority is supported by a consultative committee created under clause 28. The provision sets out the matters that may be addressed in a code of conduct and sets out compliance and review requirements. The creation of a consultative committee will give consumers a formal role in the development of conditions in the customer code.

## **Clause 28: Code of conduct – consultative committee**

This clause requires that the Authority establish a consultative committee. The purpose of the consultative committee is to receive input from customers, government and the industry in the creation of codes of conduct. It is expected that the code would

be made up of a balanced number of industry and customer representatives and representatives from government policy and consumer protection agencies.

**Clause 29: Licensee must comply with duties under Act**

This clause makes compliance with the obligations outlined in the Act a condition of licence. This provides a sanction to ensure water service providers comply with their obligations under the legislation which will be assessed as part of the operational audit.

**Clause 30: Prescribed conditions of licence**

This clause provides that the regulations may prescribe terms and conditions that are deemed to be included in every licence or every licence of a prescribed class. This provision could be used by Government to specify a particular water service standard or requirement where development of a code was not considered an appropriate mechanism.

**Division 4: Failure to comply with licence – enforcement**

This division provides the Authority with the power to penalise licensees for breach of licence conditions. The Authority is also empowered to step in and rectify breaches under certain circumstances. Such a power is necessary to ensure essential water services can continue and that critical service standards are complied with.

**Clause 31: Failure to comply with licence**

This clause empowers the Authority to serve a notice on a licensee requiring a licence contravention to be rectified within a specified period. If the licensee fails to comply with that notice, this clause empowers the Authority to impose a monetary penalty (to a maximum of \$150,000) on the licensee, or to rectify the contravention itself (the section empowers persons authorised by the Authority to enter premises and do things necessary for this purpose). Where the licensee fails to comply with a rectification notice, the Authority may amend the licence under Section 17 and does not need to follow any procedures set out in the licence.

This clause further empowers the Authority to recover fines imposed, or costs incurred, in a court of law as a debt due to the State. These penalties are higher than in, for example, the equivalent section 39 of the *Water Services Licensing Act 1995*. Penalties have been increased in line with the consumer price index to take account of the time that has elapsed since the penalties were first set.

**Clause 32: Right of the licensee to make submissions**

This clause requires the licensee to be notified by the Authority of any proposed action concerning a failure to comply with a rectification notice and to give the licensee the opportunity to make submissions on the matter before taking any action. This requirement is intended to satisfy the procedural requirements of the natural justice obligation incumbent on administrative bodies making executive decisions touching on rights and interests.

### **Clause 33: Exception – dangerous situations**

In the event of a suspected licence contravention which constitutes a dangerous situation, urgent action is needed to eliminate that danger. Thus, the Authority is empowered to rectify the contravention without notifying the licensee or being required to allow the licensee to make submissions before taking action.

Subclause (2) provides that the Authority must consult with the Health Department about rectifying dangerous situations that are a risk to public health. This is intended to prevent any confusion about the responsibilities of regulatory authorities where public health is concerned.

This clause is modelled on section 41 of the *Water Services Licensing Act 1995* and section 34 of the *Electricity Industry Act 2004*.

### **Division 5: Ending of licence and cessation of water services**

This division enables the Governor to cancel a licence, or amend a licence in certain circumstances. The division also sets out the obligations on the licensee where a licence has come to an end, taking into account property rights and interests accrued during the term of the licence, and providing for the water service works to be left in a safe condition.

### **Clause 34: Cancellation of licence for serious default**

This clause is modelled on section 42 of the *Water Services Licensing Act 1995* and section 35 of the *Electricity Industry Act 2004*. The clause empowers the Governor to cancel a licence or amend a licence. A licence may be cancelled or amended only when the Minister is satisfied that the licensee is: in serious default; bankrupt; a corporation being externally administered; in the process of being wound up; convicted of a serious offence; or defunct.

A licensee will be in serious default where the licensee has failed to comply with a condition of the licence, the failure is material, the licensee has been given notice of their breach and given time to remedy it and the licensee has failed to remedy the breach. If a licence is cancelled the Authority must ensure that notice of the cancellation is published in the *Gazette*. The cancellation will take effect when the licensee has been notified of the cancellation, or if that is impractical, 21 days after the decision to cancel the licence was made.

### **Clause 35: Provision of a water service ceasing - regulations may deal with consequences**

This clause provides for regulations to be made to deal with consequences of a licence ending. Particularly, regulations may cover matters which ensure continuity of water services for a community once a licence has ended. These heads of power are additional to those found in clause 223.

**Clause 36: Provision of a water service ceasing – duty to leave system in a safe condition**

A licensee, or former licensee, must ensure any works undertaken or operated in the areas affected by the cancellation, or amendment, are left in a safe condition, should the licensee, or former licensee, fail to leave works in a safe condition. The Minister is empowered to rectify the situation to his/her satisfaction and to recover costs. Any former licensee must not remove any part of the works, except with approval of the Authority.

**Division 6: Water service works and other assets**

**Clause 37: Licensee operating with works holding body**

This clause continues the existing policy permitting a licensed provider's water service works to be held by another person, the works holding body. See for example ss 46K-M of the *Water Services Licensing Act 1995*. This clause provides that if the works are held by a person other than the licensee, pursuant to an agreement under clause 23, the provisions of Part 6 and 7 apply to both the licensee and the works holding body.

Examples of works holding arrangements are to be found in the irrigation sector, where asset holding bodies have been established to own the assets separate from the licence holder.

**Clause 38: Regulations may deal with transfer of assets on land not held by the asset holder**

This clause enables regulations to be made which will stipulate the manner in which assets held by either a licensee or works holding body are to be transferred. Such Regulations may address: the assignment of rights or liabilities, creation of agreements and instruments, proceedings and remedies; and State taxation exemptions.

**Division 7: Inspectors**

This division provides for the appointment of inspectors and is modelled on sections 47-55 *Water Services Licensing Act 1995*. Inspectors are appointed for the purposes of Part 2 by the ERA and the DoW. Inspectors appointed by DoW will support the Minister's functions under this Part, investigating whether licence exemptions and any conditions attached to them are being complied with, advising the Minister on matters relevant to the cancelling of a licence by the Governor, and making sure works are left in a safe condition. ERA inspectors will not have any responsibilities under these provisions. Accordingly, there will not be any overlap with the duties of DoW appointed inspectors.

For the other functions in Part 2, primarily the administration of licences, the ERA may appoint inspectors. ERA inspectors will have the ability to inspect premises of

licensees and where it is suspected that water services are being provided. This will enable the Authority to determine if services are being provided without a licence, in contravention of clause 5.

**Clause 39: Terms used**

This clause sets out the definitions of ‘designating authority’, ‘inspection purposes’ and ‘inspector’ for their use in this Division. The designating authority and inspector definitions refer to clause 211.

**Clause 40: Entry for inspection purposes**

Inspectors may, in accordance with the Part 8 entry provisions, enter a place to which it is suspected that a water service is provided, or at which it is suspected that water service works are located for inspection purposes, as listed in clause 41.

**Clause 41: General powers for inspection purposes**

The powers accorded to inspectors are modelled on regulation 85 of the *Water Services Licensing (Plumbers Licensing and Plumbing Standards) Regulations 2000* and section 49 and 50 of the *Water Services Licensing Act 1995*. There is a cross reference to the *Criminal Investigation Act 2006* which permits those designated as public officers under that Act to exercise the powers accorded to public officers under Parts 6 and 13 of that Act. This enables inspectors to access records and to seize things, as evidence.

**Clause 42: Power to prohibit use etc.**

An inspector is required to report to the Authority or the CEO as soon as practicable any non-compliance relating to a term or condition of a licence, or exemption. Where notice is received from the inspector about a thing, the Authority or the CEO may prohibit the use of a thing by order, in writing, and have the water services disconnected.

Subclause (5) allows cost recovery to occur where a service has been disconnected.

**Clause 43: Offences**

This clause sets out the offences and penalties that apply for obstructing or misleading an inspector performing his/her functions and duties.

**Division 8: Review of decisions**

This Division provides avenues of redress for persons aggrieved by a decision under this Act. They can seek review of that decision in the State Administrative Tribunal (SAT). Review to the SAT by an applicant or holder of a water services licence was previously provided for in section 44 of the *Water Services Licensing Act 1995*.

The grounds of review have been expanded to include decisions on requests for a licence transfer and prohibitions under cl 42.

**Clause 44: Review of certain decisions**

This clause provides for review by the SAT, for certain decisions made by the Authority or the CEO, by a licensee, or former licensee. Subclause (3) provides that pending the review of a decision being finally dealt with by the SAT, the Authority or the CEO cannot rectify a failure or disconnect a service unless urgent action is required in a dangerous situation.

**Division 9: General licensing provisions**

This Division contains general licensing powers to support the licensing function. The clauses set out matters to be taken into account when determining the public interest, allow licence fees to be prescribed by regulation, set out requirements for the notice and publication of some decisions made by the Authority, require that licences be available for public inspection and allow for the creation of regulations to ensure public consultation is undertaken, as required.

**Clause 45: Applications – additional information**

This clause enables the decision-maker for applications (the Minister in the case of exemption applications, and the Authority, on assessment of applications for a licence or licence amendment) to request additional information from applicants prior to making a decision.

**Clause 46: Matters relevant to determination of public interest**

The Authority is obliged to consider certain matters when it determines whether or not something would be contrary to the public interest. The clause will work together with obligations placed on the Authority by section 26 of the *Economic Regulation Act 2004* which include the long-term interests of consumers and the prevention of abuse of monopoly or market power. To these considerations, clause 46 adds health and environmental considerations which may be relevant to decisions of the Authority. Both considerations are found in the public interest, provisions being ss19 and 31A of the *Water Services Licensing Act 1995*.

**Clause 47: Notice of and publication of certain decisions**

The Authority is required to give written notice and a statement of reasons for a decision to refuse to grant, renew, amend or approve the transfer of a licence, or for a decision to refuse to approve of a works holding arrangement under section 33, within 14 days after the decision is made.

In addition, the Authority must publish a notice, as soon as practicable, of the licence grant, renewal, transfer or amendment, or approval of a works holding arrangement, as prescribed.

**Clause 48: Licences to be available for Inspection**

This clause requires the Authority to make available for public inspection:

- (a) a copy of each licence in force;
- (b) a copy of maps or plans of operating areas; and
- (c) drainage asset declarations.

This will enable the public to be informed about the licences and conditions that apply to their water services.

#### **Clause 49: Regulations about public consultation**

This clause provides that the regulations may require the Authority to undertake public consultation in accordance with a specified procedure before it makes a decision on any application for the grant, renewal, transfer or amendment of a licence. The regulations enable the Government to provide direction to the Authority as to how the consultation should be undertaken.

#### **Part 3: Last resort supply arrangements**

This Part establishes a procedure for the appointment of a supplier of last resort (SOLR). The part enables the Authority, where it considers it necessary to do so, to appoint a supplier of last resort for an area provided services by another licensee. This could be because the Authority considers that either the licensee providing services for an area is in danger of failing or that the term of a licence is ending and no new supplier wishes to undertake the provision of services and therefore action is needed to ensure services are maintained.

The supplier of last resort scheme is one of a number of customer protection mechanisms within the Bill. It is designed to ensure that customers receive continued water services in the event that a licensee fails and is unable to continue to provide services.

A similar scheme is established under the *Electricity Industry Act 2004* and many of the clauses in this Part are modelled on sections from that Act.

#### **Clause 50: Terms used**

This clause provides definitions of terms used in this part of the Act relating to the supplier of last resort.

#### **Clause 51: Designated areas**

This clause provides for the Authority, by order published in the Gazette, to designate an area for which there is to be a last resort supply plan for provision of a type of water service (supply, sewerage or drainage). At a minimum, it is envisaged that a designated area would include the existing operating area(s) of a licensee.

#### **Clause 52: Authority to ensure that supply plan is in place for designated area**

This clause provides that the Authority must ensure that a last resort supply plan is approved for a designated area as soon as practicable after that area is designated.

**Clause 53: Requirements for supply plans**

This clause specifies the requirements for a last resort supply plan in a last resort event. A last resort supply plan must set out the arrangements and make provisions that are necessary for the supply of water services should a last resort event occur. The plan must make provision for such prescribed matters as will be detailed in regulations.

A last resort supply plan is of no effect to the extent that it is inconsistent with any written law. When the supply of last resort plan is being formulated, it must be consistent with the Water Services Act and other legislation. However, when the supplier of last resort is required to provide a supply of last resort under that supply of last resort plan, there may be inconsistencies between the supplier of last resort and the Water Services Act because a supplier of last resort is not a licensee for the purposes of the Act and therefore does not have to comply with the requirements of a licensee under Part 2 of the Act.

**Clause 54: How supply plan brought into operation**

This clause enables the Authority to bring a last resort supply plan into effect by order published in the *Western Australian Government Gazette*. The order will specify the day on which the plan is to come into operation.

A last resort supply plan can only be brought into operation if the provision of a class of water service has ceased in an area or the licence has been, or will be: cancelled (or surrendered and subsequently cancelled), expired and not renewed, amended so that the area is no longer an, or in an, operating area specified in the licence.

**Clause 55: Appointment of supplier of the last resort**

This clause provides that, prior to appointing a supplier of last resort the Authority must invite expressions of interest from licensees. This process will allow non-government water service providers to apply to become a supplier of last resort.

The Authority may then appoint a licensee from those who have submitted an expression of interest by notice in writing. Both the Minister and the Treasurer must concur with this appointment. This concurrence is necessary as the supplier of last resort is likely to need to be recompensed for its role.

Where the Authority receives no suitable expressions of interest, or the Minister considers there is insufficient time to invite expressions of interest, a water corporation may be appointed as the supplier of last resort by the Minister with concurrence of the Treasurer. This will allow the quick appointment of a supplier of last resort where there is a pressing need.

The maximum term of appointment is two years, but can be renewed.

The Authority has the power to cancel the appointment of a licensee in relation to the provision of water services of a particular class. Again, both the Minister and the Treasurer must concur.

**Clause 56: Functions of supplier of last resort**

This clause provides that a designated supplier of last resort for an area must: prepare a draft last resort supply plan for the area and submit it to the Authority within three months of being designated; consult with the Authority for approval of the draft last resort supply plan; and implement the last resort supply plan if it comes into operation under clause 51.

**Clause 57: Approval or determination of a supply plan**

The Authority is empowered to approve a draft last resort supply plan or request that it be amended. If a draft last resort supply plan has not been approved within a time the Authority considers reasonable, it may prepare its own last resort supply plan.

**Clause 58: Amendment of supply plan**

The supplier of last resort may amend a last resort supply plan with the approval of the Authority which may also, at any time following consultation with the supplier of last resort, amend the last resort supply plan for the area.

**Clause 59: Supplier of last resort to be treated as licensee**

This clause means that the supplier of last resort will have the powers and duties of a licensee under this Act (other than Part 2) for the area. This is needed in order for the supplier of last resort to maintain and operate the water service works and deliver services to the area.

**Clause 60: Duty to perform functions of supplier of last resort**

This clause makes the performance of the functions and duties of the supplier of last resort, as set out in the last resort supply plan, a condition of the licence of a designated supplier of last resort.

**Clause 61: Liability and recovery of costs of supplier of last resort**

This clause limits the liability of the supplier of last resort for losses, damage or injury arising from actions of the former licensee prior to the supplier of last resort taking over, the condition of the works and any interruptions to services. This will not apply to the extent that the supplier of last resort was negligent or is covered by section 218 failed to carry out the arrangements in the last resort supply plan and regulations.

Subclause (3) provides that the supplier of last resort may apply to the Minister to recover reasonable costs and expenses arising from acts or omissions of former licensees in the area or the condition of the works used in the provision of those previous services.

Subclause (4) enables the Minister to pay the supplier of last resort's costs without the need to resort to court proceedings. This can only be done where the costs arise under subclause (3), the supplier of last resort has limited its losses and the costs cannot be passed on to water service customers. The concurrence of the Treasurer is also required.

Subclause (5) provides that this section will only have effect where there are no regulations made under section 62. Section 62 enables regulations to be created which deal with the liability and indemnification of suppliers of last resort. The regulations cannot expose the licensee to a greater liability or provide less compensation than that which is provided in clause 61.

#### **Clause 62: Regulations about last resort supply arrangements**

This clause provides that regulations may deal with various matters in relation to last resort supply plans, including preparation, approval and amendment processes for last resort supply plans and arrangements to be included in last resort supply plans.

#### **Part 4: Water services ombudsman scheme**

This Part establishes a Water Services Ombudsman scheme for the protection of water service customers in Western Australia. The scheme is created to investigate and resolve disputes and complaints about licensees from customers and other persons affected by the provision of a water service. The Ombudsman may make binding decisions to settle disputes.

Independent third party complaint investigation schemes, such as the one outlined here, are considered to be best practice for the provision of utility services and energy and Water Ombudsman schemes are found in several jurisdictions throughout Australia.

There is currently an energy ombudsman operating in Western Australia, created under the *Energy Coordination Act 1994* and the *Electricity Industry Act 2004*. It is planned that the Water Ombudsman will be co-located with the Energy Ombudsman and the bodies will share staff and resources with the existing Energy Ombudsman.

#### **Division 1: Preliminary**

This division outlines the preliminary matters for consideration in establishing the water services ombudsman scheme.

#### **Clause 63: Terms used**

This clause sets out definitions relating to the Ombudsman scheme which are used in this Part. A 'customer' of the licensee extends to include a person who is entitled to the provision of a water service. As a result, the Ombudsman can resolve disputes arising from the unreasonable refusal to provide a water service.

#### **Clause 64: Regulations about water services ombudsman scheme**

This clause provides that regulations will be enacted to provide for the establishment and operation of the Ombudsman scheme. Regulations will also provide for the functions of the water services ombudsman. Subclause (2) enables regulations to specify that water services Ombudsman provisions may not apply to a licensee. This may be needed in circumstances where a water service provider does not have the types of customers that would be expected to use the Ombudsman. For example, a supplier of water to large industrial customers.

## **Division 2: Approval of water services ombudsman scheme**

This division provides the mechanism for the approval of the water service ombudsman scheme and the objectives that the scheme must address for approval to be given. The Division also provides for the revocation of approval of the ombudsman scheme.

### **Clause 65: Authority may approve scheme**

Subclause (1) provides that the Authority may approve a scheme that provides for an Ombudsman. The clause also outlines the nature of the scheme to be approved. The Ombudsman will both investigate and deal with complaints and disputes between customers and licensees, together with complaints by a person affected by the provision of/failure to provide a water service. Other kinds of disputes and complaints as prescribed by the regulations may be added to the matters that the Ombudsman may deal with.

Subclause (2) provides that a failure by a licensee to make a decision within a specified time may be dealt with as a decision and thus will be reviewable by the ombudsman.

Subclause (3) gives the scheme a limited retrospective operation as it enables the scheme to apply to a dispute or complaint that arose prior to the commencement of the scheme. The retrospective operation of the scheme is limited to 12 months prior to commencement.

Subclauses (4) and (5) provide that the Authority may approve an amendment to a proposed scheme and notice of this amendment is to be published in the Gazette.

Schedule 1 of the Transitional Provisions of the Act provides under section 12 that the Minister and not the Authority must approve the initial water services ombudsman scheme to meet the objectives set out in section 66.

### **Clause 66: Requirements for scheme or amendment to be approved**

This clause provides that the Authority may approve an Ombudsman scheme, or an amendment to a scheme, if the listed objectives in subclause (2), and any other prescribed objectives, are met. The objectives in subclause (2) include things such as: all licensees are required to be members and are bound by the decisions of the Ombudsman, the scheme is funded by the licensee members, is accessible and will operate expeditiously.

**Clause 67: Revocation of approval**

This clause provides that the Authority may revoke the status of an Ombudsman scheme if it is satisfied that the scheme no longer meets the objectives referred to in clause 66 (above). This must be done by instrument in writing. A copy of this instrument must be tabled in Parliament.

**Division 3: Scheme operation**

This division sets out the functioning mechanisms for a Water Services Ombudsman scheme. It also provides for enforcement of, and compliance with, the scheme.

**Clause 68: Customers etc. may have decision or complaint reviewed**

This clause provides that the types of person set out in clause 68(1) can apply to the Water Services Ombudsman for a review of a decision or complaint to which the scheme relates. Once the application has been made the Ombudsman can make an order or determination, give any direction, or decline to deal with the matter on any ground provided for in the scheme.

**Clause 69: Jurisdiction of courts and tribunals**

This clause provides that the Ombudsman scheme will have no effect on the jurisdiction of a court or tribunal and a matter being dealt with by a court or tribunal cannot be considered by the Ombudsman. If the Ombudsman is of the opinion that the matter should be dealt with by a court or tribunal then the matter must be referred on and cannot be dealt with by the Ombudsman.

This clause is needed as it is not intended that the Ombudsman would deal with the compensation claims for property damage or other matters that normally would go to a court or tribunal. The scheme is intended to assist in resolving relatively small service related disputes between customers and service providers.

**Division 4: Membership of approved scheme**

This Division is concerned to ensure that licensees become members of the approved Ombudsman scheme. This is essential to enable the Authority to monitor compliance and enforcement decisions of the ombudsman. Becoming a member of the Ombudsman scheme is a prerequisite to the granting of a licence and proof of membership, or intended membership, must be shown prior to granting. It is a condition of every licence that the licensee be a member of and bound by the scheme and comply with any direction or decision of the water services ombudsman.

**Clause 70: Membership of approved scheme**

Subclause (1) provides that the Authority cannot grant, transfer, or renew a licence unless it is satisfied that the person or the licensee is a member of an approved

Ombudsman scheme or that the licensee will become a member of an approved scheme upon grant of the licence.

Subclause (2) states that it is a condition of every licence that the licensee be a member of an approved scheme, be bound by that scheme and comply with any decision or direction of the water services Ombudsman. The licensee would be in breach of their licence if they were to provide water services to customers without fulfilling those conditions. This clause provides the mechanism the Authority can use to enforce the decisions and directions of the Ombudsman.

Subclause (3) works to ensure persons or entities who are licensees have the capacity to become members of an approved ombudsman scheme.

## **Part 5 — Water services**

This part deals with the duties and powers of water services providers that apply according to the type of service provided. Some duties and powers are linked to statutory water charges. These charges are set by the Minister for Water by regulation. Where these charges apply licensees are required to provide services.

Where no statutory charges apply, licensees must enter into agreements with customers in order to charge for services. Most of the provisions in this Part are similar, in effect, to provisions in current water legislation that will be replaced by this Bill.

### **Division 1: Terms used**

This division sets out the definitions of terms used in this part of the Act.

#### **Clause 71: Terms used**

This clause provides definitions of terms used in this part of the Act which include property connection and “standard terms and conditions of service”. These are norms, which delineate where responsibility lies for maintenance of a property’s infrastructure and the place where standard terms and conditions may be found, being on a licensee’s website, if not on the licensee’s licence, and/or a customer contract if there is one.

### **Division 2: Provision of services generally**

This Division provides the terms and conditions, liabilities and duties of the licensee and the customers of the licensee. These clauses apply to all classes of service.

#### **Clause 72: Application of this Division**

This clause ensures that the provisions in this division will apply to agreements entered into before this Act comes into effect as well as those entered into later. Primarily this will affect the existing agreements that the Water Corporation has entered into with customers throughout the state. These agreements are required wherever the Water Corporation varies its standard service.



**Clause 73: Statutory entitlement to provision of water services**

This clause creates a statutory entitlement to a water service for the owner of land where a water service charge applies to the land. A water service charge may apply wherever a person is capable of being connected to the service. This entitlement is subject to the terms and conditions of the provision of the service, the charges due to the licensee being paid, and the provisions of this Part.

As statutory charges may apply to all land owners, irrespective of whether the land is connected to a service, it is appropriate that where there is a statutory obligation to pay for a service there should also be a statutory obligation on the licensee to provide the service on request, subject to the agreement with the terms and conditions of any service and payment of fees and charges due on connection.

The water service provided by the licensee is dependent on the water service charge applying to the land and any agreements between the licensee and any occupier of the land other than the owner (such as a tenant). Although the tenant has no statutory entitlement under this Act to be connected, they would have rights against the owner under the *Residential Tenancies Act 1987*. The licensee will not be able to disconnect a water supply service to a tenant occupying a dwelling.

**Clause 74: Terms and conditions of provision of water services**

The purpose of this clause is to provide a capacity to establish default standard terms and conditions of service.

The standard terms and conditions of service will apply, as modified by any agreement, unless the standard terms and conditions have been replaced by an agreement that applies to the provision of service, In which case, the terms and conditions of this agreement will apply. The licensee is taken to have approved the provision of service based on those terms and conditions. Taking water without, or contrary to, the approval of a licensee is an offence under clause 90.

This section does not apply in relation to irrigation services or the discharge of non-residential wastewater as these will be managed through agreements in all cases.

**Clause 75: Agreements about provision of water services**

This clause allows for agreements to be created between the service provider and the customer. These agreements may cover the nature and cost of the service to be provided. This will be necessary where a non-standard service is required. This clause does not apply to standard customer contracts.

Subclause (1) limits the agreement between a licensee and a person about the provision of water services to matters that are consistent with this Act and the terms and conditions of the licensee's licence.

Subclause (2) lists a number of matters that may be covered by the agreement including, special circumstances and measures; water service charges, continuity of supply; or water quality.

Subclause (3) controls the circumstances where alternative water service charges are necessary for the provision of water services. An agreement that disadvantages a third party, not bound by the agreement, is intended to be ineffective to the extent of the disadvantage. This would prevent, for example, a water service provider coming to an agreement with a landlord that would disadvantage a tenant.

**Clause 76: Aspects of certain agreements binding on successors**

Certain aspects of agreements about the provision of water services are binding on subsequent owners of the land. All terms and conditions of the agreement will be binding on owners who have prior notice of the agreement. There is provision for a notification of the agreement to be registered on the title of the land and subsequent owners are taken to have notice of the agreement if the notification is registered on the title. When the agreement ceases to be relevant, the licensee must give the Registrar a withdrawal of notification to have it removed from the land title.

With respect to certain aspects of a service, subsequent owners will be bound by the terms and conditions of the agreement, regardless of whether they had prior notice of its existence. These terms and conditions include those relating to aspects of the service that do not ordinarily apply to a service of that type and those relating to quantity and quality of water supplied or discharged.

This provision is modelled on clause 63 of the *Water Industry Act 1994 (Vic)* and is required to enable service provider to continue to supply a service under previously agreed conditions when a property changes ownership.

**Clause 77: Interruption of water services generally**

This clause provides the power for the licensee to interrupt, suspend or restrict water services where there is need to do so in circumstances such as an emergency, accident, or for maintenance or repair.

Subclause (2) states that a licensee is not liable for loss or damage from an interruption (suspension or restriction) from supply of water services unless the interruption is the result of negligence or bad faith on the part of the licensee, or there is an alternate agreement with the licensee over liability.

Subclause (3) provides for the licensee to ensure that the extent of any interruption is minimised. This clause is in addition to other rights the licensee may interrupt, suspend or restrict the provision of the water services.

Subclause (4) provides that the conditions of licence may limit a licensee's capacity to interrupt or restrict a service.

**Clause 78: Meters**

This clause enables the licensee to insist on the installation of a meter on land that is connected to a water service provided by that licensee. The meter may be for any type of water service .

**Clause 79: Accuracy and testing of meters**

This clause establishes an evidential presumption in favour of the licensee that meter readings are accurate. The customer can challenge this by having the meter tested to provide evidence to the contrary.

Subclause (3) provides that regulations can be created to cover the accuracy and testing of meters. The regulations may cover matters such as allocating the costs associated with having the meter tested and determining who shall bear that cost. There is also a regulation making power for the adjustment of charges if a meter is found to be inaccurate.

**Division 3: Development and building control, and infrastructure contributions**

This Division provides for building control and infrastructure contributions. Infrastructure contributions (also known as headworks charges) are designed to share the cost of the major works between existing and new customers.

**Clause 80: Terms used**

This clause provides definitions of terms used in this division.

**Clause 81: Application of this Division**

Clause 81 states that the Division will not apply to irrigation services. The types of matters dealt with in this division and the way they are managed (such as building work regulation and requirements for new services) are not relevant in the most part for irrigation services. Where these matters do need to be managed, it is intended that they would be dealt with by agreement between irrigation co-operative members, customers and the licensed irrigation service provider.

**Clause 82: Notification of, and requirements as to, building work**

The owner/occupier of land must give notice to the licensee of any alteration, construction or demolition of buildings that are on or in the licensee's operating area. This enables the licensee to ensure that the proposal is suitable for the provision of the service and ensure the protection of a licensee's assets and to calculate head-works charges for the construction, alteration or demolition. Notice of plans to construct or alter a building must be given to the licensee in a form approved by the licensee before commencing any work.

This clause also provides that the requirement of notice of construction, or alteration, will not apply in certain areas, which is intended to allow exceptions for certain areas to be prescribed by regulations This will allow for regulations to be drafted to exempt certain areas from this requirement.



### **Clause 83: Satisfying requirements for additional water services**

This clause enables licensees to charge for infrastructure contributions or make other requirements where a proposal for subdivision, building or change in use of a water service work leads to an increase in demand for a service.

Subclause (2) stipulates that where there will be an increase in demand for the water service following the building work and the licensee will be required to meet that demand at the time or in the future, then the licensee may require the applicant to give them further information and do one or more of the things listed in subclause (3).

Subclause (3) allows the licensee to require that: the water service works be undertaken, the applicant pay the licensee an infrastructure contribution; or the licensee could require the applicant to pay an amount to cover the costs of the licensee doing the water service works itself.

Subclause (6) empowers the Minister with the power to over-rule the licensee and vary, replace or revoke any of the options listed under subclause (3).

Subclause (7) provides that the licensee can refuse to: grant an application to permit discharge of non-residential wastewater; provide a water service in respect of land; and refuse to do other works as requested by the owner of the land. The licensee can do any/all of the above unless a requirement in (3) has been met or the applicant has entered into an alternate agreement with the licensee.

Agreements can be entered into without a notice having to be given to the proponent (under subclause (3)). Licensees and proponents can also enter into an agreement after a notice has been given. Subclause (8) ensures that the fact that a notice has been given does not prevent the parties to an agreement providing, in the agreement, for works that are or a payment that is, different from those set out in the notice.

Subclause (9) provides that contributions required to be paid under a notice may be recovered in court as a debt due by the person to the licensee.

Existing legislation allows for the deferral of infrastructure contributions. Subclause (10) provides that regulations may be made setting out how infrastructure contributions may be deferred and the costs and expenses of doing so.

### **Clause 84: Ensuring water service works are done**

This clause allows the licensee to undertake works, should the person to whom a notice was given under Clause 83(3)(a) fail to comply without having an alternate agreement with the licensee. The licensee must give the person 21 days notice of its intention to do the works, unless an urgent and dangerous situation exists. The licensee is given powers of entry allowing them to access land to perform the work required and the costs are recoverable in court.

### **Clause 85: Infrastructure contributions**

This clause defines infrastructure contribution (formerly known as “headworks contributions”) as a financial contribution to a licensee to assist in offsetting present or future costs to the licensee of providing or upgrading infrastructure. Infrastructure is used to refer to both headworks and minor reticulation works. This contribution must be paid by a person whose activity results in an increase in demand for water services e.g. provision of new, or upgraded works by the licensee. The activities which may cause an increase in demand include: development, subdivision building work; change in use of land; or change in use of service.

Subclause 3 empowers the Minister to approve guidelines that may be specific to a particular licensee or apply generally to all licensees, and the extent to which a contribution can be required and the method to be used in calculating the amount of the contribution. .

### **Clause 86: Property in works**

Where works are undertaken for the licensee by someone else under an agreement, this clause provides that clauses 163 and 164 will apply to those works. This ensures that ownership of the works will not pass to the owner of the land to which the works are fixed, unless the licensee otherwise agrees.

The clause is modelled on section 67(10) of the *Water Agencies (Powers) Act 1984*.

### **Clause 87: Review of certain decisions under or relating to this Division**

This clause provides an avenue of review to the State Administrative Tribunal of decisions made by licensees under this division. Subclause (2) provides for the effect of an application for review. If a person makes an application to the State Administrative Tribunal, then the licensee is prohibited from continuing with the works until the matter has been finally dealt with by the Tribunal, unless a dangerous situation exists and urgent action is required or the Tribunal consents.

### **Division 4: Protection of works, fittings and fixtures**

This division provides for the protection of the works, fittings and fixtures of the licensee to ensure the community receives continuity of services, the safety of persons and the protection of the quality of water and wastewater. A series of offences are created :

- interfering with the water service works of the licensee;
- taking water contrary to approval;
- undertaking building works in close proximity to water service works;
- failure to use fittings approved by the licensee; and
- failure to maintain works for which a person is responsible.

**Clause 88: Application of this Division to fire hydrants**

This clause ensures that fire hydrants are protected from interference, as if they are works of a licensee. This is needed as although hydrants are attached to the works of the licensee they are not the works of the licensee and would therefore not be protected from interference without this provision.

**Clause 89: Interfering with water service works of a licensee**

This clause makes it an offence to interfere with the water service works of a licensee. Offences include: interfering with the provision or the operation of service works; repairing or removing fittings or pipes that are parts of works; or allowing a thing to enter the water service works of a licensee. This division does not apply to members of a licensee, e.g. an irrigation cooperative member. It is a defence to a charge under this section if it is proved that the person charged relied on information from and followed any directions given by, the licensee as to the location of the works. The information a licensee would provide in these cases may include maps as to the location of the services and instructions as to how the location of the works should be confirmed and the works protected.

**Clause 90: Taking water without or contrary to approval**

This clause makes it an offence for a person to take water or wastewater from the works of a licensee without prior approval or in a way that is contrary to that approval. It is not an offence to take water as authorised under the *Fire Brigades Act 1942*, the *Bush Fires Act 1954* or from a fire hydrant, under clause 98(1), if approved by the licensee under this clause. In addition, should a person have another right to take the water, for example in the exercise of a native title right or a riparian right arising from owning or occupying adjoining land, they will have a defence.

Subclause (2) adds a higher penalty for persons who take water for commercial gain, in recognition of the fact that such behaviour is more serious than simply taking water without approval, and that in order to deter someone from flaunting the law for commercial gain the offence requires a more substantial penalty.

This section does not apply to members of a licensee, e.g. members of an irrigation cooperative, as it is expected that the behaviour of members of a licensee will be adequately managed by their articles of association or by contractual relationships between themselves.

**Clause 91: Construction etc. over or in vicinity of water service works of licensee**

This clause makes it an offence to construct, erect or place any building, plant etc. in, on, under, over or within a prescribed proximity of the water services works of a licensee except with the approval of the licensee.

Subclause (2) further makes it an offence for a person to drill, excavate, bore or use impact equipment (or any other activity, which could for example include blasting

and the like) within the prescribed proximity of the water service works of a licensee, except with the licensee's prior approval.

It is a defence to a charge under subclause (1) or (2) if the contravention occurred due to reliance on information obtained from the licensee as to the location of the works. The information a licensee would provide in these cases may include maps as to the location of the services and instructions as to how the location of the works should be confirmed and the works protected.

Clauses 91(4) and (5) allows for regulations to prescribe the things that are taken to be an obstruction and activities that are taken to be damaging to works and establishes a process for a licensee to issue a compliance notice to a person committing an offence under subclauses (1) and (2). The compliance notice may require the person to: cease the activity, demolish or alter the obstruction, replace excavated material or remove fill and to do any works necessary to restore the licensee's works.

#### **Clause 92: Requirement to use etc. approved fittings, fixtures and pipes**

The clause makes it an offence for a person to install unapproved fixtures, fittings or pipes connected to the water service works of a licensee; modify fixtures, fittings or pipes or use unapproved material in connection with a fitting, fixture or pipe connected to water services works.

Subclause 2 provides an exception to the offence in subclause (1) in relation to irrigation works of a licensee holding an irrigation licence.

Regulations may be made that will apply in relation to this clause. For example, regulations may set out approved materials or deal with the procedure for approval of materials to be used in connection with fittings, fixtures and pipes connected to the water service works, or may set fees for inspectors.

#### **Clause 93: Requirement to maintain etc. fittings, fixtures and pipes**

This clause makes it an offence for the owner or occupier of land not to maintain fixtures, fitting and pipes, for which they are responsible (see subclause 3), as to create waste, health problems or allow water, other than wastewater to enter sewerage works,.

Subclause (2) relates to land with sewerage connections and provides that a fitting, fixture or pipe must not be used if the property sewer connection or the sewerage works are blocked.

Subclause (3) deems the owner of the land is responsible for a fixture, fitting or pipe, if a water supply or sewerage service is provided in respect of the land and the fixture, fitting or pipe is connected to the works of a licensee and it is not owned by the licensee.

Subclause (4) states that, despite the foregoing, an owner or occupier will not be responsible for the maintenance of a service connection to the extent that the licensee is obliged to maintain the connection under the licence or other agreement with the

owner. This accommodates an existing policy of the Water Corporation, which requires the licensee to maintain all infrastructure below the 2.5m below ground level regardless of whether or not they own it or are responsible for it.

Subclause (5) provides that regulations may specify standards of maintenance for fittings, fixtures or pipes and compliance with those standards.

Subclause (6) provides a defence to a charge under subclause (2) where the owner or occupier did not know that the sewerage works or connection were blocked.

Subclause (7) provides that a contravention under subclause (1) or (2) may result in the licensee, or the Minister, giving a compliance notice for the owner or occupier to rectify the non-compliance within a specified time.

Subclause (8) provides that a person given a compliance notice must comply with it and sets out penalties for failure to comply.

### **Division 5 – Water Supply Services**

This Division sets out certain provisions that are specific to water supply services. The clauses concern the unauthorised connection of additional water supply connections, water supply service provision to groups of dwellings, when it is permissible to disconnect water supply services and provision for, and ownership of, fire hydrants.

#### **Clause 94: Approval required before connecting to water supply**

This clause creates an offence of connecting a water supply service to land without first obtaining approval from the licensee. This ensures the licensee's conditions of connection are met including the payment of charges and fees..

#### **Clause 95: No connection of additional water supply without approval**

This clause makes it an offence for an owner or occupier of land that is connected to the water supply works of a licensee to connect an additional water supply (for example a bore supply or water tank) to that connection except in accordance with prior approval from the licensee. .

Subsection (2) sets out the relevant considerations for the licensee to take into account, namely, concerns such as contamination of the existing water supply, effectiveness of the existing water supply system and any other relevant matter, except commercial considerations.

This clause is intended to ensure the public safety is considered and the existing water supply is maintained by preventing back flow and contamination problems that could arise if people were able to connect a private water supply, such as a bore or rainwater tank, to the main supply in an unregulated manner.

**Clause 96: Disconnection or reduction in rate of flow etc.**

This clause allows the licensee to cut off, reduce the flow or refuse to connect the supply of water in certain circumstances. The cutting off of water to an occupied dwelling is prohibited. This is because of the potential public health risks posed by removing the basics of life.

Subclause (3) allows for the power to disconnect to be varied in the licence. It is envisioned that codes to be developed will vary the power to reduce the rate of flow of a water supply.

**Clause 97: Fire hydrants**

This clause set out the obligations on a licensee with regard to the installation and provision of fire hydrants in fire districts and local government areas. It mirrors existing obligations on water service providers under the *Country Areas Water Supply Act 1947*, the *Metropolitan Water Supply Sewerage and Drainage Act 1909* and the *Water Boards Act 1904*.

**Clause 98: Taking water from fire hydrants**

This clause allows local government or a person authorised by local government to take water from a fire hydrant in that local government district for the purposes of extinguishing a fire, and other prescribed purposes.

Water may be taken from a hydrant for other purposes if approved by the licensee.

This clause continues existing rights for the taking of water from hydrants for these purposes.

**Division 6: Sewerage services**

This division sets out certain provisions that are specific to the provision of sewerage services. The clauses establish the requirements surrounding connection to a sewerage service as well as requirements regarding the discharge of non-residential wastewater.

**Subdivision 1 – Sewer connections**

This subdivision outlines the procedure required to connect a property to the sewerage works of the licensee.

**Clause 99: Minister may require connection to sewerage works**

This clause empowers the Minister to require an owner of land to connect to sewerage works of a licensee at the owner's expense if the inlet is reasonably capable of being connected and it is in the public interest to do so. The clause is modelled on sections 58-61 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* and sections 35-36 of the *Country Towns Sewerage Act 1948*.

Subclause (3) allows for the Minister to require the licensee to make the connection if the owner of the land fails to do so. This must be done by written notice. The licensee is given entry powers to carry out connection works in accordance with a notice.

**Clause 100: Approval required before connecting to a sewer**

Subclause (1) creates an offence of connecting a wastewater inlet on land to the sewerage works of a licensee except with the approval of the licensee and sets out penalties for this offence.

Subclause (2) allows the licensee to grant retrospective approval of a connection.

**Clause 101: Common sewer connections**

This clause provides that regulations may deal with sharing of obligations associated with common sewer connections between the owners of the properties concerned. A common sewer connection is defined as a sewer connection that connects wastewater inlets on different properties to the sewerage works of the licensee.

**Subdivision 2 – Discharge of trade waste**

This Subdivision defines trade waste and sets out the procedure for the lawful discharge of trade waste. Remedies available to the licensee. These provisions replace the current system of commercial wastewater discharge permits managed by the Water Corporation under the *Metropolitan Water Supply Sewerage and Drainage Act 1909* and the *Country Towns Sewerage Act 1948*.

**Clause 102: Terms used**

This clause defines trade waste to be wastewater that is not of a kind that is ordinarily discharged from a residential dwelling. This enables the special arrangements and rules that apply to this type of service to be distinguished from a standard residential sewerage service.

**Clause 103: Discharge of trade waste without or contrary to licensee's approval**

This clause makes it a requirement to obtain approval of the licensee before discharging trade waste into the licensee's sewerage works and sets out penalties for unapproved discharges. This applies to both the owner and the occupier of land, however, if the owner has approval, the occupier can discharge the wastewater. Regulations can be created to detail circumstances in which this requirement will not apply.

**Clause 104: Approval of licensee**

This clause provides that the approval of the licensee to discharge trade waste may be subject to conditions. These conditions may include: doing works; maintaining and

monitoring fittings and fixtures; inspecting fittings and fixtures; and the division of responsibilities between the owner and occupier of the land. Subclause (3) allows a licensee to amend a trade waste approval.

**Clause 105: Discharge of trade waste not in accordance with approval**

This clause provides that, where a person is discharging trade waste other than in accordance with an approval, the licensee may either: give a compliance notice to the person, amend the terms and conditions of the approval, revoke the approval or seek to recover charges the person ought to have paid.

**Clause 106: Failure to maintain fittings, fixtures and pipes**

This clause enables the licensee to give a compliance notice to an owner or occupier of the land on which a trade waste inlet is located where the licensee is satisfied that the connection has not been properly maintained and that failure is likely to cause a nuisance or a health hazard, cause a leak, interfere with the connection or the licensee's works or adversely affect the capacity of the licensee's wastewater treatment plant to deal with the wastewater.

**Clause 107: Compliance notices**

This clause sets out the details for the giving of a compliance notice to a person or more than one person.

Subclause (2) provides that the notice must specify: in what way the approval is being breached or the fixture, fitting or pipe is not being maintained; what must be done to comply with the notice; and the time within which the notice must be complied.

Subclause (3) provides that a person may be required to undertake specific works, institute a maintenance program or change the way in which the wastewater is discharged to comply with the notice.

Subclause (4) creates an offence of failure to comply with a compliance notice and sets out the relevant penalties.

**Clause 108: Regulations relating to discharge of trade waste**

This clause details the purposes that trade waste regulations can be made for in addition to the general regulation making power in clause 222.

**Division 7: Drainage services**

This Division sets out provisions specific to the control of drainage services. Clauses cover the construction, connection and maintenance of drainage works and assets. Drainage services differ from other types of services as there is not always a conduit connecting the land to the service provided. In addition, many of the "assets" utilised to provide the service are natural features such as waterways, which nevertheless must be maintained in order to provide the drainage service.

### **Clause 109: Terms used**

This clause defines terms used in “drainage services” for the purposes of Division, 7, of the Act. “Drainage assets” can include natural channels and are not merely conduits or pipes constructed by a licensee. “Drainage works” of the licensee can include assets formed from land and owned by another, but declared as assets. This is necessary because, in many cases, natural waterways (and artificial reedbeds or swales in common use in a development) may be components of drainage networks.

### **Clause 110: Controlled drainage assets**

This clause is modelled on clause 100 of the *Metropolitan Water Authority Act 1982* and allows the Minister to declare that a drainage asset is controlled by a licensee. The Minister has the power to amend or revoke a declaration. Once an asset has been declared by the Minister, the asset is the responsibility of the licensee.

This clause is required as many parts of drainage networks may not be man made, being natural environmental features. Nevertheless for the proper running of the drainage network they must be managed, maintained and protected from interference. This provision provides a mechanism for bringing these assets under the control and care of a licensee.

Notice of the declaration must be published in the *Western Australian Government Gazette* and the notice must also state where maps and plans of the land and asset can be viewed by the public.

### **Clause 111: Minister may require connection to drainage works**

This clause parallels similar clauses that allow the Minister to require a land owner to connect land to sewerage system. The decision to require connection would be made on public interest grounds, for example, to address a risk to health.

This clause replicates section 64(4) of the *Land Drainage Act 1925* which allows the Minister to require owners of land to construct and connect drainage assets to the drainage works of the licensee. That is provided that the works are necessary to accomplish a drainage policy or plan in relation to the land concerned, and the works are in the public interest. The works are to be completed at the expense of the owner and the owner must ensure that the works meet the technical requirements of the licensee.

If an owner fails to comply with the notice to construct works, or the works do not meet the technical standards of the licensee, the Minister may require the licensee, by written notice, to ensure that the works are done, or done to a particular standard. Persons authorised by the licensee are given powers of entry to complete the requirements of the notice. The State is required to pay the licensee’s costs of completing the works. This amount is then recoverable in court against the owner of the land as a debt.

### **Clause 112: Approval required before connecting to drainage works**

This clause requires a person to get approval from the licensee to connect or disconnect a drainage asset from the drainage works, or another drainage asset that is connected to the drainage works of the licensee. Connection or disconnection without approval will constitute an offence for which a penalty is payable.

There is an equivalent provision elsewhere in the Bill concerning the connection of sewerage services and water supply services.

### **Clause 113: Requirement to maintain or modify drainage assets, etc.**

This clause requires the owner of land to maintain a drain, conduit or fitting on the land that is connected to the drainage works of the licensee so that it continues to function as it was designed to function, or as otherwise approved by the licensee. Penalties are specified for a breach of this obligation. Because drainage practices have evolved over time it is appropriate that a licensee has the capacity to approve maintenance of a drain in a way that may cause it to operate differently than was originally intended. For example, it may be preferable for water to be retained longer to facilitate infiltration.

The Minister may require modification by notice, from which a right of review arises, to the State Administrative Tribunal.

### **Clause 114: Relationship of this Division to other Acts**

The Minister cannot require a connection to an asset, or modification of a drainage asset, if this would give rise to an inconsistency with other water legislation governing drainage.

## **Division 8: Enforcement**

This Division concerns the enforcement of Part 5. Provision is made for the designation of “compliance officers” who have access to powers of entry (under Part 8) to enable investigation, and the gathering of evidence, as to whether a person has complied with their obligations under the Act.

Entry for compliance purposes is limited to investigating whether Part 5 is being, or has been, complied with. The capacity of a licensee to do repairs is limited to the circumstances in which compliance notices are given.

Should it be discovered that there has been non compliance with the law, the Minister or the licensee is able to enforce compliance through a compliance notice process. Failure to comply with the notice gives rise to remedies. General provisions are also created to allow persons authorised by the CEO, or licensee, to enter property to fulfil the Minister’s, or the licensee’s obligations under certain clauses of the Act. These persons need not be “compliance officers”, however, notice of intended entry must still be given.

**Subdivision 1: Entry for compliance purposes**

This Subdivision provides for entry by compliance officers to ensure that certain obligations outlined in Part 5 of the Act are being complied with. The powers of the officers upon entry are also outlined.

**Clause 115: Term used: compliance purposes**

The term “compliance purpose” is defined to mean the purpose of investigating whether the obligations of a person (other than a licensee) under Part 5 are being complied with and gathering evidence regarding any failure to comply with the obligations.

**Clause 116: Entry for compliance purposes**

This clause sets out the circumstances in which a compliance officer may enter a place for compliance purposes.

**Clause 117: General powers for compliance purposes**

This clause provides a list of things a compliance officer may do upon entry to a place. A compliance officer exercising power under this clause is taken to be a public officer in for the purposes of Parts 6 and 13 of the *Criminal Investigation Act 2006*.

This clause allows for the seizing of things as evidence. For example where a compliance officer comes across an illegal fitting being used to take water this may be seized as evidence.

**Clause 118: Offences**

This clause provides that it is an offence to obstruct a compliance officer or provide false or misleading information to a compliance officer.

**Subdivision 2 – Compliance notices**

This subdivision concerns the giving of compliance notices and the options available to the Minister and/or licensee should a person fail to comply with that notice.

**Clause 119: Application of subdivision**

This provision specifies that the compliance notice process set out in clauses 121, 122 and 123 applies to all compliance notices given under Part 5 or under the regulations.

**Clause 120: Compliance notices**

This clause sets out the information that compliance notices must contain and the things that a person given a compliance notice may be required to do.

### **Clause 121: Giving compliance notices**

This clause sets out who may be given a compliance notice in circumstances where it is not practicable to give to the land owner. Where land is unoccupied, for example, the compliance notice is taken to have been given to the owner of the land if it has been affixed to the land in a conspicuous place for the time within which the notice must be complied with.

Subclause (2) provides that the licensee or Minister must, if practical, give the owner of the land with a copy of the compliance notice as well as the person who is failing to comply with the provision necessitating the compliance notice. For example, if an occupier/tenant was to be given a compliance notice for contravention of a provision of the Act, the owner of the land should also be issued a copy of that notice.

### **Clause 122: Licensee or Minister may remedy the failure to comply**

This clause allows the licensee, or the Minister, to remedy a contravention in the case that the person fails to comply with the compliance notice, by stepping in, to the extent necessary, to prevent: water wastage, nuisance, health hazards, the interference with the water service works of the licensee.

Subclause (2) provides that an authorised person may enter any place and do all things necessary for the purposes of remedying a contravention, in accordance with Part 8 Entry for Performance of Functions).

Subclause (3) deals with works placed on land in the course of rectifying a failure to comply with a notice. To avoid these becoming works of the licensee because the licensee has carried out the works, this clause specifies that works belong to the owner of the land if they are the types of works that would belong to the owner, had they been placed there by the owner.

Subclause (4) provides a list of potential things that may be done to remedy a contravention. This list is intended as an illustration. The licensee may demolish, remove or alter buildings, repair or replace fittings and fixtures, and disconnect a connection subject to the constraints listed in the clause.

Subclauses (6) provides that the licensee or Minister (whoever incurred the costs in remedying non-compliance) may seek an order from a court to recover those costs against the person who failed to comply with the notice.

### **Clause 123: Review of decisions relating to giving compliance notices**

This clause provides an avenue of review to a person given a compliance notice, the owner of the land, and any occupier of the land who may seek review of any decision to give the compliance notice; what must be done to comply; the relevant time period for compliance; decision to remedy non-compliance; or to lodge a memorial on a title.

The lodging of an application for review will have the effect of halting the licensee or Minister until the matter has been finally dealt with by the State Administrative Tribunal, or the consent of that Tribunal to continue any action has been obtained by a licensee or the Minister, unless a dangerous situation exists and urgent action is required.

**Division 9: Fees and charges for water services**

This Division concerns the liability of persons to pay certain charges for water services. The charges apply in respect of the land and regulations are to be proscribed to provide further details of the amounts and types of charges. It is anticipated that these regulations will be enacted concurrently with this Bill.

**Clause 124: Licensees may impose fees and charges for water services**

While this Bill provides for fees and charges for water services to be set in regulations where appropriate, fees and charges are not always regulated. The purpose of this clause is to remove any implication in the Act that licensees are unable to impose water service fees or charges in the absence of such regulations.

**Clause 125: Regulations may provide for water service charges**

Head powers for regulations to deal with charges for, or in relation to, the provision of water services are provided to address, for example: charges for the provision of water services; charges for goods and services; charges applying in respect of the land despite the fact that a service may not be provided; exemptions from charges; rebates or refunds; the apportionment of charges; record keeping of the licensees; and methods for payment of charges.

This clause may operate so that regulations can be prescribed for a period before the regulations come into operation as long as they do not affect the amount of a charge that has already become payable before the regulations come into operation.

**Clause 126: Supplying groups of dwellings**

This provision deals the apportionment of fees and charges where a water service is provided to two or more dwellings via a single property connection. However it does not apply to strata titled land, nor can it be inconsistent with any agreement with the owner of the land.

**Clause 127: Water service charges payable despite change in ownership of the land or liability to prosecution**

This clause provides that unpaid statutory water service charges are payable, despite changes in ownership of the land. This is consistent with current legislation. In addition, it provides that charges will still be payable on any water taken unlawfully and payment of that charge will not affect the liability of a person to be prosecuted for the unlawful taking of water.

### **Clause 128: Order for payment of water service charges**

Where a person takes water, or discharges water or wastewater into, the works of a licensee, without the approval of the licensee and the person is not otherwise liable to pay the usual charges, then the person may be ordered in court to pay an amount not exceeding the amount had the ordinary water service charges applied.

The court may determine which statutory water service charges apply. The court may grant the order whether, or not, the person has been convicted of an offence relating to the taking of the water or wastewater.

### **Division 10: General provisions**

This Division contains general provisions relevant to Part 5 of the Act.

### **Clause 129: Prohibition on dealings in land**

This clause replicates an existing provision in the *Water Services Licensing Act 1995*. It provides the power to prevent the registration of any dealings in land until any overdue charges in respect of the land have been paid. This power is not a power to recover overdue charges by action against an owner of the land, but a power to prevent the registration of dealings in the land until the overdue charges are paid.

The licensee can lodge with the Registrar of Titles in the approved form, a memorial for endorsement of the title of the land with respect to outstanding water service charges, or infrastructure contributions deferred by regulations made for the purpose of s83(10), or is in arrears.

Subclause (3) prevents the Registrar from registering any instrument affecting the land without the written consent of the licensee, if a memorial is in place over the land.

Subclause (4) allows for the licensee to request, in the approved form, the withdrawal of a memorial registered under subclause (2) upon payment of the outstanding charges.

### **Clause 130: Reading meters etc. and routine inspection and maintenance**

Water service providers need to enter residential properties frequently to undertake routine maintenance and inspections, and to read meters. For these activities obligations to give notice would be impractical. This clause provides a power to enter land including the area associated with the dwelling (but not dwellings) for these purposes. Where occupants may be disrupted by the inspection and maintenance 48 hours notice must be given. This section is slightly amended from its predecessor being section 71 of the *Water Agencies (Powers) Act 1984*. The change in wording here makes it clearer as to when prior notice is required.

### **Clause 131: Dangerous situations**

This clause allows an authorised person to take action where a dangerous situation exists and that situation affects, or may affect, the water service works of a licensee and action needs to be taken in order to address that dangerous situation. For such purpose, this clause allows an authorised person to enter a place without consent, notice or warrant.

Subclause (1) provides that if a person who is authorised by the licensee for the purposes of this subclause (1) is satisfied that there is a dangerous situation the authorised person may take action or authorise other persons to take action. A dangerous situation is an emergency type of situation that affects, or may affect, the water service works of a licensee and must require urgent action in order to assess, reduce, eliminate or avert a risk to persons, property or the environment. Examples of a dangerous situation are where toxic chemicals are introduced into the water supply service causing a risk to health, injury caused by, or attributed to, the misuse or malfunction of water service works and urgent works needed to provide, or restore, water services to any place or person.

Subclause (2) allows an authorised person to enter any place without consent, notice or warrant and prevent persons from entering the area where the dangerous situation exists. In addition, the authorised person may direct another person to leave or not to enter the area where the dangerous situation.

Subclause (3) sets out a penalty for a person who does not comply with a direction given by an authorised person in relation to their leaving, or not entering, an area of danger.

Subclause (4) provides that even though notice to enter is not required under subclause (2)(a), if practicable notice of entry must be given to the occupier, or if there is no occupier, the owner, of any place affected.

Subclause (6) establishes a presumption that any entry made, or action taken, under this clause was necessary and reasonable unless there is evidence to show that the entry or action taken was not done in good faith.

### **Clause 132: Approval of licensee subject to conditions**

This clause allows the licensee to set conditions on the approvals it can give under Part 5.

### **Part 6: Powers in relation to water service works**

This part contains provisions that enable and control the provision of works by water service providers. As these works may be disruptive as well as being in the public interest there are processes that specify how the public is to be consulted, appeal provisions are provided and there is a capacity for the Minister to refuse to authorise works. As works may be attached to land, or formed from land, provisions ensure

access to works is preserved and that a licensee can maintain ownership of a work that is attached to land. This part replicates the requirements and procedures for the authorisation of works in the *Water Agencies (Powers) Act 1984*.

### **Division 1: Preliminary**

#### **Clause 133: Terms used**

This clause sets out the clauses where the terms used in this Part are defined.

### **Division 2 — Provision of water service works**

This division deals with licensee powers in relation to the provision, operation and maintenance of water service works, exemptions from certain planning laws and entry to land and road reserves for the provision of works.

#### **Clause 134. Major works**

The major works definition identifies those works that must go through a comprehensive consultation and approval process prior to construction. These include dams, large storage tanks and other works likely to be of wide community interest and which may have significant impact.

#### **Clause 135. General works**

The general works definition lists works that will be of local interest and may be disruptive and are therefore subject to a formal consultation and objections process.

#### **Clause 136. Exempt works**

Exempt works are works not covered by the major and general works categories. Such works do not cause the level of disruption, as do general and major works, and do not therefore require consultation or Ministerial approval.

### **Division 2 – Provision of water service works**

This division deals with licensee powers in relation to the provision, operation and maintenance of water service works, exemptions from certain planning laws and entry to land and road reserves for the provision of works.

#### **Clause 137: Powers in respect of water service works**

This clause provides licensees with the power to carry out all water service works necessary for the provision of water services authorised by the licence of the licensee, any works specified in the licence and any other works that are requested by, and at the expense of, another person provided they are related to the provision of water services.

**Clause 138: Exemption of water service works from certain planning laws**

Under section 6 of the *Planning and Development Act 2005* works that are regarded as “public works” are not subject to the normal planning approval processes under that Act.

This clause provides that water service works constructed by a licensed water service provider will be treated as though they are public works. The clause is based on section 38 of the *Port Authorities Act 1999*. Section 60 of the *Electricity Corporations Act 2005* provides a similar type of exemption for the Electricity Networks Corporation and the Regional Power Corporation.

**Clause 139: Surveys and testing work**

This clause enables licensees to undertake surveys and do tests associated with the planning and provision of water service works. The clause also defines testing work.

**Clause 140: Ancillary works powers**

This provision sets out the works powers of a water service provider may undertake ancillary to the provision of water service works. This reflects existing powers in the *Water Agencies (Powers) Act 1984*.

**Clause 141: Entry for the provision of works etc.**

This provision enables water service providers to enter land for the purposes set out in this part, including for the provision of works. Exercise of the power of entry must be made in accordance with Part 8.

**Clause 142: Special provision applicable to road works**

This provision enables water service providers to enter road reserves for carrying out road works without notice or consent, unless the works requires the road to be broken up or would severely disrupt traffic in which case notice must be given to the public authority that manages the road. These powers are needed as utility services are often located in road reserves, and the lack of such a provision would significantly delay maintenance and repair of works by requiring prior notice to be given.

**Division 3 — Major works, requirements for public notification and Ministerial authorisation**

This division deals with the processes to be followed by licensees when proposing to undertake major works, the most significant category of works. Major works include things such as dams, reservoirs, irrigation schemes and large wastewater treatment plants.

**Clause 143: Prerequisites to provision of major works**

Major works may only be undertaken when the Minister and the licensee has complied with processes for notifying the public and interested parties of the proposed works and the Minister has authorised the works.

**Clause 144: Licensee to prepare plans and publish and give notice of major works**

This provision sets out the process by which the licensee will make available information on the proposed major work and the persons to whom works notices must be given.

**Clause 145: Objections and submissions**

Any person may make an objection to a proposed major work, and the licensee is required to have regard to any objection lodged within the relevant period specified in subclause (2).

**Clause 146: Licensee may amend the proposal**

This clause enables the licensee to amend a proposal, for the purpose of responding to submissions or for other reasons. The licensee must advise any person adversely affected by the amendment.

**Clause 147: Submission of proposal to Minister**

This clause sets out how the licensee is to present information on the proposal and any objections to the Minister when seeking authorisation for the works.

**Clause 148: Powers of Minister in respect of the proposal**

On receipt of the proposal and information on objections the Minister may authorise the proposal, reject it, or, where the proposal has been amended, require that it be published again. There is an obligation on the Minister to consider the report on the proposal and its recommendations when making a decision on the proposal. Where the proposal is published again there is a further opportunity for the public to make submissions.

**Clause 149: Certain objectors and submitters to be notified of authorisation**

Where the Minister authorises works and no action has been taken to amend a proposal in response to a person's objections or submissions, the licensee is required to notify the person of the Minister's authorisation.

**Clause 150: Certain alterations, extensions and additions to major works**

This clause deals with circumstances where major works are altered, extended or added to, in a manner that is material to the works and it is land that is either owned

by the licensee or a Crown reserve. The Minister may authorise the work or decline to do so and require that it be subject to publishing and consideration as though it was an initial proposal for a major works.

#### **Division 4 — General works, requirements for public notification and, in certain cases, for Ministerial authorisation**

This Division deals with processes for the consideration and authorisation of general works. General works are defined in clause 133 of the Bill. They comprise things such as water mains, sewer mains and small wastewater and water treatment plants.

##### **Clause 151: Prerequisites to provision of general works**

Where there are no objections raised to the undertaking of general works a licensee may undertake provision of the works. Where objections are raised a licensee must submit the proposal to the Minister who may authorise or refuse to authorise the works. The provision also sets out a method for determining that no relevant objections needs to be taken into account for the purposes of the provision.

##### **Clause 152: Licensee to prepare plans and give notice of general works**

The licensee is required to prepare information on general works as set out in subclause (3) in order to assist people affected by the matter to understand what is proposed. Notices must be given to affected persons, local government, and to the Western Australian Planning Commission, if the works are in an area covered by a region planning scheme.

Where there are no relevant objections or submissions to be taken into account regarding the undertaking of general works a licensee may undertake provision of the works. Where there are relevant objections and submissions are raised a licensee must submit the proposal to the Minister who may authorise or refuse to authorise the works.

##### **Clause 153: Objections and submissions**

This clause sets out the process for making submissions and objections in response to the proposed works. There is an obligation on licensees to have regard to an objection or submission.

##### **Clause 154: Licensee may amend the proposal**

This clause enables the licensee to amend a proposal, for the purpose of responding to submissions or for other reasons. The licensee must advise any person adversely affected by the amendment. Amendments must not have the effect of making general works into major works.

**Clause 155: Submission of proposal to Minister**

The licensee is required to provide a report to the Minister on the proposal and on plans, descriptions, estimates, specifications, objections and submissions received in relation to the proposal.

**Clause 156: Powers of Minister in respect of proposal**

The Minister may authorise or refuse to authorise the works. The licensee cannot proceed with the works without the Minister's authorisation.

**Division 5 — Exempt works**

Exempt works are works that involve the maintenance or replacement of existing works, or are undertaken on crown land or land belonging to the person who requested the works. As these works do not have the same impact as other works they do not have to go through the same rigorous approval processes.

**Clause 157: No prerequisites under this Part**

Defined at clause 136, these works are considered to have minimal impact on the public no publishing of these works is required, or authorisation by the Minister.

**Division 6 — Deviation and modification**

This division sets out the conditions where works may deviate from an approved plan or proposal. The provisions are not mutually exclusive and a proposal may be modified in accordance with one or several of the provisions.

**Clause 158: Term used: water service works**

For this division water service works means major works and general works. Exempt works do not need to be covered as plans for exempt works do not need to be published or approved by the Minister.

**Clause 159: Plans may indicate possible deviation from line of works**

This provision allows the plans for water service works to indicate possible deviations. Where these possible deviations are approved the major or general (whichever is relevant) works approval is taken to have been obtained.

**Clause 160: General power to deviate by up to 20m**

This provision provides some flexibility to the licensee to vary works from the locations provided in a plan to accommodate unanticipated circumstances (for example difficult sites conditions such as rock) encountered during construction of the works. Where the deviation is on land other than unoccupied Crown land or a road, the agreement of the land owner or occupier is needed.

**Clause 161: Modification by agreement with owner and occupier**

A licensee constructing works may deviate from approved plans where the deviation is approved in writing by affected landowners and occupiers.

**Clause 162: When Minister may authorise deviation or modification**

The Minister may approve a licensee constructing works deviating from approved plans where it is in the public interest and the variation does not adversely affect a landowner or occupier.

**Division 7 — Property in water service works**

This Division ensures that licensees do not lose ownership of works when they are constructed on land belonging to others. Normally things that are attached to land become “fixtures” and belong to the owner of the land on which they are fixed. It is necessary that works such as pipelines and other similar things remain the property of the licensee so they may be maintained and used for delivering services to others.

**Clause 163: Property in water service works and other things placed on land**

This clause ensures that works placed by a licensee on land remain the property of the licensee. Works do not become part of the land even if they are a fixture. Access to these works and maintenance, alteration and removal are all subject to the relevant provisions of this Bill.

**Clause 164: Powers of licensee in respect of water service works that are part of land**

Some works are formed out of the land itself. For example a drain may consist of an excavation and nothing else. Such things are intrinsic to land. This clause provides that when a licensee constructs such things the licensee retains rights to maintain, alter or demolish the works. These rights may be transferred to another licensee which would be necessary if another licensee took over provision of the service.

**Part 7 — Powers in relation to interests in land**

This Part deals with powers to acquire interests and easements in land in order for licensees to undertake works and provide water services. These provisions are modelled on existing powers held by water service licensees under various Acts and by the Minister under the *Water Services Licensing Act 1995*.

**Clause 165: Terms used**

These definitions link the terms used in this Part to the *Land Administration Act 1997* and to the *Public Works Act 1902*. These Acts also concern, in part, the acquisition of interests and easements for the construction of public works.

**Clause 166: Power of public authority to grant certain interests**

This clause allows public authorities to grant an interest being a lease, easement or a licence to a licensee for the purpose of water service works.

A definition of public authority is provided in clause 3 of this Bill. A public authority means —

- (a) a Minister of the State; or
- (b) an agency, authority or instrumentality of the State; or
- (c) a body, whether incorporated or not, that is established or continued for a public purpose by or under a written law; or
- (d) a local government or regional local government.

**Clause 167: Taking of interest purposes of licensee**

This provision enables use of the provisions of Part 9 of the *Land Administration Act 1997* to acquire land or an easement over land for public works and services. This may only be done where the Minister has advised the licensee of his opinion that it is appropriate to do so. The licensee is required to acquire the interest by agreement if that is practicable. If not, Part 9 of the *Land Administration Act 1997* may be utilised. All costs and expenses of a taking under Part 9 are to be paid by the licensee.

**Clause 168: Vesting of interest**

The resulting interest or easement vests in the licensee for the purpose of enabling the licensee to provide the water services, or undertake, operate or maintain the water service works, for which the interest was taken.

**Clause 169: Easements in gross**

Easements may be obtained under clause 167 without a licensee having ownership of any land associated with the easement. Such an easement is called an “easement in gross”. This clause allows licensees to create such easements. This reflects existing provisions in the *Land Administration Act 1997*

**Clause 170: Subdivision of Land – planning approval**

This clause allows licensees to submit plans to the Western Australian Planning Commission for approval of a subdivision of land acquired or to be acquired by the licensee as if it owned the land.

A similar provision is presently in the *Water Agencies (Powers) Act 1984* (section 79).

**Clause 171: Sale of Land**

This clause prevents a licensee selling land if the purchaser would hold a parcel of land that did not comply with local minimum lot size and zoning requirements unless

the Planning Minister gives permission. The intent of this clause is to provide a check on circumstances arising where small parcels of land acquired for water works are later sold, when they are no longer needed by the licensee, for another purpose, despite the lot size being inconsistent with a local planning scheme.

## **Part 8 — Entry for performance of functions**

This part sets out how the powers of entry by authorised persons are to be exercised. The provisions in Part 8 are similar to the powers of entry in current water legislation.

### **Division 1 — Preliminary**

This division sets out the terms used in this Part and its relationship to other Parts. It describes what authorised persons are and who may authorise persons.

#### **Clause 172: Terms used**

This clause describes authorised persons for the purposes of this Part. It is a broad class of person who may be a compliance officer, for example, or an inspector. It may also be someone authorised by the licensee or the CEO for the purposes of Part 5, or an individual acting on behalf of the licensee.

The powers of entry are in relation to a place or a dwelling. The definition of “dwelling” in clause 3 includes the area associated with the dwelling (as defined in the *Criminal Investigation Act 2006*) and includes a mobile home. Place includes a dwelling. Accordingly, entry to a dwelling includes entry into the yard, onto the drive way and around the back of a house.

“Informed consent” is defined in this section.

#### **Clause 173: Application of this Part**

This provision connects the entry powers in this Part with the other Parts concerning powers of entry. The meter reading entry power does not require consent, notice or warrant so that the meter reader is able to, for example, venture up the driveway to read a meter.

### **Division 2 — Entry for performance of functions**

This Division sets out the circumstances under which a place other than a dwelling may be entered and circumstances under which a dwelling may be entered.

#### **Clause 174: Entry with consent or under notice or warrant**

If a right to enter is granted under the Act, at least 48 hours notice of proposed entry must first be given to the owner or occupier, unless either the informed consent of the owner or occupier is obtained, or entry is authorised under a warrant. A dwelling may not be entered where the occupier or owner objects, except where an inspector or compliance officer reasonably suspects an offence under the Act is being committed.

Special provisions attach to the exercise of works powers to protect owners or occupiers from disruption or adverse effects of the works. Unless otherwise agreed, if the works are likely to cause disruption to the occupier, that person must receive 48 hours notice. Further if the works are likely to have adverse effects on a place, then 48 hours notice must be given to the owner.

**Clause 175: Notice of entry**

This clause requires notice of a proposed entry to be given in writing. Notice of a proposed entry is not required for the purposes of reading a meter. If notice cannot be given at first entry, sub-clauses (3) and (5) provide for notice to be given subsequently.

**Clause 176: Rights of occupier of dwelling**

This clause sets out the rights of an occupier of a dwelling when an authorised officer seeks to enter a dwelling and the obligations of an authorised person when that person seeks to enter a dwelling. If an occupier is present, the authorised person must identify himself or herself to the occupier, produce a certificate of authority and inform the occupier that it is intended to enter the dwelling. If there is a warrant entry taking place the warrant must be produced prior to entry. Otherwise an opportunity for informed consent must be given.

There are some exceptions built into these processes in order that if they occur, for example, if people are endangered by following them, the opportunity for informed consent may be dispensed with.

In circumstances when the occupier is not present, the notice must be left at the dwelling, displayed prominently.

**Clause 177: When authorised person must leave**

Authorised officers must leave if they have entered a place with consent and the consent is withdrawn. They also must cease performing a function and leave the place if they cannot produce their certificate of authority on request by an owner or occupier.

The policy settings are slightly different between subclauses (2) and (3), on the assumption that inspectors and compliance officers will sometimes (if not always) be engaged in enforcement work, but other types of authorised persons will (most likely) be entering land to do works. Penalties are specified for offences by authorised persons and inspectors and compliance officers under these provisions.

**Clause 178: Power to enter includes power to enter other places**

This clause covers entry circumstances where properties have common areas, such as in apartment buildings. No power may be exercised in a common area despite there being a right to enter it to get to the place where the functions allowed by the Act are to be carried out.

**Clause 179: Entry with vehicles and equipment**

This clause provides that the power of entry by an authorised person allows entry by vehicles and equipment necessary to perform the function for which the land was entered.

**Clause 180: Assistance to exercise powers**

Where powers of entry are used authorised officers may be accompanied by other persons co-opted to provide assistance. This would commonly be needed in works situation where it would be impractical for each workman to have an individual authorisation. In that situation, one authorised person could oversee a group of assistants undertaking the work and the assistants would not require to be individually designated as authorised officers. However, they must follow directions issued by the authorised person who they are assisting.

**Clause 181: Use of force**

There may be circumstances where it is necessary to use force to enter a place, for example to cut a padlock on a gate so that entry can be made. The ability to use force is limited to use against “things”. Force cannot be used against a person.

**Clause 182: Actions of authorised persons and others**

This requires that an authorised person must exercise the power of entry in such a way that minimises the possible interference with the lawful activities of an occupier, or owner, of the place and in that regard comply with the reasonable requests of an owner, or occupier.

**Clause 183: Injunction in support of power of entry**

This clause allows injunctions to prevent persons taking actions that would prevent a power of entry being used, or to compel a person to enable the exercise of the power of entry by an authorised person. This might be used where a person, having received notice of works, decides to construct a concrete pad in the area proposed for the works in the intervening 48 hours, so as to prevent or hinder them.

**Clause 184: Complaints about exercise of powers**

This clause allows complaints about use of the powers of entry by an authorised person to be taken either: to the Water Services Ombudsman created under Part 4 where the authority was derived from the licensee; or, in any other case, to the Commissioner under the *Parliamentary Commissioner Act 1971*.

Exercise of the complaint process in this provision does not impact on civil remedies that may be available.

### **Division 3 — Warrants to enter**

This division sets out requirements for the making of applications for warrants enabling an authorised person to enter a place and contains provisions relating to the content, issuing and execution of warrants.

#### **Clause 185: Term used: remote communication**

This clause is based on section 3(1) of the *Criminal Investigations Act 2006* and provides a definition of “remote communication” used in cl.189.

#### **Clause 186: Application for warrant**

This clause provides that warrants may be sought not only under these provisions but also in some circumstances where entry may be made without notice or warrant, as this will assist in entering a place where the officer believes entry may be opposed.

#### **Clause 187: Contents of application**

This clause sets out the information to be included in an application for a warrant. It must include the grounds for seeking the warrant, whether entry has been opposed, refused, or prevented, and cannot otherwise be obtained and any prescribed information.

#### **Clause 188: How application to be made**

This clause outlines how warrants generally may be sought, that is before a justice in person, but also sets out the circumstances in which a warrant may be sought by remote communication. It is to be made on oath, and in writing, but also with certain exceptions. Breach of these provisions will result in evidence gathered being inadmissible in court.

#### **Clause 189: Issue of warrant**

This clause sets out the conditions, which if the justice is satisfied exist, may lead to a warrant being issued.

#### **Clause 190: Contents of warrant**

A warrant must identify the functions for which it was issued and other information such as the maximum time period within which the warrant must be executed which cannot be longer than 12 months.

#### **Clause 191: Execution of warrant**

A warrant allows an authorised person successive entries to the place for which it was issued for functions specified in the warrant. The occupier of the place must be allowed to inspect the warrant upon request. Executed warrants must have certain

details recorded, including name and title of authorised person, date and time of execution, and other prescribed matters.

## **Part 9 — Legal proceedings**

### **Division 1 — Legal proceedings**

#### **Clause 192: Prosecutions — who may commence**

All offences under the Act will be commenced by the CEO of the Department of Water or a person authorised to do so by the CEO. This reflects the policy position that powers to commence prosecutions belong to the State, rather than to private persons and private prosecutions will not be allowed.

#### **Clause 193: Time for bringing prosecution**

The Bill allows 5 years for proceedings to be brought for an offence under the Act. The time period commences when the offence is alleged to have been committed, or when the CEO or another person becomes aware of the evidence of the offence.

This is consistent with other similar modern legislation such as the *Biosecurity and Agriculture Management Act 2007*, but is a considerably longer period than in the Acts being replaced by this Bill. For example the *Metropolitan Water Supply, Sewerage and Drainage Act 1909* allows 24 months for a prosecution to be commenced.

#### **Clause 194: Continuing offences – daily penalties**

It is necessary to specify in the penalty provision, for each offence for which a daily penalty is needed, the appropriate daily penalty. Specifying a daily penalty in this way gives effect to the provisions of the *Sentencing Act 1995* s. 9(7), which provides for a daily penalty to be imposed, at the discretion of the court, at the time of sentencing the offender for the relevant offence (i.e. as part of the same prosecution action). This is distinct from the operation of the *Interpretation Act 1984* s. 71, which would allow for a further prosecution to be taken in respect of a post conviction continuation of the relevant offence.

#### **Clause 195: Injunctions to ensure compliance with this Act**

This clause allows injunctions to be sought by the CEO, the Authority or a licensee to stop persons doing things, or omitting to do things that would or would be likely to contravene an offence provision. This power is additional to offence proceedings and does not affect them.

#### **Clause 196: Court's power to make ancillary orders on conviction**

This provision sets out the things a court may do if it thinks it appropriate where it convicts a person of an offence under the Act. An order under this provision may be in addition to any other penalty imposed on a person convicted under the Act and does not restrict a person from pursuing a civil remedy against the convicted person.

The ancillary provisions include broad powers to prevent, control, abate, or mitigate damage caused by the commission of the offence, and to prevent or control environmental harm.

## **Division 2 — Liability of certain persons**

### **Clause 197: Liability of officers of body corporate**

This clause sets out the liability of officers of a body corporate where a body corporate is found to have committed an offence under this Act. Defences include lack of consent or connivance to the offence and that all reasonable care was taken to prevent the commission of the offence in the circumstances.

### **Clause 198: Liability of principal for acts of agent**

This clause sets out the circumstances under which a principal may be found liable for the actions of an agent, and the defences against such a charge that a principal may use, being lack of consent or connivance to the offence and that all reasonable care was taken to prevent the commission of the offence in the circumstances.

### **Clause 199: Liability of employer for offences of employee**

This clause sets out the circumstances under which an employer may be found liable for the actions of an employee, and the defences against such a charge that an employer may use, being lack of consent or connivance to the offence and that all reasonable care was taken to prevent the commission of the offence in the circumstances.

### **Clause 200: Conduct on behalf of bodies corporate and principals**

If it is a necessary element of an offence to establish a state of mind with respect to conduct, then establishing that the conduct was engaged in by directors, employees, or agents of a body corporate within the scope of his or her actual or apparent authority is sufficient to establish the requisite state of mind. It is a defence if the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct of its employee or agent.

## **Division 3 — Evidentiary provisions**

Various presumptions are included to assist in the enforcement of the offence provisions including things that are taken to be proved.

### **Clause 201: Evidence of certain things relating to contraventions**

As offences taking place under this Act are rarely observed and take place on private property it is often difficult to identify who carried out the contravention. However the person best placed to observe the contravention is often the property occupier who is also the person most likely to benefit from the contravention. For this reason the Bill provides that, in absence of evidence to the contrary, it is presumed that the

occupier of the land at the time, or a person acting on the occupier's behalf, did the act or thing.

**Clause 202: Evidence of authorisation and enforcement matters**

This clause sets out a number of things that in the absence of evidence to the contrary are taken to be proved. This clause is modelled on s.118 of the *Biosecurity and Agriculture Management Act 2007*.

**Clause 203: Evidence of scientific matters**

This clause allows the CEO of the Department of Water to approve an analyst or a class of analysts to carry out analysis for the purposes of the Act. In proceedings for an offence under the Act a report by such an analyst is taken to be proof of a matter in the absence of evidence to the contrary.

**Clause 204: Documentary and signed evidence**

This clause sets out how, for the purposes of prosecuting an offence, documents may be certified and used as evidence.

**Clause 205: Evidence of ownership or occupancy**

This clause sets out how, for the purposes of prosecuting an offence, ownership or occupancy of land may be proven.

**Clause 206: Evidence of documents and service**

This clause sets out how, for the purposes of prosecuting an offence, evidence of issue of a document has to be proven.

**Clause 207: Provisions are in addition to *Evidence Act 1906***

This provision specifies that this Division is in addition to and does not affect the operation of the *Evidence Act 1906*.

**Part 10 — Administration**

This Part sets out the machinery of government to give effect to the Bill, including who licences water service providers, how inspectors and compliance officers are designated, the Minister's powers of delegation and how agencies may share information.

**Division 1 — The Economic Regulation Authority**

**Clause 208: Functions of Authority**

This clause sets out the functions of the Economic Regulation Authority under this Act. These relate to the regulation of water service providers.

### **Clause 209: Authority’s capacity to authorise or designate persons**

This clause empowers the Economic Regulation Authority to designate compliance officers and inspectors for carrying out functions under this Act. These need not be appointed from the staff of the Authority.

### **Division 2 — Inspectors and compliance officers**

#### **Clause 210: Terms used**

This clause defines the terms used in this part.

#### **Clause 211: Designation of inspectors and compliance officers**

This clause provides for the designation of inspectors or compliance officers by the CEO, the licensee or the Authority for the purposes of specified provisions of Part 2 and Part 5 of the Act. Subclause (5) sets out all the requirements for certificates of authority issued to authorised persons by the designating authorities. For example, because these certificates are issued as proof of designation, they must have a passport sized photograph, an expiry date, and must also include any limitations on the exercise of powers of an inspector or compliance officer.

#### **Clause 212: Limitations on scope of authority of inspectors and compliance officers**

The purpose of this clause is to focus the respective responsibilities of inspectors and compliance officers on the provision of water services under the Act, in particular the provision of water service works. The regulations may also deal with the functions of the inspectors/officers.

### **Division 3 — General matters**

#### **Clause 213: Delegation by Minister**

This clause sets out how and to whom the Minister may delegate functions under this Act. It is similar in scope to section 104 of the *Water Agencies (Powers) Act 1984*.

#### **Clause 214: Delegation by the CEO**

This clause sets out how and to whom the CEO of the Department of Water may delegate functions under this Act. It is based on section 105 of the *Water Agencies (Powers) Act 1984*

#### **Clause 215: Information sharing**

This clause sets out how specified agencies may share relevant information under this Act. Provided the sharing of the information is in good faith the officers doing so are protected from criminal or civil liability in respect of information disclosure.

**Clause 216: Confidentiality of information**

The clause identifies information that is to be considered confidential and sets out penalties for misuse of confidential information obtained by reason of any function that person has, or at any time had, in the administration of this Act. It is based on existing provisions in section 112 of the *Water Agencies (Powers) Act 1984*.

**Part 11 — Miscellaneous**

**Clause 217: Relationship of this Act to *Rights in Water and Irrigation Act 1914* and *Health Act 1911***

Any authority required under the *Rights in Water and Irrigation Act 1914* is still required notwithstanding the provisions of this Act. Any provisions of the *Health Act 1911* are in addition to, and not inconsistent with this Act.

**Clause 218: Licence not personal property for the purposes of the *Personal Property Securities Act 2009* (Commonwealth)**

If a licence is transferable by the licensee it is declared not to be personal property for the purposes of the Act.

**Clause 219: Liability of certain persons for damage caused in exercise of powers**

This clause replicates the policy settings in section 62 of the *Water Agencies (Powers) Act 1984*. The clause specifies how disputes over compensation are to be dealt with and specifically rules out claims for any loss of enjoyment or amenity value; or any change in the aesthetic environment, caused by the undertaking of water service works. A licensee is only liable for physical damage done to property when caused by entry to property by the licensee and/or in the exercise of a works power by the licensee.

**Clause 220: Immunity from liability for certain official actions**

This clause provides State officials immunity from liability arising from certain claims in tort, when they have acted in good faith performing functions under the Act.

**Clause 221: Limitation from liability for certain actions**

This clause amplifies the existing provisions in section 63 of the *Water Agencies (Powers) Act 1984*. The State, the Minister, the CEO, the Authority, a licensee and an authorised person are not liable for any injury or damage, other than physical damage as referred to in clause 220 ), resulting from the exercise or purported exercise of a power under the Bill, the placing of water service works or the provision of water service works that are part of the land, unless negligence is established, or liability is found under Part 10 of the *Land Administration Act 1997*.

**Clause 222: Infringement notices and the *Criminal Procedures Act 2004***

It is intended that the Water Services Act will be prescribed for the purposes of the *Criminal Procedure Act 2004*, which will thereby specify how infringement notices must be prepared and issued. One aspect of these processes that may cause difficulties is section 8 of the *Criminal Procedure Act 2004* which requires that infringement notices be issued within 21 days of the alleged offence. Where the infringement notice is sent to a person who did not commit the offence (for example, where there is a tenant at the property where an offence is committed) it may be necessary to reissue the infringement notice. Clause 221 allows time for this to happen. This circumstance arises most frequently where people are breaching water use restrictions.

**Clause 223: Regulations**

This clause sets out all the matters for which the Governor may make regulations for the purposes of giving effect to the Act.

**Clause 224: Notes in the text**

The Bill contains several explanatory notes. See for example see the note in clause 21. These notes are provided to aid understanding of the particular section are not part of the Act.

**Clause 225: Review of Act**

The operation and effectiveness of the Act and the adequacy of penalties is to be reviewed by the Minister every 5 years and a report made to Parliament on its effectiveness.

**Clause 226: Transitional arrangements**

**Schedule 1 — Transitional provisions**

**Division 1 — Transitional provisions for the commencement of this Act**

**Subdivision 1 — Preliminary**

**Clause 1: Terms used**

This clause defines the terms used in this Part.

**Clause 2: New provisions that correspond to old provisions**

This clause provides that new provisions correspond to old provisions if they deal with the matter or thing in the same way.

**Clause 3: Relationship of this Division to *Water Corporations Act 1995* Schedule 5 Division 1**

If Schedule 5 Division 1 of the *Water Corporations Act 1995* deals with a matter, it displaces a provision of this division that deals with the same matter.

## **Subdivision 2 — Application of *Interpretation Act 1984***

### **Clause 4: Application of *Interpretation Act 1984***

The relevant provisions that were repealed by the *Water Services Legislation Amendment and Repeal Act 2011* are taken to be repealed by this Act.

## **Subdivision 3 — General provisions**

### **Clause 5: Continuing effects of licences, exemptions, directions, determinations, notices etc**

This clause provides that if instruments exist under old provisions that are replaced by exactly similar new provisions, then the instruments continue to be in force except to the extent to which they are inconsistent with this Act.

### **Clause 6: Completion of things commenced before commencement day**

This clause provides that where new provisions correspond exactly to old provisions, any action commenced under the old provision before commencement day may be completed under the new provision.

### **Clause 7: Continuing effect of things done before commencement day**

This clause provides that anything that would have had effect under an old provisions will have effect under the new provision after commencement day.

### **Clause 8: References to repealed Acts and old provisions**

This clause establishes that references to an Act repealed by the *Water Services Legislation Amendment and Repeal Act 2011* will be a reference to the *Water Services Act 2011*.

### **Clause 9: Relationship of this Subdivision to other transitional provisions**

Subdivision 4 and the regulations of this Division prevail over the provisions of this Subdivision to the extent of any inconsistency.

## **Subdivision 4 — Specific provisions**

### **Clause 10: Licences and exemptions**

This clause provides that licences and exemptions that are in place under the *Water Services Licensing Act 1995* prior to commencement day are licences and exemptions under this Act under the same terms and conditions.

### **Clause 11: Initial code of conduct under section 27 of the Act**

The first code of conduct is to be made by the Minister. Subsequent codes of conduct (including amendments) will be made by the Economic Regulation Authority in consultation with the consultative committee.

**Clause 12: Initial water services ombudsman scheme**

This clause provides that the initial scheme must be approved by the Minister instead of the Authority.

**Clause 13: Water service works of licensees**

This clause provides that works that were the property of a licensee under the *Water Agencies (Powers) Act 1984* section 84(2) or under the *Water Boards Act 1904* section 39 are water service works of the licensee for the purposes of this Act.

**Clause 14: Drainage works of the Water Corporation**

This clause provides that drainage works under the control of the Water Corporation under *Metropolitan Water Authority Act 1982* become drainage works of the Water Corporation under this Act.

**Clause 15: Relationship of this Subdivision to transitional regulations**

The regulations made for this Division prevail over the provisions of this Subdivision to the extent of any inconsistency.

**Subdivision 5 — Transitional regulations**

**Clause 16: Transitional Regulations**

This clause provides that the Regulations may be made to deal with savings and transitional matters and consequential legislative amendments arising as a result of the enactment of this Act.