

WATER RESOURCES LEGISLATION AMENDMENT BILL 2006

EXPLANATORY NOTES

Overview of the Bill

The purpose of the Bill is to amend water and water resource management related Acts. It incorporates machinery of government amendments introduced in Parliament in 2003, and amends relevant provisions to vest in the Minister certain functions and powers.

It constitutes the first phase of a comprehensive reform of water management and regulation in Western Australia. The Bill gives effect to the Government's revised administrative and institutional arrangements in the water resources portfolio, in the context of the establishment of the new Department of Water.

A substantial portion of the Bill arising from the proposed abolition of the Water and Rivers Commission is taken from the Machinery of Government (Water Resources) Amendment Bill 2003. The provisions relating to the Water Resources Council and the Ministerial Body, as well as some of the general administrative provisions that are being inserted into the *Water Agencies (Powers) Act 1984*, are taken from the Water Resources (Administration) Bill 2003. Both these Bills were introduced into Parliament in November 2003 and lapsed in January 2005.

The Bill abolishes the Water and Rivers Commission by repealing the *Water and Rivers Commission Act 1995* and makes the necessary consequential amendments to the various water Acts that currently confer functions and powers upon the Water and Rivers Commission. The majority of the Commission's functions and powers are being transferred to the Minister.

Substantial consequential amendments will be made to the:

- *Country Areas Water Supply Act 1947*
- *Metropolitan Water Authority Act 1982*
- *Metropolitan Water Supply, Sewerage and Drainage Act 1909*
- *Rights in Water and Irrigation Act 1914*
- *Swan River Trust Act 1988*
- *Water Agencies (Powers) Act 1984*
- *Waterways Conservation Act 1976*
- *Water Supply, Sewerage and Drainage Act 1912* (to be repealed)

Minor consequential amendments will be made to a further twelve water and water related statutes.

The Bill will establish a Water Resources Council under the *Water Agencies (Powers) Act 1984*. The Council will comprise of Ministerially appointed members with a diverse range of expertise and experience and will advise the Minister on policy and planning in relation to water resources. The composition and functions of the Council are explained in more detail in the clause notes (see clause 114).

The Bill provides for the establishment of a Water Resources Ministerial Body (a body corporate) under the *Water Agencies (Powers) Act*, primarily to ensure continuation of the Water and Rivers Commission's powers to deal in land. The Ministerial Body is based on the model adopted in the Machinery of Government amendments to the *Transport Co-ordination Act 1966*. It provides a mechanism through which the Minister can exercise statutory functions that are more conveniently performed by a body corporate, such as dealings in land, property or assets. The Ministerial Body is explained in more detail in the clause notes (see clause 114).

As well as the specific functions and powers transferred to the Minister, a number of the Water and Rivers Commission's general functions and powers under the *Water and Rivers Commission Act* will be retained and transferred to the Minister for Water Resources. Additional general functions are included to ensure that the Ministerial Body may hold and manage the Commission's land and to better define the Minister's general functions and responsibilities with respect to water resources (see clause 114).

The Minister's functions and powers will be exercised with the assistance of the Department of Water. Subject to specified limitations, the Minister will be able to delegate the performance of the Minister's functions and powers to other persons or entities, including the chief executive officer (CEO) of the Department of Water. These powers of delegation are explained in more detail in the clause notes (see clause 141 and clause 191).

A small number of the Commission's functions that are more administrative in nature have been transferred to the CEO of the Department of Water (for example, the CEO will maintain registers of licences and other instruments). The CEO will also have powers of delegation (see clause 141 and clause 191).

In addition, the Bill provides for new Ministerial powers that will be inserted into the *Water Agencies (Powers) Act 1984*, so that the Minister can perform functions relating to conserving, protecting and managing the water resources of Western Australia:

- The Minister will be empowered to give written directions to licensed water service providers (such as the Water Corporation, water boards, local governments and other entities holding a licence under the *Water Services (Licensing) Act 1995*) to provide information to the Minister

that is relevant to the Minister's water resource management functions (see clause 114).

- To facilitate a coherent strategic approach to water resource management the Bill provides for amendments to the *Water Corporation Act*. The Minister for Water Resources is to be consulted by the Minister responsible for the administration of the *Water Corporation Act 1995* regarding the appointment of members of the board of the Water Corporation (see clause 144), the preparation of the Corporation's strategic development plan (see clause 145) and statement of corporate intent (see clause 146).
- The Minister will be empowered to give written directions to the Water Corporation and water boards to have regard to a general policy of the Government in relation to water resources (see clause 141).

CLAUSE NOTES

PART 1 – PRELIMINARY

- Clause 1 Short title of the Act.
- Clause 2 This clause outlines the commencement of this legislation. Part 1 (Preliminary) and Part 12 (Transitional provisions) will commence upon Royal Assent. The clause allows for other provisions of this Act to come into operation by proclamation, to allow transitional matters to be completed prior to the Act taking effect.
- Clause 3 This clause allows for consequential amendments to statutory rules, regulations and by-laws to be prepared as omnibus regulations.

PART 2 - AMENDMENTS TO THE *COUNTRY AREAS WATER SUPPLY ACT 1947*

- Clause 4 Specifies the Act being amended as the *Country Areas Water Supply Act 1947*.
- Clause 5 **Section 5 amended**
A consequential amendment. The definition of the Commission is deleted as the Water and Rivers Commission Act 1995 is to be repealed.
- Definitions of “CEO” and “Department” are inserted. The chief executive officer of the department assisting in the administration of the *Country Areas Water Supply Act* will be given certain functions under that Act. The definition of “officer” is amended as it is not necessary to define officers of a department.
- Historically, the Water and Rivers Commission and other agencies have administered parts of this Act, and since these need to be acknowledged, a definition of ‘**former Commission**’ is inserted, as well as a definition of

'former authority', which includes the former Commission.

- Clause 6 **Section 7 repealed**
Repeals the Minister's power to delegate functions and powers under the Country Areas Water Supply Act. This specific power of delegation is no longer required since the power of delegation in section 104 of the *Water Agencies (Powers) Act* (see Clause 141) is to be applicable also to the *Country Areas Water Supply Act*.
- Clause 7 **Section 11 amended**
Correction to make it clear that the powers of the Corporation to divert, intercept and store water within the boundaries of a catchment area or water reserve constituted under the *Country Areas Water Supply Act* are subject to the Corporation complying with any applicable licensing requirements in Part III of the *Rights in Water and Irrigation Act*.
- Clause 8 **Section 12BA amended**
A consequential amendment. Section 12BA is also amended by clause 23. Applications for certificates stating that no illegal clearing has taken place on land are now to be made to the Minister for Water Resources (instead of the Commission).
- Clause 9 **Section 12BD amended**
A consequential amendment. Section 12 BD is also amended by clause 23. The Minister (instead of an officer of the Commission) will have powers to enter land, and do works, and ensure compliance with a restoration order for land that has been illegally cleared in controlled catchments. Officers of the Department or other persons who are acting on behalf of the Minister can also exercise these powers. (see Clause 112, which makes consequential amendments to section 3(3) of the *Water Agencies (Powers) Act*).
- Clause 10 **Section 12BE amended**
A consequential amendment. The right of the Crown (instead of Minister or Commission) to apply for an injunction is not limited by this section.

Note:

Throughout the Acts some references to the Commission are replaced with references to the Crown. Generally, references to the Commission having rights (such as a right to legal remedy) or liabilities (such as a liability to pay compensation) have been amended to refer to the Crown having the right or

liability. As the Minister and the CEO are functionaries of the Crown they do not, in that capacity, have rights or liabilities other than on behalf of the Crown. "Crown" instead of "State" has been used for consistency with existing references in the amended Acts. Under its constituent Act (section 5), the Commission is presently an agent of the Crown.

- Clause 11 **Section 12E amended**
A consequential amendment. Section 12E is also amended by clause 23. Functions relating to claims for compensation will be undertaken by the Minister (instead of the Commission). The term, 'former authority' encompasses the former Water and Rivers Commission that will be abolished by this Bill.
- Clause 12 **Section 12EB amended**
A consequential amendment. Section 12EB is also amended by clause 23. The Minister is responsible for dealing in land (selling, exchanging, covenanting) instead of the Commission. Land will be held by the Water Resources Ministerial Body to be established under section 11 of the *Water Agencies (Powers) Act* (see clause 114).

The term 'former authority' encompasses the former Water and Rivers Commission that will be abolished by this Bill.
- Clause 13 **Section 12ED amended**
A consequential amendment. Where due notice has been served, the Minister (instead of the Commission) has a power to enter land for the purposes of Part IIA of the *Country Areas Water Supply Act*. The Minister's general power of entry can also be exercised by officers of the Department or other persons who are acting on behalf of the Minister (see clause 112, which makes consequential amendments to section 3(3) of the *Water Agencies (Powers) Act*).

The Minister, an officer of the Department (instead of the Commission) or a person authorised by the Minister (instead of the Minister or the Commission) can enter upon land to intervene in the commission of an offence under the *Country Areas Water Supply Act*, without giving notice.
- Clause 14 **Section 12EE amended**
A consequential amendment. Entry upon, and inspection of land, by the Minister, an officer of the Department (instead of the Commission) or a person acting with the
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authority of the Minister (instead of the Minister or the Commission) is required before certain documents can be admitted into evidence in proceedings.

- Clause 15 **Section 45 amended**
A consequential amendment. Section 45 is also amended by Clause 23. The civil remedy is the Crown's, and not the Minister's or the CEO's.
- Clause 16 **Section 111 amended**
A consequential amendment. The Crown (instead of the Commission) will maintain the ability to pursue action (civil proceedings) against a person who has been convicted of an offence against the *Country Areas Water Supply Act*. The remedy is the Crown's, rather than the Minister or the CEO.
- Clause 17 **Section 112 amended**
A consequential amendment. Any person who obstructs the Minister (instead of the Commission), any officer of the Department (instead of the Commission) or a person authorised by the Minister (instead of the Commission) from carrying out their duties under the *Country Areas Water Supply Act* will be committing an offence. Penalties have not been changed.
- Clause 18 **Section 113 amended**
A consequential amendment. This change reflects the transfer of ownership of waterworks infrastructure to the Crown from the Commission.
- Clause 19 **Section 114 amended**
A consequential amendment. Officers of the Department (instead of the Commission) may apprehend an offender under this Act. Only officers of the Department who are authorised by the Minister for the purposes of the section may exercise the power.
- Clause 20 **Section 115 amended**
A consequential amendment. The Minister and officers of the Department (instead of the Commission and Commission officers) may initiate legal proceedings for an offence against certain provisions of this Act.
- Clause 21 **Section 116 replaced**
It is considered unnecessary to provide powers for officers of the Department to represent the Minister or the Department in court as such representation would generally be effected by an admitted legal practitioner. In
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cases where it is necessary for persons other than an admitted legal practitioner to represent the Department or the Minister, that person can seek leave from the Court.

- Clause 22 **Section 121 amended**
A consequential amendment. The CEO (instead of the Commission) can issue certificates in relation to works constructed prior to the commencement of the *Country Areas Water Supply Act*, which can be admitted as evidence in Court proceedings.
- Clause 23 **Various references to the Commission changed to Minister**
A consequential amendment. Consequential amendments are proposed in this clause to vest powers and functions in the Minister (instead of the Commission), including the Minister being empowered under section 104 of the *Water Agencies (Powers) Act* to delegate those functions and powers (see clause 141).

Part 3 - Amendments to the *Metropolitan Water Authority Act 1982*

- Clause 24 Specifies the Act being amended as the *Metropolitan Water Authority Act 1982*.
- Clause 25 **Section 4 amended**
A consequential amendment. The definition of the **Commission** is deleted since the *Water and Rivers Commission Act 1995* is being repealed.
- Historically, the Water and Rivers Commission and other agencies have administered parts of this Act, and since these need to be acknowledged, a definition of **‘former Commission’** is inserted, as well as a definition of **‘former authority’** which includes the former Commission.
- Clause 26 **Section 5 amended**
A consequential amendment. It notes that the Water and Rivers Commission has been repealed.
- Clause 27 **Section 19 amended**
A consequential amendment. Maintains an exemption from civil liability for persons who performed functions
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of the former Water and Rivers Commission under the *Metropolitan Water Authority Act* or the *Metropolitan Water Supply, Sewerage and Drainage Act*.

- Clause 28 **Section 98 amended**
A consequential amendment. Arterial drainage scheme planning will be the responsibility of the Minister (instead of the Commission) in the Metropolitan Area.
- Clause 29 **Section 99 amended**
A consequential amendment. The Minister (instead of the Commission) will be responsible for the overall administration of arterial drainage.
- Clause 30 **Section 106 amended**
A consequential amendment. The Minister (instead of the Commission) will administer the declaration of drainage courses.
- Clause 31 **Section 107 amended**
A consequential amendment. The Minister (instead of the Commission) will inform planning authorities of the existence of drainage courses.

Part 4 - Amendments to the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*

- Clause 32 Specifies the Act being amended as the *Metropolitan Water Supply, Sewerage and Drainage Act 1909*.
- Clause 33 **Section 5 amended**
A consequential amendment. The definition of the **Commission** is deleted as the *Water and Rivers Commission Act 1995* is being repealed.
- Definitions of “CEO” and “Department” are inserted. The CEO of the department assisting in the administration of the *Metropolitan Water Supply, Sewerage and Drainage Act* will be given certain functions under that Act. The definition of “officer” is amended as it is not necessary to define officers of the Department.

- Clause 34 **Section 14 amended**
Amends section 14 make it clear that the powers of the Corporation to divert, intercept and store water within the boundaries of a catchment area or water reserve constituted under the *Metropolitan Water Supply, Sewerage and Drainage Act* are subject to the Corporation complying with any applicable licensing requirements in Part III of the *Rights in Water and Irrigation Act*.
- Clause 35 **Section 16 amended**
A consequential amendment. The Minister (instead of the Commission) may authorise activity affecting water resources in water reserves and catchment areas that would otherwise constitute an offence under this section.
- Clause 36 **Section 35 repealed**
This section is redundant as the provisions for control of artesian bores are covered adequately under the *Rights in Water and Irrigation Act 1914*.
- Clause 37 **Section 57C amended**
A consequential amendment. This section is also amended by clause 50. The Minister (instead of the Commission) will have the power to grant dispensation from observance of any by-law. Dispensation may be subject to conditions set by the Minister (in place of the Commission).
- Clause 38 **Section 57EA amended**
Amends section 57EA to make it clear that the power of the Corporation to take water from a Public Water Supply Area constituted under the *Metropolitan Water Supply, Sewerage and Drainage Act* is subject to the Corporation complying with any applicable licensing requirements in Part III of the *Rights in Water and Irrigation Act*.
- Clause 39 **Section 57G amended**
A consequential amendment. Section 57G is also amended by clause 50. Applications for licences to construct wells within Public Water Supply Areas should be made to the Minister (in place of the Commission) who will issue the licences.
- Clause 40 **Section 57H amended**
A consequential amendment. Section 57H is also amended by clause 50. The Minister (instead of the Commission) will enforce compliance of licence
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conditions. Costs incurred by the Minister in enforcing compliance are a debt due to the Crown (instead of the Commission).

- Clause 41 **Section 57I amended**
A consequential amendment. Section 57I is also amended by clause 50. Powers to revoke, suspend or amend well licences are vested in the Minister (instead of the Commission).
- Clause 42 **Section 146 amended**
A consequential amendment. By-laws made under section 146 can provide for the CEO (instead of the Commission) to keep a register of licences issued for the construction of wells in Public Water Supply Areas.
- Clause 43 **Section 153 amended**
A consequential amendment. Since the civil remedy ultimately rests with the Crown, the Crown rather than the Minister or the CEO, is specified.
- Clause 44 **Section 156 amended**
A consequential amendment. Any person who obstructs the Minister (instead of the Commission), an officer of the Department (instead of the Commission) or a person authorised by the Minister (instead of the Commission) from carrying out their duties under the *Metropolitan Water Supply, Sewerage and Drainage Act* or the *Metropolitan Water Authority Act* commits an offence. Penalties have not been changed.
- Clause 45 **Section 157 amended**
A consequential amendment. Works constructed under section 157 will be the property of the Crown (instead of the Commission).
- Clause 46 **Section 158 amended**
A consequential amendment. Officers of the Department (instead of the Commission) may apprehend an offender under section 158. The nature of the power is such that only officers of the Department who are authorised by the Minister for the purposes of the section may exercise this power.
- Clause 47 **Section 159 amended**
A consequential amendment. The Department (instead of the Commission), officers of the Department (instead of Commission officers) and delegates of the Minister (instead of Commission delegates) may initiate legal
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proceedings for an offence against provisions specified in this Act.

- Clause 48 **Section 160 amended**
A consequential amendment. Penalties formerly paid to the Commission will go to the Consolidated Fund (see also clause 206 for associated changes to the *Sentencing Act 1995*).
- Clause 49 **Section 161 replaced**
It is not necessary to provide powers to officers of the Department to represent the Minister or the Department in Court as representation would generally be by an admitted legal practitioner. In cases where it is necessary for persons other than an admitted legal practitioner to represent the Department or the Minister, then that person can seek leave from the Court.
- Clause 50 **Various references to “Commission” changed to Minister**
A consequential amendment. Consequential amendments to vest powers and functions previously undertaken by the Commission in the Minister. The majority of the Commission’s functions are vested in the Minister. The Minister is empowered by section 104 of the *Water Agencies (Powers) Act* to delegate those functions and powers (see clause 141).

Part 5 – Amendment of the *Rights in Water and Irrigation Act 1914*

- Clause 51 Specifies the Act being amended as the *Rights in Water and Irrigation Act 1914*.
- Clause 52 **Section 2 amended**
A consequential amendment. The definition of the **Commission** is deleted as the *Water and Rivers Commission Act 1995* is being repealed.
- Definitions of “CEO” and “Department” are inserted. The CEO of the department assisting in the administration of the *Metropolitan Water Supply, Sewerage and Drainage Act* will be given certain functions under that Act. The definition of “officer” is amended as it is not necessary to define officers of the Department.

Section 2 also defines the Water Resources Council since the functions of the Council are specified in the Act (see clauses 66, 67 and 74).

- Clause 53 **Section 5 amended**
A consequential amendment. Some springs are not regulated under the *Rights in Water and Irrigation Act 1914*. Section 5 sets out a process by which springs that would otherwise be unregulated can be prescribed under local by-laws and brought within the scope of the Act. This clause removes the role of the Commission in that process.
- Clause 54 **Section 5A amended**
A minor alteration that more simply describes the process by which the Crown's rights to the use, flow and control of water resources are given to licensees and landowners. The alteration reflects the common usage of the concept of "allocations" within the water resources sector.
- Clause 55 **Section 6 amended**
A consequential amendment. The Minister (instead of the Commission) will consider submissions from local government regarding the proclamation of watercourses.
- Clause 56 **Section 16 amended**
A consequential amendment. The Minister (instead of the Commission) will give approval for works in watercourses.
- Clause 57 **Section 26B amended**
Amends a drafting error in the Act to ensure that any local by-laws made under section 26L that might exempt a person from applying for a licence are effective.
- Clause 58 **Section 26GE amended**
Corrects an error whereby all notices restricting water use issued under section 26D are cancelled when a water shortage has ended. This amendment ensures that only those notices issued because of water shortage (section 26D(1) notices) will cease with the end of the water shortage. Any notices under section 26D(2) will continue to be valid.
- Clause 59 **Section 26GH amended**
Amendment to ensure that a person may appeal against the decision regarding a claim for compensation under clause 39 of Schedule 1, despite the heading of the section
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referring only to appeals against directions. The clause also corrects a typographic error.

- Clause 60 **Section 26GL amended**
A consequential amendment. Officers of the Department (instead of the Commission or Commission board members) may be appointed to Water Resources Management Committees.
- Clause 61 **Section 26GS amended**
A consequential amendment. The Crown (instead of the Commission) will be vicariously liable should a committee member do something in good faith that results in a tort.
- Clause 62 **Section 26GU amended**
A consequential amendment. The Minister (instead of the Commission) may make plans.
- Clause 63 **Section 26GX and 26GY amended**
A consequential amendment. These sections outline the purpose of both sub-regional and local area management plans. These plans will guide the Minister (instead of the Commission) in the management of water resources.
- Clause 64 **Heading to Part III Division 3D Subdivision 2 amended**
A consequential amendment to recognise the change in the planning process arising from the abolition of the Commission.
- Clause 65 **Section 26GZC amended**
A change to the wording to recognise that plans given to interested parties for their comment are not “submitted” in the sense that an approval of the plan is required and to ensure that the wording in this clause is consistent with the new section 26GZE.
- Clause 66 **Section 26GZE replaced**
A consequential amendment. Removes the role of the Commission in submitting a plan to the Minister and imposes an obligation upon the Minister to give the draft plan to the Water Resources Council so that the Council may provide advice to the Minister regarding the plan.
- Clause 67 **Section 26GZG amended**
A consequential amendment. Ensures that the Water Resources Council is advised if regional, sub-regional and local area management plans require amendment.
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- Clause 68 **Section 26GZI amended**
A consequential amendment and clarification of the law to set out the times and locations at which the register of instruments (licences, exemptions and directions) can be inspected by the public.
- Clause 69 **Section 26GZK amended**
A consequential amendment. Replaces Commission with Minister and confers the administrative task of updating the licence register upon the CEO (who is generally responsible for maintaining the register).
- Clause 70 **Section 26GZO amended**
A consequential amendment. Confers functions relating to notifying people with a registered security interest upon the Minister (instead of the Commission) whilst conferring the administrative tasks upon the CEO (who is responsible for maintaining the register).
- Clause 71 **Section 26GZQ amended**
A consequential amendment. Confers the administrative task of varying notations of security interests on the register on the CEO (who is generally responsible for maintaining the register).
- Clause 72 **Section 26H amended**
Consequential amendments conferring rights of entry upon the Minister (instead of the Commission). Officers of the Department and other persons authorised by the Minister may also enter land under this section (see section 3(3) *Water Agencies (Powers) Act 1984* and clause 112).
- Clause 73 **Section 26J amended**
A consequential amendment. The Minister (instead of the Commission) and authorised officers may institute and maintain proceedings.
- Clause 74 **Section 26N amended**
A consequential amendment. Any legislative scheme for local by-laws is to be referred to the Water Resources Council for its consideration. It also corrects a cross referencing error.
- Clause 75 **Section 26Q amended**
A consequential amendment. It relates to the Minister (instead of by the Commission) undertaking water resource monitoring and inspection work for the benefit
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of a person or a group of persons holding a water entitlement. .

- Clause 76 **Section 27 amended**
A consequential amendment. It removes sub-section 27(1)(a) since the establishment of advisory committees is provided in the *Water Agencies (Powers) Act* (see clause 141 new section 109) and not the *Rights in Water and Irrigation Act*.
- Clause 77 **Section 27C amended**
A consequential amendment. The Minister (instead of the Commission) is to review the effectiveness of operations under the Act.
- Clause 78 **Section 35 Amended**
A consequential amendment. The Crown, including the Minister and Departmental officers (instead of the Commission) are afforded protection from liability.
- Clause 79 **Section 36 Amended**
A consequential amendment. Compensation liabilities rest with the Minister (instead of the Commission and the different liabilities of the Minister and the Water Corporation are kept distinct.
- Clause 80 **Section 39 replaced**
A consequential amendment and clarification of the law. Substitutes the Minister for the Commission and uses the term 'allocate' in place of 'appropriate', since it concerns the allocation of water for irrigation purposes.
- Clause 81 **Section 69 amended**
A consequential amendment. The civil remedy is the Crown's, and not the Minister's or the CEO's.
- Clause 82 **Section 70 amended**
A consequential amendment. Any person obstructing the Minister, any officer of the Department or any authorised person from carrying out functions under this Act will be committing an offence.
- Clause 83 **Section 71 amended**
A consequential amendment. Works will be vested in the Crown (instead of the Commission).

- Clause 84 **Section 73 amended**
A consequential amendment. Officers of the Department (instead of the Commission or Commission officers) have enforcement powers.
- Clause 85 **Section 75 replaced**
It is unnecessary to provide powers to officers of the Department to represent the Minister or the Department in Court as such representation would generally be effected by an admitted legal practitioner. In cases where it is necessary for persons other than an admitted legal practitioner to represent the Department or the Minister, that person can seek leave from the Court.
- Clause 86 **Section 79A amended**
A consequential amendment. Removes reference to the Commission and inserts "CEO" as defined in Clause 52.
- Clause 87 **Schedule 1 clause 3 amended**
A grammatical correction.
- Clause 88 **Schedule 1 clause 6 amended**
A consequential amendment. Where the Minister (instead of the Commission) proposes to refuse an application for a water licence or grant an approval with restrictions, the applicant has a right to make a written submission. Submissions concerning an application are to be heard by a person designated by the Minister (in place of the Commission) before a final decision is made.
- Clause 89 **Schedule 1 clause 12 amended**
A consequential amendment. Refers to annual reports of the Department instead of the Commission.
- Clause 90 **Schedule 1 clause 15 amended**
A consequential amendment. The Minister (instead of Commission) may include terms, conditions and restrictions on licences to take water.
- Clause 91 **Schedule 1 clause 22 amended**
A consequential amendment. Renewal of licences will be dealt with by the Minister (instead of the Commission). See clause 101 of the Bill for other changes to this clause.
- Clause 92 **Schedule 1 clause 26 amended**
A consequential amendment. The Minister (instead of the Commission) is obliged to give a licence holder the
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opportunity to make submissions when amending, suspending or cancelling a licence.

- Clause 93 **Schedule 1 clause 29A inserted**
Amendment introduces a new power to benefit the estate of a licence holder in the event of the death of the licence holder. Currently, a licence to take water terminates when the water licence holder dies. The termination of the licence also renders the continuing use of the water to maintain crops or a business as possibly illegal. This clause will enable licences to continue after the death of the holder and allow the executor of an estate to arrange for the transfer of the holder's interest in the licence.
- Clause 94 **Schedule 1 clause 30 amended.**
A typographical correction.
- Clause 95 **Schedule 1 clause 35 amended.**
A consequential amendment. The Minister (instead of the Commission) will have the responsibility to deal with applications for the transfer of a licence.
- Clause 96 **Heading to Schedule 1 Division 8 amended**
A consequential amendment. This Division enables the Minister (instead of the Commission) to hold water licences under defined conditions.
- Clause 97 **Schedule 1 clause 38 amended.**
A consequential amendment. Enables the Minister (instead of the Commission) to receive a transfer of a licence.
- Clause 98 **Heading to Schedule 1 Division 10 amended**
A consequential amendment. The Division will allow the Minister (instead of the Commission) to issue licences and to transfer water licences at a premium, that is by sale.
- Clause 99 **Schedule 1 clause 40 amended.**
A consequential amendment. Clause 40 gives the Minister (instead of the Commission) the capacity to issue a licence for a premium if, inter alia, the Crown has established works that make the water available.
- Clause 100 **Schedule 1 clause 45 amended.**
A consequential amendment. This clause gives the Minister (instead of the Commission) the capacity to issue a duplicate licence.

- Clause 101 **Various references to the Commission changed to Minister**
 Consequential amendments. A table that replaces references to the Commission with references to the Minister throughout the Act.
- Clause 102 **Various references to the Commission changed to CEO**
 Consequential amendments. A table replaces references to the Commission with references to the CEO throughout the Act.

Part 6 – Amendments to the *Swan River Trust Act 1988*

- Clause 103 Specifies the Act being amended as the *Swan River Trust Act 1988*.
- Clause 104 **Section 3 amended**
 A consequential amendment. The definition of the **Commission** is deleted as the *Water and Rivers Commission Act 1995* is being repealed. A definition of “chief executive officer” is inserted, as that term will now be used in section 31 of the *Swan River Trust Act*.
- Clause 105 **Section 12 amended**
 A consequential amendment. Removes the provision providing that a member of the Water and Rivers Commission is to be appointed to the Trust and instead increases the number of Ministerially appointed members from 3 to 4 (these persons may not be members of a local government authority).
- Clause 106 **Section 18 amended**
 A consequential amendment. Enables the Minister to designate a deputy chairman in lieu of the Commission member. The deputy chairman is to be one of the four Ministerially appointed members referred to in 12(1)(g) of the Act.
- Clause 107 **Section 19 amended**
 A consequential amendment. Deletes reference to the Water and Rivers Commission representative on the Trust, and refers to the deputy chairman.
- Clause 108 **Section 31 amended**
 A consequential amendment. Enables the chief executive officer of the department of the Public Service assisting in
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the administration of the of the *Environmental Protection Act 1986* (instead of the Commission) to provide staff to the Trust so that the Trust can undertake its functions. The Trust retains the ability under section 31(3) to enter into arrangements with other agencies for the provision of staff.

This is consistent with the administration of the *Swan River Trust Act* by the Minister for the Environment.

- Clause 109 **Section 64 amended**
A consequential amendment. Ensures that officers provided under section 31(1) may be appointed by the Trust as inspectors for the purposes of enforcing the *Swan River Trust Act*.

Part 7 – Amendments to the *Water Agencies (Powers) Act 1984*

- Clause 110 Specifies the Act being amended as the *Water Agencies (Powers) Act 1984*.

- Clause 111 **Long Title amended**
A consequential amendment. The reference to the Water and Rivers Commission is deleted and replaced with Minister. References to the Water Resources Ministerial Body and the Water Resources Council have been added.

- Clause 112 **Section 3 amended**
Consequential amendments.

Section 3(1)
The definition of the Commission is deleted as the Commission will no longer exist. References to the Commission in other definitions have been replaced with a reference to the Minister. A definition of “former Commission” is inserted, to allow for acts undertaken by the Commission (such as completion of works) to continue into the future where necessary.

A definition of “water resources” has been inserted, as this term was included in the *Water and Rivers Commission Act 1995*. The previous definition of “watercourse” is deleted and replaced with the more modern definition used in the *Rights in Water and Irrigation Act 1914*. A definition of “wetland” is inserted

consistent with the definition used in the *Rights in Water and Irrigation Act 1914*.

The definition of works is amended to include examples of water resources management works as well as water supply works.

Definitions of “CEO” and “Department” are inserted. The CEO assisting in the administration of the *Water Agencies (Powers) Act* will be granted specific functions under that Act. The definition of “officer” is amended as it is not necessary to define officers of the Department.

Section 3(3)

References to the “Commission” are replaced with “Minister” or “Department”, as appropriate. Where the Minister has powers in relation to land (such as powers to enter, and to construct works), those powers can also be exercised by an officer of the Department or other persons acting on behalf of the Minister.

Clause 113

Section 8 amended

A consequential amendment. The Governor may make an Order in Council vesting land in the Minister (instead of the Commission).

Clause 114

Parts II, IIA and heading to Part IIB inserted

This clause inserts new parts into the *Water Agencies (Powers) Act 1984* that are detailed as follows.

Part II – The Minister and the Water Resources Ministerial Body

Part II concerns the general functions and powers of the Minister (Division 1); establishes the Water Resources Ministerial Body (Division 2); and provides that the Minister is to have access to certain information (Division 3).

Division 1 — General functions and powers of the Minister

Section 9 General functions and powers of the Minister

The general functions and powers that are specified are largely similar to the general functions and powers conferred on the Water and Rivers Commission in relation to water resources management.

It is important to ensure that the Minister has a statutory basis to acquire and deal in land, as the Commission had. This section (in conjunction with the amendments to section 82 of the *Water Agencies (Powers) Act* – see clause 128) will enable the Minister to acquire and deal in land for the purposes of performing functions in relation to water resource management. It enables the Minister to utilise the Water Resources Ministerial Body as a mechanism through which the Minister may perform those functions.

Section 10 Functions and powers of the Minister — relationship to other functions and powers and to the Corporation

Specifies that the functions and powers of the Minister are to be exercised for water resource management purposes and are not intended to provide the Minister with additional powers to act on behalf of, or instead of, the Corporation.

Division 2 -The Water Resources Ministerial Body

Section 11 The Water Resources Ministerial Body

Establishes the Water Resources Ministerial Body, based on the model inserted in the *Transport Coordination Act 1966* by the *Machinery of Government (Planning and Infrastructure) Amendment Act 2002*.

The Ministerial Body is a body corporate through which the Minister can perform any of the Minister's statutory functions that are more conveniently dealt with by a body corporate, such as dealings in land, property and other assets.

The Ministerial Body is an agent of the Crown and will have the status, immunities and privileges of the Crown.

The Ministerial Body is the successor of the Ministerial Body Corporate established under the *Water Supply, Sewerage and Drainage Act 1912*, which is repealed by clause 197 of this Bill. Any freehold land held by that body will be transferred to the new Ministerial Body by clause 216 of this Bill.

Section 12. Purpose and nature of the Ministerial Body

The Ministerial Body has no specified functions. It is a tool by which the Minister may carry out any of the Minister's statutory functions that can more conveniently

be carried out by a body corporate, such as dealings in land, property or assets. The Ministerial Body itself is not an organisation for employment purposes and cannot employ any staff.

Section 13 Execution of documents by the Ministerial Body

The Ministerial Body will have a common seal, which will be affixed to relevant documents in the presence of the Minister who will sign these documents. The CEO or an officer of the Department may be authorised by the Ministerial Body to sign documents on behalf of the Ministerial Body, either generally or subject to conditions.

Division 3 – Minister to have access to certain information

Section 14 Minister to have access to certain information

Enables the Minister to direct licensed water service providers (entities licensed under the *Water Services Licensing Act 1995*) to provide information relevant to water resource management, such as plans to develop new sources or provide new services.

A water service provider who is directed by the Minister must provide the information, even if that information is perceived to be confidential or commercially sensitive. Section 14(7) protects the water service provider from civil or criminal liability that might be incurred by providing the information to the Minister (for example, breach of contract, breach of confidence or defamation).

A water service provider is entitled to object to a direction by the Minister. The Minister is then required to determine whether to cancel or confirm the direction, in consultation with the Minister administering the *Economic Regulation Authority Act 2003*.

Provision is made for any direction made by the Minister under section 14 (other than those that are cancelled) to be laid before Parliament, and published in the Department's annual report under the *Financial Administration and Audit Act*.

Section 15 Use or disclosure of information obtained under section 14

Prevents information obtained by the Minister under section 14 from being misused by the Minister, Ministerial and Departmental officers.

Apart from specified circumstances, persons are prohibited from disclosing information obtained under section 14. This prohibition continues even if the person ceases to hold the position of Minister, Ministerial or Departmental officer.

Information may be disclosed to a person who is a Departmental officer only where that information is disclosed in the course of a person's duty.

The Minister may disclose information if the Minister considers that it would be in the public interest, once the Minister has notified the person who gave the information and allowed them the opportunity to comment. The Minister is not required to provide such notification if the Minister considers that that is contrary to the public interest to delay the disclosure of the information.

The information may be disclosed where another written law (such as the *Freedom of Information Act 1992*) requires or authorises disclosure.

The penalty provided for disclosing information contrary to this section is consistent with penalties provided for equivalent offences in other legislation (such as section 95 of the *Emergency Management Act 2005* and section 241 of the *Children and Community Services Act 2004*).

Part IIA – The Water Resources Council

Part IIA provides for the Water Resources Council.

Section 16 Water Resources Council established

Establishes the Water Resources Council, comprising 6, 7, or 8 Ministerially appointed members.

Section 17 Membership of the Council

Criteria for membership is set out so that the Council membership will include areas of expertise and experience relevant to water resource management. Provision is made for the Council to include an indigenous person and a person who lives in regional Western Australia.

Section 18 Functions of the Council

The Council has an advisory role with regard to policy and planning. The Council may consult with relevant stakeholders and advise the Minister on whether the objectives of the water resources legislation are being met.

Section 19 Term of office

Sets out the terms of office for Council members. Council members are eligible to be reappointed by the Minister, notwithstanding that they have already served as a Council member.

Section 20 Casual vacancy

Deals with Council vacancies and enables the Minister to remove persons for the reasons specified.

Section 21 Remuneration and allowances

Remuneration of Council members is at the discretion of the Minister, within the criteria determined by the Minister for Public Sector Management.

Section 22 Quorum

A minimum of four members are required for a meeting quorum.

Section 23 Presiding at meetings

Provides for a chairman or other member to preside at meetings.

Section 24 Disclosure of Interest by Council Members

Establishes that members are to disclose pecuniary interests in matters before Council. The provision is inserted to protect the integrity of decisions made by the Council, where members may have a vested, commercial or any other interest in the matter. While that member may participate in discussion on the matter, he/she may not take part in any decision making process.

Sub-section (5) exempts common interest from having to be declared. For example a member holding a water entitlement would not be excluded from decisions relating to water allocation policy advice.

Section 25 Procedure at meetings

Meeting procedures will be determined by the Council.

Section 26 Minutes

Accurate minutes of Council meetings must be kept.

Section 27 Staff and other resources of the Council

The CEO of the Department is to provide staff and other necessary facilities and services, as agreed with the chairman of the Council.

Section 28 Application of the *Financial Administration and Audit Act 1985 (FAAA)*

The reporting and accountability rules of the *FAAA* will apply to the Council and its activities, and these matters will be included in the Department’s annual report.

Clause 115

Section 34 amended

A consequential amendment. Section 34 is also amended by clause 142. Amendments enable the Minister to make by-laws in relation to water resource management. The Minister (instead of the Commission) uses these by-laws to perform relevant water resources functions. The reference to the Coordinator is removed because the Coordinator of Water Services no longer exists.

Clause 116

Section 36 amended

A consequential amendment. Section 36 is also amended by clause 142. It removes references to the Commission and replaces them with “Minister” or “Department”, as appropriate.

(1) This sub section relates to the making of regulations and by-laws allowing the Minister (instead of the Commission) to grant dispensation from the requirements of by-laws by reason of the lack of availability of materials.

(2) Allows Departmental officers (instead of the Commission or Commission officers) or persons authorised by the Minister (instead of the Commission) to recover expenses related to the prosecution of offences under regulations or by-laws.

Clause 117

Section 38 amended

A consequential amendment. The Minister (instead of the Commission) has the right to advise the Governor to revoke or amend local laws and local planning scheme provisions, should the local law or scheme provision be determined to be inconsistent with the provisions of the *Water Agencies (Powers) Act*.

Clause 118

Section 62 amended

A consequential amendment. Section 62 is also amended by clause 142. References to the Commission are replaced by “Minister” or “Crown”, as appropriate.

In sections 62 and 63 (see clause 119), the term “Crown” is used in those places where the section is referring to liabilities arising from the exercise of statutory powers and limitations on those liabilities. References to the liability of the “Crown” encompass liability arising from acts attributable to the Minister, acts of the Ministerial Body (which has the status, immunities and privileges of the Crown, see clause 114), statutory authorities (as that term is defined in the *Water Agencies (Powers) Act*) and other persons acting with the authority of the Minister. The use of the term “Crown” in the context of limitations on liability will ensure that those limitations apply to all of those entities.

(1) The Minister (instead of the Commission) is required to remedy any damage to land or premises as a result of using the powers of entry onto land, or carrying out of works.

(2) The Crown (instead of the Commission) is not liable to pay compensation unless the requirements of section 62(3) are met. Claims for compensation are to be lodged with the Minister (instead of the Commission).

Clause 119

Section 63 amended

A consequential amendment. References to the Commission are replaced with “Minister” or “Crown” as appropriate.

(1) Limits the liability of the Crown (instead of the Commission) for injury or damage (other than damage of the kind described in section 62) to situations where there is negligence by the Minister, a statutory authority or persons authorised by the Minister (instead of the Commission).

(2) Action against the Crown will cease if a person injured does not have a medical examination in accordance with section 63(2). The CEO (instead of the Commission) will determine the nominated medical practitioner and the time period within which a person must submit to an examination.

- Clause 120 **Section 66 amended**
A consequential amendment. The reference to the Commission is replaced with “CEO”, enabling the CEO to give advice and issue guidelines in relation to planning proposals. The Minister is already able to give such advice under section 66.
- Clause 121 **Section 70 amended**
A consequential amendment. Section 70 is also amended by clause 142. The power to enter onto land is vested in the Minister (instead of a person authorised by the Commission). In exercising powers to enter land, the Minister (instead of the Commission) is not required to acquire an interest in the land except in the circumstances listed in section 70(3).

These powers of the Minister can also be exercised by officers of the Department or other persons who are acting on behalf of the Minister (see section 3(3) of the *Water Agencies (Powers) Act*, as amended by clause 112)
- Clause 122 **Section 71 amended**
A consequential amendment. Section 71 is also amended by clause 142. The powers to enter land, premises or other things to undertake routine inspection or routine maintenance for the purposes of the *Water Agencies (Powers) Act* and other relevant Acts (as set out in section 5 of the *Water Agencies (Powers) Act*) are transferred to the Minister (instead of the Commission). Agreements with owners or occupiers with land for routine inspections may be entered into by the Minister (instead of the Commission).

The powers of the Minister can also be exercised by Departmental officers or other persons who are acting on behalf of the Minister (see section 3(3) of the *Water Agencies (Powers) Act*, as amended by clause 112). Departmental officers or persons acting on behalf of the Minister may be required to show evidence of their appointment or authorisation under section 71(3).
- Clause 123 **Section 72 amended**
A consequential amendment. Section 72 is also amended by clause 142. The Minister (instead of the Commission) will deal with notification of entry issues.
- Clause 124 **Section 73 amended**
A consequential amendment. Section 73 is also amended by clause 142. References to the Commission are replaced
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with “Minister” or “Department” as appropriate. The Minister (instead of the Commission), Departmental officers and other persons who are able to exercise powers of the Minister under section 3(3) can enter land in emergencies.

Clause 125

Section 78 amended

A consequential amendment. The Minister (instead of the Commission) is empowered to dispose of land when it is no longer required or relevant to achieving outcomes under the *Water Agencies (Powers) Act* or a relevant Acts (set out in section 5 of the *Water Agencies (Powers) Act*). Other consequential amendments recognising the former Commission are also made.

Clause 126

Section 79 amended

A consequential amendment. The Minister (instead of the Commission) can submit plans for subdivision to the Western Australian Planning Commission Minister.

Clause 127

Section 81 amended

A consequential amendment. Section 81 is also amended by clause 142. References to “Commission” are replaced with “Minister” or “Crown”. The Minister (instead of the Commission) is responsible for works relating to water resources, and any liabilities arising in relation to those works will be liabilities of the Crown.

The protection from liability for damage caused by works undertaken on private land applies to the Crown (instead of the Commission).

The Minister (instead of the Commission) is responsible for any dealings in land that may be required for the purposes of the *Water Agencies (Powers) Act* or other relevant Acts (as set out in section 5 of the *Water Agencies (Powers) Act*). Various powers relating to land acquisition are vested in the Minister (instead of the Commission). The Minister (instead of the Commission) is required to acquire an interest in land where major works are undertaken.

A definition of “Land Administration Minister” is inserted to more clearly distinguish between references to that Minister and the Minister responsible for the *Water Agencies (Powers) Act*.

Clause 128

Section 82 amended

Section 82 enhances the Minister’s ability to utilise the *Water Agencies (Powers) Act* (in conjunction with the *Land Administration Act 1997* and the *Public Works Act 1902*) to acquire and otherwise deal in land for the purposes of fulfilling the functions of conserving, protecting and managing of water resources. The amendment acknowledges that land may be used for the conservation of water resources, without works or infrastructure being constructed on the land. The clause also ensures that Minister is able to carry out such dealings in land through the Ministerial Body.

This approach is similar to section 12EB of the *Country Areas Water Supply Act 1947*, which recognises that the use of land for the conservation of water resources does not necessarily involve the construction of works.

Clause 129

Section 83 amended

A consequential amendment. Section 83 is also amended by clause 142. Powers relating to works will be vested in the Minister (instead of the Commission). Departmental officers or other persons acting on behalf of the Minister (see section 3(3) of the *Water Agencies (Powers) Act*, as amended by clause 112) may exercise these Ministerial powers.

Clause 130

Section 84 amended

A consequential amendment. Section 84 is also amended by clause 142. Works constructed on land pursuant to the Minister’s powers are deemed to have been lawfully placed and are the property of the Minister, unless the Minister has agreed otherwise with the land owner.

The Minister (instead of the Commission) has the power to remove works constructed on land. Departmental officers or other persons acting on behalf of the Minister (see section 3(3) of the *Water Agencies (Powers) Act*, as amended by clause 112) may exercise these Ministerial powers.

Works previously undertaken by the Commission will be taken as having been done by the Minister.

Clause 131

Section 86 amended

A consequential amendment. The definition of “exempt works” is amended to remove reference to the Commission. The definition of “major works” is amended to indicate that Ministerial direction is now only relevant

regarding the Corporation (as the Minister will now be undertaking works that were previously undertaken by the Commission).

- Clause 132 **Section 87 amended**
A consequential amendment. The Minister (instead of the Commission) is empowered to undertake major works. The amendment notes that Ministerial authorisation to undertake works is now only relevant in the case of the Corporation.
- Clause 133 **Section 88 amended**
A consequential amendment. Section 88 is also amended by clause 142. The Minister (instead of the Commission) will advertise, display plans and notify persons affected by major works proposals. Clarifies that plans are to be displayed at the Departmental office closest to the locality of the works (instead of the head office of the Commission).
- Clause 134 **Section 89 amended**
A consequential amendment. Section 89 is also amended by clause 142. Objections and comments in relation to major works proposals are to be lodged with the Minister (instead of the Commission).

The amendment notes that submission of major works proposals for Ministerial authorisation is now only relevant in the case of the Corporation.
- Clause 135 **Section 90 amended**
A consequential amendment. As the Minister will now undertake major works (instead of the Commission), the submission of major works proposals for Ministerial authorisation is now only relevant in the case of the Corporation.
- Clause 136 **Section 91 amended**
A consequential amendment. The Minister (instead of Commission) is responsible for altering or extending major works. The submission of alteration/extension proposals for Ministerial authorisation is now only relevant in the case of the Corporation.
- Clause 137 **Section 93 amended**
A consequential amendment. Section 93 is also amended by clause 142. The Minister (instead of the Commission) will be responsible for displaying plans and notifying persons affected by general works proposals. Clarifies
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that plans are to be lodged at the Departmental office closest to the locality of the works (instead of the head office of the Commission).

- Clause 138 **Section 95 amended**
A consequential amendment. The Minister (instead of the Commission) is authorised to undertake general works. The amendment notes that submission of proposals to the Minister for authorisation is now only relevant in the case of the Corporation.
- Clause 139 **Section 97 amended**
A consequential amendment. The Minister (instead of the Commission) is empowered to deviate from a works proposal in certain circumstances. Amendments note that Ministerial authorisation of a deviation or modification is now only applicable in the case of the Corporation.
- Clause 140 **Section 103 amended**
A consequential amendment. The CEO (instead of the Commission) will issue to persons who are authorised under the regulations to give infringement notices a certificate showing that authorisation.
- Clause 141 **Part X inserted**
Clause inserts several new administrative provisions in the *Water Agencies (Powers) Act*, as set out below.

Part X – Administrative Provisions

Section 104 Delegation by the Minister

Since the majority of the Commission's powers will be vested in the Minister broad delegation powers have been granted to the Minister to ensure operational efficiencies arising from the day-to-day administration of water resources. With the exception of two functions, the Minister is empowered to delegate Ministerial powers and duties listed in this Act or other relevant Acts (as listed in section 5 of the *Water Agencies (Powers) Act*). Delegations may be made to the CEO; another officer of the Department; an officer of another department or employee of an organisation; another Minister; the employing authority of another department or organisation (for example, the CEO of another Department); or any other person or body.

Delegations to different Ministers or departments may be required to ensure effective water resource management. Where the delegation is to another Minister, the CEO of

the Department or the employing authority of another department or organisation, it may not be practical for those persons to exercise the delegated powers personally. Hence, where powers are delegated to these persons, the Minister is empowered to authorise these persons to further delegate the power. The persons to whom the power may be sub-delegated is limited, however, to persons within the relevant department or organisation. Powers delegated to Departmental officers (other than the CEO), officers of other departments or organisations and other persons or bodies may not be sub-delegated.

Subsection (1) expressly prevents the Minister from delegating the powers under section 14 (power to require information from licensed water service providers) and section 106 (power to give directions about Government policy) of this Bill. The nature of these powers warrants personal Ministerial responsibility and accountability.

Section 105 Delegation by the CEO

The CEO has the power to delegate the CEO's powers and duties under the *Water Agencies (Powers) Act* and other relevant Acts (as listed in section 5 of the *Water Agencies (Powers) Act*). Powers may be delegated to other officers of the Department; an officer of another department or an employee of an organisation; the employing authority of another department or an organisation (for example the CEO of another Department); or any other person or body.

Prior to delegating powers, the CEO is required to obtain the approval of the Minister, except in the case where the CEO delegates to an officer of the Department. This will ensure that the Minister is informed when powers are delegated by the CEO.

A person to whom the CEO delegates a power may not further delegate that power, except where the CEO delegates to the employing authority of another department or organisation (for example, the CEO of another Department) as it may not be practicable for that person to exercise the delegated power. Again, the persons to whom the employing authority may sub-delegate are limited to persons within the relevant department or organisation.

Section 106 Directions about Government policy

The Minister may direct the Water Corporation (established under the *Water Corporation Act 1995*) or a

water board (established under the *Water Boards Act 1904*) to have regard to a general policy of the Government relating to water resources.

Consistent with the requirements of transparency and accountability, the Minister will be required to both table the direction in Parliament and publish it in the annual report of the Department under the *Financial Administration and Audit Act 1985*.

Section 107 Non-public sector staff

Section 107 enables the CEO to employ wages staff other than those employed under the *Public Sector Management Act 1994*. This is necessary to enable continuation of employment of existing wages staff of the Commission.

Section 108 Provision of staff, services and facilities

Section 108 allows the CEO to provide staff, services and facilities, for 'related entities' which includes advisory committees, and other bodies and people, established or carrying out functions under the *Water Agencies (Powers) Act* or a relevant Act (as listed in section 5 of the *Water Agencies (Powers) Act*).

Section 109 Advisory committees

The Minister may establish committees for the purpose of advising the Minister on any aspect of the administration of this Act or a relevant Act (as listed in section 5 of the *Water Agencies (Powers) Act*). The terms of reference of committees are to be determined by the Minister. Members of committees may be remunerated on the recommendations of the Minister for Public Sector Management. The Minister may also establish local Water Resources Management Committees under the *Rights in Water and Irrigation Act 1914*.

Under the transitional provisions (see clause 224), all committees established by the Water and Rivers Commission Board existing when this Bill is proclaimed will become 'Advisory Committees' under this section of the *Water Agencies (Powers) Act*. Existing committees that were disbanded and reconstituted under other legislation prior to proclamation of this Bill will not be affected by the transitional provisions.

Section 110 Laying documents before Parliament

Some provisions being inserted into the *Water Agencies (Powers) Act* include a requirement to lay documents

before each House of Parliament within a specified period. This is a standard clause that sets out the procedure that applies when a House of Parliament is not sitting at the commencement of that time period and the Minister is of the opinion that the House will not sit during that period.

Section 111 Protection from liability from wrongdoing

A standard provision that replicates section 32 of the *Water and Rivers Commission Act* which protects any person who acts ‘in good faith’ to administer any function under the *Water Agencies (Powers) Act 1984* or a relevant Act (as listed in section 5 of the *Water Agencies (Powers) Act*). This includes protection for members of committees formed by the Minister under the *Water Agencies (Powers) Act* when performing their functions as committee members.

The liability for these acts falls to the Crown.

Section 112 Confidentiality

The provision protects confidential information that may only be used or released in accordance with section 112(2). The penalties for disclosing information contrary to this clause are consistent with the penalties provided in clause 114 of this Bill (section 15 unauthorised disclosure of information provided to the Minister by water service providers).

- Clause 142 **Various references to Commission changed to Minister**
Consequential amendments to vest powers and functions previously undertaken by the Commission in the Minister.

Part 8 – Amendments to the *Water Corporation Act 1995*

- Clause 143 Specifies that the Act being amended is *Water Corporation Act 1995*.
- Clause 144 **Section 7 amended**
This clause requires the Minister administering the *Water Corporation Act 1995* to consult the Minister responsible for administering the *Water Agencies (Powers) Act* (that is, the Minister responsible for water resource management) prior to making nominations to the board of the Water Corporation.

The clause seeks to ensure that a “whole of government” framework is adopted regarding sustainable water resource management. The Minister for Water Resources has no power of veto concerning board appointment.

Clause 145

Section 49 amended

This clause requires the Minister administering the *Water Corporation Act 1995* to consult the Minister responsible for administering the *Water Agencies (Powers) Act* (that is, the Minister responsible for water resource management) prior to agreeing to the Water Corporation’s strategic development plan

This clause seeks to facilitate consistency between the strategic direction of the Corporation and the Government’s broader water resources management objectives, in cases where different Ministers are responsible for water resources management and the administration of Water Corporation.

Clause 146

Section 58 amended

This clause requires the Minister administering the *Water Corporation Act 1995* to consult the Minister responsible for administering the *Water Agencies (Powers) Act* (that is, the Minister responsible for water resource management) prior to agreeing to the Water Corporation’s statement of corporate intent.

This clause seeks to facilitate consistency between the strategic direction of the Corporation and the Government’s broader water resources management objectives, in cases where different Ministers are responsible for water resources management and the administration of Water Corporation.

Part 9 – Amendments to the *Waterways Conservation Act 1976*

Clause 147

Specifies the Act being amended as the *Waterways Conservation Act 1976*.

Clause 148

Long title amended

A consequential amendment. Clarifies the revised scope of the Act as a result of the disbanding of the Waterway Management Authorities and the Rivers and Estuaries Council.

- Clause 149 **Heading to Part 1 inserted**
Headings inserted into the Act to improve its structure.
- Clause 150 **Section 3 amended**
A consequential amendment. The definitions of “Commission”, “Committee”, “Council” and “Management Authority” are replaced with definitions of the “CEO” and the “Department”.
- Clause 151 **Section 5 amended**
A consequential amendment. Where the Minister (instead of the Commission) believes that a matter relates entirely to the waters within a management area or other land managed by the Commission (that is, land managed under agreement or Crown reserves), the provisions of the *Waterways Conservation Act* prevail over any inconsistent power of local government. Where the Minister (instead of the Commission) agrees with a local government that a matter relates to land inside a management area or other land managed by the Commission but is not likely to affect the waters of that management area or that other land, the provisions of the *Waterways Conservation Act* do not apply in so far as they conflict with relevant local government powers. Where, in the opinion of the Minister (instead of the Commission), a matter may indirectly affect the waters of a management area or other land managed by the Commission and there is a conflict between the provisions of the *Waterways Conservation Act* and relevant local government powers, the local government must consult the Minister (instead of the Commission) in relation to the exercise of the potentially conflicting power.
- Section 15 (resolution of disputes by the Governor) is repealed as part of the general repeal of provisions referring to Management Authorities (see clause 157). Any reference in this section to disputes being resolved in accordance with section 15 is removed. Since the Minister (instead of the Commission) is now responsible for exercising these functions under this clause, disputes are more appropriately resolved by negotiations within Government, rather than being required to be determined by the Governor.
- Clause 152 **Section 8 amended**
A consequential amendment. The Minister (instead of the Commission) has the power to determine (by a notice in

writing) where any requirement of this Act does not apply.

Clause 153

Heading to Part 2 inserted
Part 2 – Application of the Act

Clause 154

Section 9 amended
A consequential amendment. Removes references to the Commission and Management Authorities.

Sub-section 9(2) outlining the areas to which powers of Management Authorities applies is deleted, since Management Authorities have been disbanded and the Act will be administered by the Minister.

Areas to which this Act applies will include:

- Management Areas (under section 10);
- Private land in respect of which there is an agreement (under section 31); and
- Reserves, the care and control of which has been placed under the Minister under (section 32).

Clause 155

Section 10 amended
Reference to Management Authorities is removed and the declared areas will be administered by the Minister and the Department (see new sections 11 and 12). The Minister (instead of the Environmental Protection Authority) will be responsible for making recommendations to the Governor to declare management areas for the purposes of the *Waterways Conservation Act*.

Clause 155 makes consequential amendments and corrects a reference to the repealed *Interpretation Act 1918*.

Clause 156

Heading to Part 3 inserted
Part 3 - Functions of the Minister

Clause 157

Sections 11 to 30 replaced by sections 11 and 12
The previous sections detailed the constitution, functions and powers of the Rivers and Estuaries Council and the Management Authorities, and these have been dissolved, consistent with recommendations at page 130 of the 2001 Machinery of Government Review Report “Government Structures for Better Results”. All references to Management Authorities under this and other sections of this Act are deleted.

The sections are replaced with new sections 11 and 12, that outline the functions of the Minister.

Section 11 General functions of the Minister

The functions of the Commission and Management Authorities are transferred to the Minister. The Minister will have overall responsibility for the conservation of waters and associated land, including control and prevention of pollution to waters or land.

The Minister will be responsible for the general administration of the Act, such as licensing and permitting, and carrying out works. To achieve administrative efficiency the Minister may delegate the performance of these functions to the CEO and officers of the Department (see clause 191) and pay local government to construct works to support these functions.

Section 12 Performance of the functions of the Minister

A consequential amendment that transfers the Commission's functions to the Minister.

Clause 158

Heading to Part 4 and section 30 inserted

Part 4 - Agreements, management programmes and consultation

Section 30 Covenants

A consequential amendment. This provision replaces the repealed subsection 25(2)(1) and gives the Minister (instead of the Commission) the power to negotiate covenants on private land as if the Minister were a neighbour. The covenant may only be taken for the purpose of conservation of the land and water to which the Act applies.

Clause 159

Section 31 amended

A consequential amendment. The Minister (instead of the Commission or a Management Authority) will have the power to enter into agreements with landowners for any purpose specified under this Act.

Clause 160

Section 32 amended

A consequential amendment. The Minister (instead of the Commission) may be given the power to care, control and manage land reserved under the *Land Administration Act 1997*, by the Land Administration Minister. The Land Administration Minister may by a management order provide that any powers conferred on the Minister or

CEO can be exercised by a local government or another body. This provides some flexibility for management and control of vested land within management areas.

- Clause 161 **Section 33 amended**
A consequential amendment. It will allow the Minister to consult with local government on initiatives under this Act that may be of interest to the local government.
- Clause 162 **Section 34 repealed**
This provision is repealed since the Minister does not require a statutory provision to be able to enter into agreements.
- Clause 163 **Section 35 amended**
A consequential amendment. The Minister (instead of the Commission) will be empowered to prepare management programs for operations to be undertaken within a management area, in consultation with local government and any other relevant public authority.
- Specific reference is made to regulations that may ensure that any development, physical disturbance or interference does not occur without consent of the Minister, for areas subject to a management program. The Minister will also be empowered to arrange for or carry out any works specified by a management program.
- Clause 164 **Section 36 amended**
A consequential amendment. The Minister (instead of the Commission) may request a town planning decision maker to refer town planning applications to the Minister (instead of the Commission).
- Clause 165 **Section 37 amended**
A consequential amendment. Where it comes to the notice of any other Minister that a proposal or act may be detrimental to an area subject to this Act, that Minister is required to advise the Minister (instead of the Commission) and provide assistance to resolve the issue, if practical. The obligation on the Commission to report to the Minister has been removed in recognition that departments, unlike statutory authorities, have obligations to Ministers that do not need to be specified in statute.
- Clause 166 **Section 38 amended**
A consequential amendment. Provides that public referrals are dealt with by the Minister (instead of the Commission).
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- Clause 167 **Sections 39, 42, 43 and 45 repealed**
 A consequential amendment. The first three sections relate to staffing, funding and administration of the Commission and Management Authorities that are repealed by this Act. Section 45 relates to protection from liability, and is replaced by clause 191 of this Bill.
- Clause 168 **Heading to Part 5 inserted**
 Part 5 - Protection of Waters and land
- Clause 169 **Section 46 amended**
 A consequential amendment. The Minister (instead of the Commission) will be responsible for licensing. These functions can be delegated by the Minister. Subsection 46(2) is repealed since it is unnecessary to deal with Management Authorities and delegates of the Minister will be subject to the same provisions as the person making the delegation.
- Clause 170 **Section 48 amended**
 A consequential and additional amendment. It gives the Minister (instead of the Commission) specific powers regarding control of pollution, and the use of waters to which this Act applies. While the general prohibition and regulations for permitting or licensing certain activities are retained, the offence of pollution is removed as the matter is adequately addressed in the *Environmental Protection Act 1986*.
- Clause 171 **Section 49 amended**
 A consequential amendment. The Minister (instead of the Commission or Management Authority) will be able to apply for Supreme Court injunctions against a person contravening this Act.
- Clause 172 **Section 50 amended**
 A consequential amendment. The Minister (instead of the Commission or relevant Management Authority) will be able to issue orders that require people to remove polluting matter, and make regulations regarding pollution
- Clause 173 **Section 51 amended**
 A consequential amendment. The Minister (instead of the Commission) will be responsible for the removal of structures that have not been removed in spite of an order to do so.

- Clause 174 **Section 52 amended**
 A consequential amendment. The Minister (instead of the Commission) will be able to issue works orders for remedial works.
- Clause 175 **Section 53 amended**
 A consequential amendment. The Minister (instead of the Commission) will be responsible for recovering expenses incurred through sections 50, 51 or 52.
- Clause 176 **Headings to Part 6 and division 1 inserted**
 Part 6 – General provisions
 Division 1 – By-laws
- Clause 177 **Section 54 repealed**
 Consequential and editorial amendments. The provision to prepare model by-laws for the Management Authorities is deleted. The Minister is responsible for making by-laws, and is required to seek public comment on proposed by-laws consistent with clause 191 of this Bill.
- Clause 178 **Section 56 amended**
 Editorial amendments to repeal redundant sub-sections whilst retaining the original intent. Existing sub-sections (2) and (3) dealing with the adoption of model by-laws are repealed as there is no longer provision for model by-laws (see clause 177).
- Replaces sub-section (5) with a new provision requiring local laws to be prepared in accordance with the *Local Government Act 1995*. The procedural requirements of section 3.12 of the *Local Government Act* require the local government to give a copy of the proposed local law to the Minister administering the *Waterways Conservation Act*.
- Inserts a new sub-section to provide that local laws made by local governments under this Act only have effect so far as they are consistent with by-laws made by the Minister.
- Clause 179 **Section 57 amended**
 A consequential amendment. Ensures that regulations prevail over by-laws and local laws that are made under this Act.

- Clause 180 **Sections 58 and Section 59 are repealed**
 A consequential amendment. Repeals section 58 since sufficient checks and controls exist concerning local laws made by local governments.
- The public consultation provisions of section 59 are recast in clause 191.
- Clause 181 **Heading to Division 2 inserted**
Division 2 - Enforcement provisions
- Clause 182 **Section 61 amended**
 A consequential amendment. The CEO (instead of the Commission) is able appoint inspectors. Provisions relating to Management Authorities are deleted and references to officers of other agencies who may act as inspectors are updated.
- Clause 183 **Section 62 amended**
 A consequential amendment that outlines the powers of the CEO (instead of the Commission) to appoint 'honorary wardens', and deletes references to Management Authorities.
- Clause 184 **Section 63 amended**
 A consequential amendment. Replaces references to the Commission and Management Authority with the Minister as the recipient of information.
- Clause 185 **Section 64 amended**
 A consequential amendment that replaces references to the Commission and Management Authority with the Minister.
- Clause 186 **Sections 66 and 67 repealed**
 Fines under this Act will be paid to the State consolidated fund (instead of the Commission)(see also Clause 206 for complementary changes to the *Sentencing Act 1995*).
- Clause 187 **Heading to Division 3 inserted**
 Division 3 - General offence and procedural provisions
- Clause 188 **Section 69 amended**
 A consequential amendment referring to acts of the Minister (instead of the Commission or a Management Authority) in legal proceedings.

- Clause 189 **Section 71 amended**
A consequential amendment referring to the Minister (instead of the Commission) as being able to authorise people to bring a prosecution for an offence against the Act.
- Clause 190 **Section 75 amended**
A consequential amendment. Relates to ‘evidentiary provisions’, and requires that in proceedings for an offence, proof is not required of some administrative matters unless evidence is given to the contrary. The language is simplified and all references to the “Commission and Management Authority” are replaced where appropriate.

Sub-section (8) is repealed as it relates to evidence or minutes being kept as proof of meetings for all Management Authority meetings. With the dissolution of Management Authorities, this is no longer relevant.
- Clause 191 **Heading to Division 4 and section 76 to 81 inserted**
Division 4 – Administrative provisions

Section 76 Delegation by the Minister
Since the majority of the Commission’s powers will be vested in the Minister, broad delegation powers have been granted to the Minister to ensure operational efficiencies arising from the day-to-day administration of water resources. Delegations may be made to the CEO; another officer of the Department; an officer of another department or employee of an organisation; another Minister; the employing authority of another department or organisation (for example, the CEO of another Department); or any other person or body.

Delegations to different Ministers or departments may be required to ensure effective water resource management. Where the delegation is to another Minister, the CEO of the Department or the employing authority of another department or organisation, it may not be practical for those persons to exercise the delegated powers personally. Hence, where powers are delegated to these persons, the Minister is empowered to authorise these persons to further delegate the power. The persons to whom the power may be sub-delegated is limited, however, to persons within the relevant department or organisation. Powers delegated to Departmental officers (other than the

CEO), officers of other departments or organisations and other persons or bodies may not be sub-delegated.

Section 77 Delegation by the CEO

The CEO has the power to delegate the CEO's powers and duties. Powers may be delegated to other officers of the Department; an officer of another department or an employee of an organisation; the employing authority of another department or an organisation (for example the CEO of another Department); or any other person or body.

Prior to delegating powers, the CEO is required obtain the approval of the Minister, except in the case where CEO delegates to an officer of the Department. This will ensure Ministerial responsibility for delegations.

A person to whom the CEO delegates a power may not further delegate that power, except where the CEO delegates to the employing authority of another department or organisation (for example the CEO of another Department) as it may not be practicable for that person to exercise the delegated power. Again, the persons to whom the employing authority may sub-delegate are limited to persons within the relevant department or organisation.

Section 78 Public consultation

This section modernises the public consultation requirements of the deleted section 59 and ensures that people affected by proposals have the opportunity to be consulted.

Section 79 Information officially obtained to be confidential

This provision protects confidential information that may only be used or released in accordance with section 79(2). The penalties for disclosing information contrary to this clause are consistent with the penalties provided in the new section 112 of the *Water Agencies (Powers) Act* (see clause 141).

Section 80 Annual reports

This provision allows confidential information to be removed from annual reports and other departmental publications while retaining the right of Parliament to obtain the information.

Section 81 Protection from liability for wrongdoing

A standard section to protect any person who acts ‘in good faith’ to administer any function under the *Water Agencies (Powers) Act 1984* or a relevant Act (as listed in section 5 of the *Water Agencies (Powers) Act*). It includes protection for members of committees formed by the Minister under the *Water Agencies (Powers) Act* when performing their functions as committee members. The liability for these acts falls to the Crown.

Clause 192 **Section 76 renumbered**

Clause 193 **Section 76 (as renumbered) amended**

A consequential amendment. Removes reference to the Commission advising the Governor on recommended regulations and guiding regulations.

Clause 194 **Schedule repealed**

A consequential amendment. The Schedule is repealed as it relates to the procedural matters common to a meeting of the River and Estuaries Council, a Management Authority or their committees, and these groups are disbanded.

Clause 195 **Various references to Commission changed to Minister**

Lists consequential amendments to replace references to the “Commission” with references to the “Minister”.

Part 10 – Repeal of Acts

Clause 196 **The Water and Rivers Commission Act 1995 repealed**

The *Water and Rivers Commission Act 1995* is repealed and the Commission and its Board of management cease to exist.

Clause 197 **The Water Supply, Sewerage, and Drainage Act 1912 repealed and savings provision**

The *Water Supply, Sewerage and Drainage Act 1912* established the Minister responsible for the administration of certain water Acts as a body corporate, and vested certain works and lands in that body corporate. The *Water Agencies (Powers) Act 1984* now includes comprehensive and modernised provisions relating to the establishment of a Water Resources Ministerial Body (see Clause 114).

Therefore the *Water Supply, Sewerage and Drainage Act 1912* is repealed. Any land or property held by the old Ministerial body corporate will transfer to the new Ministerial Body established under the *Water Agencies (Powers) Act* (see clause 216).

Part 11- Consequential amendments to other Acts

- Clause 198 ***Conservation and Land Management Act 1984 amended***
Updates various sections of this Act by adding definitions for Minister (Water Resources) (being the Minister administering the *Water Agencies (Powers) Act 1984*) and replacing references to “Water and Rivers Commission” and “Minister for Water Resources” where appropriate.
- Clause 199 ***Constitution Acts Amendment Act 1899 amended***
Amendments to Schedule V of the *Constitution Acts Amendment Act 1899* to remove references to bodies that cease due to this Bill, and listing the Water Resources Council established by section 16 of the *Water Agencies (Powers) Act 1984* (see clause 114) The effect is that if members of bodies listed in this schedule are elected to the Parliament, they will automatically lose their representation on the specified body.
- Clause 200 ***Energy Operators (Powers) Act 1979 amended***
Consequential amendments to replace the reference to “Water and Rivers Commission” with the Minister referred to in the *Water Agencies (Powers) Act*.
- Clause 201 ***Environmental Protection Act 1986 amended***
Consequential amendments to ensure a person nominated by the Minister (Water Resources) (instead of the Water and Rivers Commission) is consulted on matters relating to issuing pollution licences that affect water resources.

A definition of Minister (Water Resources) is inserted, as being the Minister administering the *Water Agencies (Powers) Act 1984*.
- Clause 202 ***Financial Administration and Audit Act 1994 amended***
Amends this Act by deleting the reference to Water and Rivers Commission in the list of statutory authorities set out in Schedule 1. The Department will not be listed in this schedule since it is not a statutory authority.
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- Clause 203 ***Land Administration Act 1997 amended***
Consequential amendments to ensure that where the Land Administration Minister delegates powers under the *Land Administration Act 1997* to the Minister responsible for the administration of the *Water Agencies (Powers) Act*, those powers can be sub-delegated by the Minister administering the *Water Agencies (Powers) Act* to the CEO of the Department or any Departmental officer (instead of the Commission or Commission officer).
- Clause 204 ***Public Sector Management Act 1994 amended***
Consequential amendment to remove the reference to “Water and Rivers Commission” from Schedule 2 of this Act.
- Clause 205 ***Public Works Act 1902 amended***
Consequential amendments to allow the Minister responsible for the administration of *Public Works Act* to delegate powers under that Act to the Minister responsible for water resources management, being the Minister responsible for the administration of *Water Agencies (Powers) Act* (instead of the *Water and Rivers Commission Act*). Those powers may be sub-delegated to the CEO or any Departmental officer (instead of the Commission or Commission officer).
- Clause 206 ***Sentencing Act 1995 amended***
Consequential amendment to Schedule 1 of this Act to ensure that fines under the two Acts listed are paid into the State consolidated fund instead of to the Department (see also clauses 48 and 186).
- Clause 207 ***Soil and Land Conservation Act 1945 amended***
Consequential amendments to delete a reference to Water and Rivers Commission in the definition of Public Authority. No other amendment is required since ‘Public Authority’ is already defined to include the Ministers administering the *Country Areas Water Supply Act* and the *Rights in Water and Irrigation Act*.
- Clause 208 ***Water Boards Act 1904 amended***
Consequential amendment to replace references to the Commission with the Minister administering the *Water Boards Act*.

Part 12 – Transitional Provisions

These transitional provisions are modelled on the *Public Transport Authority Act 2003* sections 71 to 78, and the *Water Agencies Restructure (Transitional & Consequential Provisions) Act 1995* sections 189 to 219.

Division 1 – Interpretation

- Clause 209 **Terms used in this Part**
Clarifies the definitions. The terms and interpretations are standard, and apply generally to this Part.
- Clause 210 **Interpretation Act 1984 not limited**
A clause inserted to ensure that this Part does not limit the operation of the *Interpretation Act 1984*.

Division 2 – Transfer of assets, liabilities, accounts, proceedings etc

- Clause 211 **Minister to make transfer orders**
Requires the Minister to make transfer orders specifying which assets, liabilities etc and proceedings are to be transferred to the Ministerial Body established by section 11 of the *Water Agencies (Powers) Act* (see clause 114). The transfer order may also provide for specified reserved land that is currently within the care, control and management of the Commission to be vested in the Minister for the Environment (instead of being automatically vested in the Minister responsible for the *Water Agencies (Powers) Act* under clause 213). This will allow the Minister for the Environment to take responsibility for reserves to which the *Waterways Conservation Act 1976* applies, in the event that the *Waterways Conservation Act* is to be administered within the portfolio of the Minister for the Environment.

The Minister has the power to make the transfer order as soon as this Act receives Royal Assent.

Transfer orders will have effect (under clause 212) at the transfer time, which will be when the bulk of the amendments are proclaimed to commence. At that time, the Water and Rivers Commission will cease and majority of the Commission's functions will be vested in the Minister.

- Clause 212 **Transfer of assets and liabilities**
Clause 212 gives effect to the transfer order(s). It assigns rights and liabilities to the Ministerial Body in accordance with the transfer order(s). Any rights and liabilities of the Commission not assigned to the Ministerial Body are transferred to the State.
- It substitutes the Ministerial Body as a party to certain proceedings in accordance with the transfer order(s) and substitutes the State as a party to any other proceedings that the Commission is party to.
- It amends agreements and instruments in accordance with the transfer, but only to the extent of substituting references to the Commission with references to the Ministerial Body or the State.
- It also provides that remedies or proceedings that were available against the Commission in relation to Commission's assets and liabilities continue to be available against the Ministerial Body (in cases where the asset or liability in question has been assigned to the Ministerial Body) or the State (in cases where the asset or liability in question has been assigned to the State). Similarly, acts or omissions of the Commission are deemed to be acts or omissions of either the Ministerial Body or the State.
- Clause 213 **Transfer of care, control and management of reserved land**
Clause 213 transfers the care and control of any Crown reserves or other land that before the transfer time was with the Commission to the Minister. Any associated conditions are to apply to the Minister instead of the Commission. Commission reserves that are specified in the transfer order as being placed under the care, control and management of Minister for the Environment will not be transferred to the Minister under this clause (see also clause 211(1)(d)).
- Clause 214 **The Water and Rivers Commission account**
This provision enables the transfer of the balance of the funds in the Water and Rivers Commission Account to an account of the Department.
- Clause 215 **Commission to complete necessary transactions**
This provision ensures that any asset, right or liability that cannot be transferred at the transfer time to the State or
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Ministerial Body will remain with the Commission until it is transferred or vested in the State or Ministerial Body. The Commission is to continue for this purpose and a person is to be appointed by the Minister to 'be' the Commission. The Commission is to complete all necessary transactions to transfer the assets or liabilities.

- Clause 216 **The *Water Supply, Sewerage and Drainage Act 1912***
This Act is repealed and the Ministerial body corporate established under this Act will, therefore, no longer exist (see clause 197). This clause provides for that Ministerial body corporate to be succeeded by the Ministerial Body established under section 11 of the *Water Agencies (Powers) Act 1984* (as inserted by clause 114). Freehold land and other property held by the old Ministerial body corporate will transfer to the new Ministerial body. Any reserves under the care, control and management of the old Ministerial body corporate are deemed to be placed under the care, control and management of the Minister administering the *Water Agencies (Powers) Act*.
- Clause 217 **Registration of documents**
This provision requires the relevant officials to make the changes necessary to statutory registers to reflect the transfers under this Division. The definition of 'relevant officials' is provided in this section.
- Clause 218 **Exemption from State taxes**
This transitional clause will provide for exemption from any State tax (including stamp duty) normally incurred on transfers. Other charges, such as transfer fees paid to the Registrar of Titles will apply.
- Clause 219 **Rectifying error in transfer order**
This provision enables the Minister to correct any errors in a transfer order made under clause 211. The correction may be specified to have retrospective operation, taking effect from the transfer time. Sub-clause (3) protects people who may be otherwise disadvantaged because of the retrospective operation of the correction.
- Division 3 – Staff etc**
- Clause 220 **Transfer of staff**
Sub-clause (1) transfers salary staff employed by the Commission under the *Public Sector Management Act*, while sub-clause (2) will transfer wages staff who are employed by another Act.

Clause 221 **Transfer of arrangements about use of other staff**
This clause ensures the transfer of any other staff, such as those on secondment, to the Department.

Clause 222 **Employees' rights preserved**
Ensures that all employment conditions (remuneration, accrued annual leave, long service leave, hours, etc) of all employees are maintained.

Clause 223 **Transfer of contracts for services**
People presently engaged by the Commission under a contract for services (under the *Public Sector Management Act*) will be taken to have been engaged by the CEO of the Department (instead of the Commission).

Division 4 – Committees of the Commission

Clause 224 **Transfer of members of committees of the Commission**
Committees established by the Commission under the *Water and Rivers Commission Act* that are in existence at the transfer time will be deemed to be committees established by the Minister under section 109 of the *Water Agencies (Powers) Act 1984* (as inserted by clause 114).

This clause only relates to committees that are in existence under the *Water and Rivers Commission Act* immediately before the transfer time. This clause will not apply where, prior to the transfer time, a Commission committee has been disbanded and re-established under other legislation (such as the *Environmental Protection Act 1986*).

Division 5 – Former Management Authorities under the *Waterways Conservation Act 1976*

Clause 225 **By-laws under the *Waterways Conservation Act 1976***
The amendments to the *Waterways Conservation Act* provide for the repeal of the provisions relating to Management Authorities. Any by-laws made under the *Waterways Conservation Act 1976* by a former Management Authority will be preserved and are deemed to have been made by the Minister responsible for the administration of the *Waterways Conservation Act*.

Clause 226 **Proceedings in relation to a former Management Authority**
Any proceedings that a former Management Authority may have commenced or been involved in will be transferred to the State at the transfer time.

Division 6 – Continuing effect of things done

Clause 227 **Continuing effect of licences, directions, determinations, notices etc**
Ensures that any existing licences, permits etc are continued.

Clause 228 **Completion of things commenced**
A general provision to ensure that anything commenced by a former body will be completed by the relevant successor, the Crown, the Minister, or the CEO, etc. New applications or proceedings need not be initiated.

Clause 229 **Continuing effect of things done generally**
A standard provision to ensure that all things done (or omitted) before the transfer time, continue.

Clause 230 **Agreements and instruments generally**
This provision provides that agreements and instruments (including subsidiary legislation) are to be construed according to this Bill.

Division 7 – General transitional provisions

Clause 231 **Confidentiality obligations to continue**
This provision ensures that confidentiality obligations set out in the repealed *Water and Rivers Commission Act 1995* remain in force. This section will not apply to the extent that other provisions relating to the use and disclosure of information are applicable (for example section 15 of the *Water Agencies (Powers) Act*, as inserted by clause 114; and section 112 of the *Water Agencies (Powers) Act*, as inserted by clause 141).

Clause 232 **Further transitional provisions may be made**
A standard provision that allows the Governor to make regulations to provide for any transitional matter that is not sufficiently provided for in this Part of the Act. The regulations may be made to operate retrospectively, so as to take effect from the transfer time. The provision protects people who may otherwise be adversely affected by the retrospective operation of the regulations.

Clause 233

Saving

A standard provision to ensure that the operation of this Part of the Act does not give rise to any additional legal liability or remedy, or render existing legal instruments void or unenforceable.