

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Water and Climate Change)

Water Resources Bill 2007

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 2
4	Notes 3
5	Offences against Act—application of Criminal Code etc 3
Part 2	Main principles and concepts
6	Objects of Act 4
7	Territory rights to water 4
8	Surface water 4
9	Ground water 5

J2006-218

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page
10 Waterway	5
11 Taking water	6
Part 3 Environmental flow guidelines	
12 Environmental flow guidelines	7
13 Environmental flow guidelines—preparation by authority	7
14 Environmental flow guidelines—consultation	7
15 Environmental flow guidelines—submission to Minister	8
Part 4 Water access entitlements	
16 Water management areas	10
17 Amounts of water available from areas	10
18 Amounts of water reasonable for uses	11
19 Water access entitlements	11
20 Water access entitlement—application	12
21 Water access entitlement—decision on application	12
22 Water access entitlement—content	14
23 Water access entitlement—conditions	15
24 Water access entitlement—amendment	15
25 Water access entitlement—special provision for certain entitlements based on surviving allocations etc	17
26 Water access entitlement—transfer	18
27 Water access entitlement—effect of transfer on licence to take water	19
Part 5 Licences	
Division 5.1 Licences to take water	
28 Licence to take water—requirement	20
29 Licence to take water—application	22
30 Licence to take water—decision on application	22
31 Licence to take water—conditions	24
32 Licence to take water—where water may be taken	25
Division 5.2 Driller's licences	
33 Driller's licence—requirement	26
34 Driller's licence—application	26

	Page
35 Driller's licence—decision on application	26
36 Driller's licence—conditions	27
Division 5.3 Bore work licences	
37 Bore work licence—requirement	27
38 Bore work licence—application	28
39 Bore work licence—decision on application	29
40 Bore work licence—conditions	29
Division 5.4 Waterway work licences	
41 Definitions—div 5.4	29
42 Waterway work licence—requirement	30
43 Waterway work licence—application	30
44 Waterway work licence—decision on application	31
45 Waterway work licence—conditions	32
46 Planning and Development Act not affected	32
Division 5.5 Recharge licences	
47 Recharge licence—requirement	32
48 Recharge licence—application	32
49 Recharge licence—decision on application	33
50 Recharge licence—conditions	33
51 Recharge licence—cancellation	34
Division 5.6 Licences—general provisions	
52 Licences—term	34
53 Licences—renewal	34
54 Licences—not transferable	35
55 Licences—amendment	35
56 Licences—surrender	36
57 Offence—failing to produce licence	36
58 Offence—contravening licence conditions	36
59 Offences—contravening certain conditions of licence to take water	36
Part 6 Disciplinary action	
60 Grounds for disciplinary action	38
61 Disciplinary action	38

Contents

	Page
62 Taking disciplinary action	39
63 Effect of suspension of entitlement, allocation or licence	40
Part 7 Administration	
64 Functions of environment protection authority	41
65 Delegation	42
66 Register	42
67 Inspection of register	43
Part 8 Assessment of water resources	
68 Water resources investigation	44
69 Cooperation etc with other jurisdictions	45
70 Things fixed to land by authority not taken to be fixtures	45
Part 9 Protection of water resources	
71 Notice prohibiting or restricting taking of water	46
72 Direction to modify or remove water structure	47
73 Direction to rectify effect of unauthorised activity etc	47
74 Direction to prevent or rectify damage to bed or bank of waterway	48
75 Directions in relation to unlicensed taking of surface water	49
76 Directions in relation to bores	49
77 Action by authority if notice or direction contravened	50
Part 10 Enforcement	
Division 10.1 General	
78 Definitions—pt 10	52
Division 10.2 Powers of authorised officers	
79 Power to enter premises	52
80 Production of identity card	53
81 Consent to entry	53
82 General powers on entry to premises	54
83 Power to seize things	55
84 Power to require name and address	56

	Page
Division 10.3 Search warrants	
85 Warrants generally	57
86 Warrants—application made other than in person	58
87 Search warrants—announcement before entry	60
88 Details of search warrant to be given to occupier etc	60
89 Occupier entitled to be present during search etc	61
Division 10.4 Return and forfeiture of things seized	
90 Receipt for things seized	61
91 Moving things to another place for examination or processing under search warrant	62
92 Access to things seized	63
93 Return or forfeiture of things seized	63
Part 11 Review of decisions	
94 Reviewable decisions	65
95 Review of decisions	66
96 Notice of reviewable decisions	66
Part 12 Miscellaneous	
97 Protection of officials from liability	67
98 Damage etc to be minimised	67
99 Compensation for exercise of powers	68
100 Incorporation of documents	69
101 Inspection of incorporated documents	69
102 Notification of certain incorporated documents	70
103 Evidentiary certificates	71
104 Criminal liability of corporation officers	72
105 Selfincrimination etc	74
106 Nonpayment of fees	75
107 Determination of fees	75
108 Approved forms	75
109 Regulation-making power	75

	Page
Part 13	Surviving allocations
110	Survival of allocations 77
111	Surviving allocations—surrender generally 77
112	Surviving allocations—surrender by water utility 79
113	Surviving allocations—surrender by holder no longer owner or occupier of land 79
Part 20	Transitional
200	Environmental flow guidelines 80
201	Existing licences and permits 80
202	Water access entitlement for certain existing licence holders 81
203	Information on register 82
204	References to Planning and Development Act 82
205	Transitional regulations 82
206	Expiry—pt 20 83
Part 21	Repeals and consequential amendments
207	Legislation repealed 84
208	Administrative Decisions (Judicial Review) Act 1989 Schedule 1, item 18 84
209	Gunghalin Drive Extension Authorisation Regulation 2004 Section 4 (e) 84
210	Land (Planning and Environment) Regulation 1992 Schedule 1, item 3 (d) 84
211	Utilities Act 2000 Section 20 (2) (l) 85
Dictionary	86

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment, Water and Climate Change)

Water Resources Bill 2007

A Bill for

An Act to provide for sustainable management of the water resources of the Territory, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Water Resources Act 2007*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

17 *Note 1* The dictionary at the end of this Act defines certain terms used in this
18 Act, and includes references (*signpost definitions*) to other terms
19 defined elsewhere in this Act.

20 For example, the signpost definition ‘*offence*, for part 10
21 (Enforcement)—see section 78.’ means that the term ‘offence’ is
22 defined in that section for part 10.

23 *Note 2* A definition in the dictionary (including a signpost definition) applies to
24 the entire Act unless the definition, or another provision of the Act,
25 provides otherwise or the contrary intention otherwise appears (see
26 Legislation Act, s 155 and s 156 (1)).

1 **4 Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5 Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1 Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2 Penalty units*

15 The Legislation Act, s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

1 **Part 2 Main principles and concepts**

2 **6 Objects of Act**

3 The objects of this Act are—

- 4 (a) to ensure that management and use of the water resources of
5 the Territory sustain the physical, economic and social
6 wellbeing of the people of the ACT while protecting the
7 ecosystems that depend on those resources; and
- 8 (b) to protect aquatic ecosystems and aquifers from damage and,
9 where practicable, to reverse damage that has already
10 happened; and
- 11 (c) to ensure that the water resources are able to meet the
12 reasonably foreseeable needs of future generations.

13 **7 Territory rights to water**

14 Subject to this Act, the right to the use, flow and control of all water
15 of the Territory is vested in the Territory and is exercisable by the
16 Minister on behalf of the Territory.

17 **8 Surface water**

18 For this Act, *surface water* means—

- 19 (a) water on or flowing over land (including in a waterway) after
20 having—
- 21 (i) fallen as rain or hail or precipitated in any other way; or
- 22 (ii) risen to the surface naturally from underground; or

1 (iii) been returned to the environment following treatment or
2 use; and

3 (b) water mentioned in paragraph (a) that has been collected in a
4 dam, reservoir or rainwater tank.

5 **9 Ground water**

6 (1) For this Act, *ground water* means water occurring or obtained from
7 below the surface of the ground or beneath a waterway.

8 (2) *Ground water* includes water occurring in or obtained or flowing
9 from a bore.

10 (3) However, *ground water* does not include water occurring in or
11 obtained or flowing from any other system for the distribution,
12 reticulation, transportation, storage or treatment of water or waste.

13 **10 Waterway**

14 (1) For this Act, *waterway* means—

15 (a) a river, creek, stream or other natural channel in which water
16 flows (whether continuously or intermittently); or

17 (b) the stormwater system or any other channel formed (whether
18 completely or partly) by altering or relocating a waterway
19 mentioned in paragraph (a); or

20 (c) a lake, pond, lagoon or marsh (whether formed by geomorphic
21 processes or by works) in which water collects (whether
22 continuously or intermittently).

23 (2) *Waterway* includes—

24 (a) the bed that the water in the waterway normally flows over or
25 is covered by; and

26 (b) the banks that the water in the waterway normally flows
27 between or is contained by.

1 (3) However, **waterway** does not include land normally not part of the
2 waterway that may be covered from time to time by floodwaters
3 from the waterway.

4 (4) In this section:

5 **stormwater** means water run-off that is normally collected by a
6 stormwater system.

7 **stormwater system** means a system of pipes, gutters, drains and
8 channels that are public works constructed to collect or transport
9 stormwater in or through an urban area.

10 **11 Taking water**

11 (1) For this Act, **take** water includes—

12 (a) in relation to surface water—

13 (i) withdraw, pump, extract or use surface water; and

14 (ii) divert surface water for the purpose of using it; and

15 (iii) do anything else that results in a reduction of flow of
16 surface water in a waterway; and

17 (b) in relation to ground water—allow ground water to flow or be
18 pumped from a bore.

19 (2) However, a person does not **take** water if the person uses water
20 taken by someone else under a licence to take water.

21 **Example—s (2)**

22 using water provided by a water utility

23 *Note* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).

Part 3 Environmental flow guidelines

12 Environmental flow guidelines

- (1) The Minister may approve guidelines (*environmental flow guidelines*) for working out the flow of water that is needed to maintain aquatic ecosystems.

Note Power to make a statutory instrument (including guidelines) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) Environmental flow guidelines approved by the Minister are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

13 Environmental flow guidelines—preparation by authority

- (1) Before the Minister approves environmental flow guidelines, the authority must prepare draft environmental flow guidelines for the Minister's approval.
- (2) In preparing draft guidelines, the authority must consider principally the ecological needs of aquatic ecosystems but may also take into account the environmental, economic and social impact of the guidelines.

14 Environmental flow guidelines—consultation

- (1) After preparing draft guidelines under section 13, the authority must prepare a written notice (a *consultation notice*)—
- (a) containing a brief description of the draft guidelines; and
- (b) stating that copies of the draft guidelines are available for public inspection for a period (the *consultation period*) and at the place stated in the notice; and

- 1 (c) inviting people to give written comments about the draft
2 guidelines to the authority in the consultation period.
- 3 (2) The consultation period must be at least 60 days.
- 4 (3) The consultation notice—
- 5 (a) is a notifiable instrument; and
- 6 (b) must be published in a daily newspaper circulating generally in
7 the ACT.
- 8 *Note* A notifiable instrument must be notified under the Legislation Act.
- 9 (4) The authority must consider any written comments given to it in the
10 consultation period and may revise the draft guidelines in
11 accordance with the comments as it considers appropriate.
- 12 (5) This section does not apply to a draft amendment of the
13 environmental flow guidelines that is to make formal changes only.

14 **15 Environmental flow guidelines—submission to Minister**

- 15 (1) The authority must submit the draft guidelines (including any
16 revision under section 14 (4)) to the Minister for approval, together
17 with a written report—
- 18 (a) about the authority's consultation with the public and with any
19 particular person or entity about the draft guidelines; and
- 20 (b) setting out the issues raised in the comments given to the
21 authority under section 14 in the consultation period.
- 22 (2) On receiving draft guidelines submitted for approval, the Minister
23 may—
- 24 (a) approve the guidelines as submitted; or
- 25 (b) refer the draft back to the authority with a written direction to
26 do 1 or more of the following:
- 27 (i) conduct further stated consultation;

- 1 (ii) consider any revision suggested by the Minister;
- 2 (iii) revise the draft in a stated way.
- 3 (3) If the Minister refers draft guidelines back to the authority under
- 4 subsection (2) (b), the authority must—
- 5 (a) comply with the Minister's directions; and
- 6 (b) resubmit the draft guidelines (with any revisions required) to
- 7 the Minister for approval together with a written report about
- 8 the authority's compliance with the Minister's directions and
- 9 about any revision of the draft guidelines.
- 10 (4) Subsection (2) applies to draft guidelines resubmitted to the Minister
- 11 for approval.

1 **Part 4 Water access entitlements**

2 **16 Water management areas**

3 (1) The Minister must determine areas (*water management areas*) for
4 managing the water resources of the Territory.

5 (2) A determination is a disallowable instrument.

6 *Note* A disallowable instrument must be notified, and presented to the
7 Legislative Assembly, under the Legislation Act.

8 **17 Amounts of water available from areas**

9 (1) The Minister must determine—

10 (a) the total amount of surface water that is available for taking in
11 each water management area; and

12 (b) the total amount of ground water that is available for taking in
13 each water management area.

14 (2) The amounts must be determined taking into account—

15 (a) the environmental flow guidelines; and

16 (b) the total water resources of the Territory; and

17 (c) any investigations undertaken by the authority to establish
18 sustainable yields for the water management area.

19 (3) The Minister may also determine, for any water management area,
20 an amount of the water determined under subsection (1) that is to be
21 reserved for future use.

22 (4) If the Minister makes a determination reducing the amount of water
23 reserved for future use under subsection (3), the determination may
24 state the reason for the reduction.

1 (5) A determination under this section is a disallowable instrument.

2 *Note* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the Legislation Act.

4 **18 Amounts of water reasonable for uses**

5 (1) The Minister may determine guidelines for working out the amounts
6 of water that are reasonable amounts for particular uses.

7 *Note* Decisions about granting water access entitlements and issuing licences
8 to take water require consideration of what are reasonable amounts for
9 intended uses (see s 21 (2) (a) (ii) and s 30 (2) (c)).

10 (2) A determination is a disallowable instrument.

11 *Note* A disallowable instrument must be notified, and presented to the
12 Legislative Assembly, under the Legislation Act.

13 **19 Water access entitlements**

14 (1) A *water access entitlement* is an entitlement to the amount of
15 surface water or ground water stated in the entitlement.

16 (2) The amount must be stated as the lesser of—

17 (a) a percentage of the total amount of the surface water or ground
18 water available for taking from time to time in the water
19 management area stated in the entitlement; and

20 (b) a stated maximum volume.

21 *Note* Because a water access entitlement entitles the holder to a percentage of
22 the water available for taking, and that amount is likely to vary from
23 time to time, the entitlement does not guarantee that a particular volume
24 of water, or any water, will be available under the entitlement.

- 1 **20 Water access entitlement—application**
- 2 (1) A person may apply to the Minister for a water access entitlement.
- 3 *Note 1* If a form is approved under s 108 for this provision, the form must be
- 4 used.
- 5 *Note 2* A fee may be determined under s 107 for this provision.
- 6 (2) The application must be in writing and must state—
- 7 (a) the applicant’s name; and
- 8 (b) whether the applicant seeks surface water or ground water; and
- 9 (c) the amount of water sought; and
- 10 (d) the water management area to which the amount relates; and
- 11 (e) the intended use of the water; and
- 12 (f) the place where the applicant intends to access the water and
- 13 the basis of the applicant’s right to have access to that place.
- 14 (3) The Minister may, by written notice given to the applicant, require
- 15 the applicant to give the Minister additional information or
- 16 documents the Minister reasonably needs to decide the application.
- 17 (4) If the applicant does not comply with a requirement under
- 18 subsection (3), the Minister may refuse to consider the application
- 19 further.
- 20 **21 Water access entitlement—decision on application**
- 21 (1) On application by a person for a water access entitlement, the
- 22 Minister must—
- 23 (a) grant the water access entitlement; or
- 24 (b) refuse to grant the water access entitlement.

- 1 (2) The Minister must not grant the water access entitlement unless
2 satisfied that—
- 3 (a) the amount of water to which the entitlement would give
4 access—
- 5 (i) is available for taking having regard to any determination
6 in force under section 17 (Amounts of water available
7 from areas) and any other water access entitlements and
8 surviving allocations that exist in relation to the water
9 management area; and
- 10 (ii) is not more than a reasonable amount for the intended use
11 having regard to any determination in force under
12 section 18 (Amounts of water reasonable for uses); and
- 13 (b) the water is not intended to be used on urban residential
14 property; and
- 15 (c) the intended use of the water is otherwise consistent with the
16 Territory plan; and
- 17 (d) the applicant does not hold a surviving allocation; and
- 18 *Note* Surviving allocations are water allocations that were granted
19 under the repealed Act. A person holding a surviving allocation
20 may surrender it, and be granted a water access entitlement, under
21 this Act, pt 13 (Surviving allocations).
- 22 (e) it is appropriate to grant the entitlement having regard to—
- 23 (i) the applicant's environmental record; and
- 24 (ii) anything else the Minister considers relevant.
- 25 (3) Subsection (2) (b) does not apply if the applicant is a water utility.

- 1 (4) In deciding applications, the Minister must give priority—
- 2 (a) first, to any application for surface water by the owner or
- 3 occupier of land who—
- 4 (i) was previously able to take water without a licence
- 5 because the water was taken from a waterway on or
- 6 immediately adjacent to the land; and
- 7 (ii) can no longer do so because a boundary change was made
- 8 to the land, on the Territory's initiative, after the
- 9 commencement of this Act; and
- 10 (iii) is seeking the water for stock or domestic use; and
- 11 (b) second, to any application by a person who does not have
- 12 access to urban water supply and is seeking the water for stock
- 13 or domestic use; and
- 14 (c) after that, as the Minister considers appropriate.

15 **22 Water access entitlement—content**

16 A water access entitlement must state—

- 17 (a) the name of the holder of the entitlement; and
- 18 (b) the amount of surface water or ground water that may be taken;
- 19 and

20 *Note* The amount must be stated as the lesser of a percentage of the

21 total amount of water available for taking in the water

22 management area and a stated maximum volume (see s 19 (2)).

- 23 (c) the water management area to which the amount relates; and
- 24 (d) if the holder does not have access to urban water supply and
- 25 the entitlement is for water for stock or domestic use—
- 26 (i) that the water is for stock or domestic use; and
- 27 (ii) the place where the water may be taken; and

- 1 (e) anything else required under this Act to be stated in the water
2 access entitlement.

3 *Note* A reference to an Act includes a reference to the statutory instruments
4 made or in force under the Act, including any regulation (see
5 Legislation Act, s 104).

6 **23 Water access entitlement—conditions**

- 7 (1) A water access entitlement is subject to any condition—
8 (a) imposed when the entitlement is granted; or
9 (b) prescribed by regulation; or
10 (c) imposed on amendment of the entitlement under section 24.

11 **Examples of conditions to which water access entitlement may be subject**

- 12 1 that the water may be used only for the purpose stated in the entitlement
13 2 that the water may be used only in a water management area
14 3 that the water may be taken only from the place stated in the entitlement
15 4 for an entitlement to ground water granted to enable a bore to be drilled—
16 that the entitlement will expire at the end of 12 months after the entitlement
17 is granted if ground water is not found in that period.

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 Legislation Act, s 126 and s 132).

- 21 (2) The conditions to which a water access entitlement is subject are
22 taken to be conditions of any licence to take water that is based on
23 the entitlement.

24 **24 Water access entitlement—amendment**

- 25 (1) The authority may amend a water access entitlement, including by
26 imposing a condition on, or amending an existing condition of, the
27 entitlement.

28 *Note* A fee may be determined under s 107 for this provision.

- 1 (2) However, the authority may amend an entitlement only if—
- 2 (a) the authority has given the holder of the entitlement written
- 3 notice of the proposed amendment; and
- 4 (b) the notice states that written comments on the proposal may be
- 5 made to the authority before the end of a stated period of at
- 6 least 14 days after the day the notice is given to the holder; and
- 7 (c) the authority has considered any comments made before the
- 8 end of the stated period.
- 9 (3) Subsection (2) does not apply if the holder applied for, or agreed in
- 10 writing to, the proposed amendment.
- 11 (4) The amendment of an entitlement takes effect on—
- 12 (a) the date on which notice of the amendment is given to the
- 13 holder; or
- 14 (b) if a later date is stated in the notice—that date.
- 15 (5) A condition imposed or amended by the authority must not be
- 16 inconsistent with any condition prescribed by regulation that applies
- 17 to the entitlement.
- 18 (6) This section does not apply to an amendment made under
- 19 section 25.

25 Water access entitlement—special provision for certain entitlements based on surviving allocations etc

- (1) This section applies to a water access entitlement granted by the authority under section 111 (Surviving allocations—surrender generally) or section 202 (Water access entitlement for certain existing licence holders) that includes a statement about where the water may be taken.

Note The statement is included on—

- water access entitlements granted under s 111 if no fee was paid under the repealed Act for the grant of the surrendered allocation; and
- all water access entitlements granted under s 202.

- (2) On application by the holder of the entitlement, the authority must amend the water access entitlement to remove the statement.

Note A fee may be determined under s 107 for this provision.

- (3) The authority must also amend the entitlement to remove the statement before—

(a) approving a transfer of the entitlement; or

(b) making any other amendment of the entitlement.

Example—s (3) (b)

changing the percentage of water that may be taken stated in the entitlement

Note 1 A fee may be determined under s 107 for this provision.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Subsection (3) does not apply in relation to—

(a) an entitlement held by a water utility; or

(b) an entitlement that—

- (i) is held by a person who does not have access to urban water supply; and

- 1 (ii) is for water for stock or domestic use; or
- 2 (c) an amendment of an entitlement held by an individual that is to
- 3 be made only because the individual has changed his or her
- 4 name.

5 **26 Water access entitlement—transfer**

- 6 (1) The holder of a water access entitlement may, with the approval of
- 7 the authority, transfer the whole or part of the entitlement to
- 8 someone else.

9 *Note* A fee may be determined under s 107 for this provision.

- 10 (2) The authority must not approve the transfer of a water access
- 11 entitlement unless satisfied that—

- 12 (a) the intended use of the water and the place it is proposed to be
- 13 used is consistent with—

14 (i) the conditions of the entitlement; and

15 (ii) the Territory plan; and

- 16 (b) it is appropriate to approve the transfer having regard to—

17 (i) the transferee's environmental record; and

18 (ii) anything else the authority considers relevant.

- 19 (3) A transfer of a water access entitlement may be absolute or for a
- 20 limited period.

- 21 (4) A transfer of part of a water access entitlement must be for units no
- 22 smaller than 0.5ML.

- 23 (5) A water access entitlement that entitles the holder to water for stock
- 24 or domestic use on particular land may be transferred to someone
- 25 else only if the holder's interest in the land is also transferred to that
- 26 person.

- 1 (6) A regulation may make provision in relation to the transfer of water
2 access entitlements.

3 **27 Water access entitlement—effect of transfer on licence to**
4 **take water**

- 5 (1) If a person transfers absolutely the whole of a water access
6 entitlement or corresponding water access entitlement to which a
7 licence to take water relates, the licence is taken to be cancelled.
- 8 (2) If a person transfers, for a limited period, the whole of a water
9 access entitlement or corresponding water access entitlement to
10 which a licence to take water relates, the licence is taken to be
11 suspended for the period.
- 12 (3) If a person transfers absolutely part of a water access entitlement or
13 corresponding water access entitlement to which a licence to take
14 water relates, the amount of water the person is authorised to take
15 under the licence is taken to be reduced by the amount of the
16 transfer.
- 17 (4) If a person transfers, for a limited period, part of a water access
18 entitlement or corresponding water access entitlement to which a
19 licence to take water relates, the amount of water the person is
20 authorised to take under the licence is taken to be reduced by the
21 amount of the transfer for the period.
- 22 (5) In this section:
- 23 *corresponding water access entitlement* means a water access
24 entitlement (however described) granted under a law of the
25 Commonwealth, a State or another Territory that regulates the
26 granting of entitlements to water and is prescribed by regulation for
27 this definition.

Part 5 Licences

Division 5.1 Licences to take water

28 Licence to take water—requirement

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

- (a) takes surface water or ground water from a place; and
- (b) does not have a licence to take the water from the place.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person who is the owner or occupier of land commits an offence if the person—

- (a) takes ground water from a bore on the land; and
- (b) does not have a licence to take the ground water.

Maximum penalty: 50 penalty units.

(3) An offence against subsection (2) is a strict liability offence.

(4) A person commits an offence if the person—

- (a) in the conduct of a business carrying or extracting water, takes surface water from a place; and
- (b) does not have a licence to take the surface water.

Maximum penalty: 50 penalty units.

(5) An offence against subsection (4) is a strict liability offence.

(6) This section does not apply to—

- (a) the taking of water from a waterway—
 - (i) for camping or similar purposes; or

(ii) for watering travelling stock; or

Examples—par (a) (i)

1 bushwalking

2 picnicking

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) the taking of rainwater from a rainwater tank that has been installed in accordance with the approval (if any) required under the *Planning and Development Act 2007*, chapter 7 (Development approvals); or

(c) the owner or occupier of land on or immediately adjacent to which there is a waterway who takes water from the waterway, or surface water from the land, for stock or domestic use; or

(d) the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of protecting life or property, or controlling, extinguishing or preventing the spread of a fire; or

(e) the taking of water by a person who is exempt under a regulation from the requirement to have a licence.

(7) In this section:

relevant person means—

(a) the chief officer (fire brigade); or

(b) any other member of the fire brigade; or

(c) the chief officer (rural fire service); or

(d) any other member of the rural fire service; or

(e) a police officer; or

(f) any other person under the control of the chief officer (fire brigade) or the chief officer (rural fire service).

29 Licence to take water—application

- (1) A person may apply to the authority for a licence to take water from a stated place.

Note 1 If a form is approved under s 108 for this provision, the form must be used.

Note 2 A fee may be determined under s 107 for this provision.

- (2) The authority may, by written notice given to the applicant, require the applicant to give the authority additional information or documents the authority reasonably needs to decide the application.

- (3) If the applicant does not comply with a requirement under subsection (2), the authority may refuse to consider the application further.

30 Licence to take water—decision on application

- (1) On application by a person for a licence to take water, the authority must—

- (a) issue the licence; or
- (b) refuse to issue the licence.

- (2) The authority must not issue the licence unless satisfied that—

- (a) the applicant—
 - (i) holds a water access entitlement, a corresponding water access entitlement or a surviving allocation on which to base the taking of water under the licence; or
 - (ii) is exempt from this requirement under a regulation; and
- (b) the water to be taken under the licence is to be taken from—
 - (i) the water management area stated in the water access entitlement or subcatchment stated in the surviving allocation; or

-
- 1 (ii) another water management area from which the water
2 may be taken under section 32 (Licence to take water—
3 where water may be taken) or under a regulation; and
- 4 (c) the amount of water to be taken under the licence is not more
5 than a reasonable amount for the intended use having regard to
6 any determination in force under section 18; and
- 7 (d) the water is not intended to be used on urban residential
8 property; and
- 9 (e) the intended use of the water is otherwise consistent with the
10 Territory plan; and
- 11 (f) the applicant has lawful authority—
- 12 (i) to obtain access to the place from which the water is to be
13 taken under the licence; and
- 14 (ii) if the water is to be diverted from that place to where it is
15 to be used—to divert the water; and
- 16 (g) if the application relates to a development for which an
17 approval is required under the *Planning and Development*
18 *Act 2007*, chapter 7 (Development approvals)—the
19 development has been approved under that chapter.
- 20 (3) Also the authority must not issue the licence unless satisfied it is
21 appropriate to do so having regard to—
- 22 (a) the applicant's environmental record; and
- 23 (b) whether issuing the licence would or may—
- 24 (i) adversely affect the environmental flows for a particular
25 waterway or aquifer that are required under the
26 environmental flow guidelines; or
- 27 (ii) adversely affect the environment in any other way; or
- 28 (iii) adversely affect the interests of other water users; and
-

- 1 (c) anything else the authority considers relevant.
- 2 (4) Subsection (2) (d) does not apply—
- 3 (a) to a water utility; or
- 4 (b) if the entitlement on which the licence is to be based—
- 5 (i) was granted under section 111 (Surviving allocations—
- 6 surrender generally) or section 202 (Water access
- 7 entitlement for certain existing licence holders) (whether
- 8 or not it has been later transferred); and
- 9 (ii) allows the water to be used on stated urban residential
- 10 property.
- 11 (5) A regulation made for subsection (2) (a) may authorise the authority
- 12 to exempt a person from the requirement mentioned in that
- 13 subsection in the circumstances prescribed by regulation.

14 **31 Licence to take water—conditions**

- 15 (1) A licence to take water is subject to any condition—
- 16 (a) prescribed by regulation; or
- 17 (b) imposed on the licence by the authority.

18 **Examples of conditions to which licence may be subject**

- 19 1 that records must be kept
- 20 2 that a water meter must be installed, operated and maintained
- 21 3 that information about compliance with licence conditions must be given to
- 22 the authority
- 23 4 that monitoring and testing must be done after water is taken
- 24 5 that places from which water is taken must be marked in a stated way
- 25 6 that water may only be taken at a stated rate (which may be different for
- 26 different days of the year)
- 27 7 that not more than a stated maximum amount of water may be taken
- 28 8 that water must not be taken from a waterway at a time when there is no or
- 29 little flow in the waterway

9 that the authority must be allowed to conduct regular routine inspections

Note 1 The licence is also subject to any condition that applies to a water access entitlement on which the licence is based (see s 23 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A condition imposed by the authority must not be inconsistent with any condition prescribed by regulation that applies to the licence.

32 Licence to take water—where water may be taken

- (1) A licence to take water held by a water utility may authorise the utility to take surface water under the licence from—

(a) the water management area stated in the water access entitlement on which the licence is based; or

(b) a place in a waterway that is downstream from the water management area; or

(c) any other water management area for which the utility holds a water access entitlement.

- (2) A licence to take water held by a person other than a water utility may authorise the person to take surface water under the licence from—

(a) the water management area stated in the water access entitlement on which the licence is based; or

(b) if the water management area is prescribed by regulation for this paragraph—a place in a waterway that is downstream from the water management area.

- (3) A licence to take water must not authorise ground water to be taken under the licence from a water management area other than the water management area stated in the water access entitlement on which the licence is based.

- 1 (4) In this section:
2 ***water access entitlement*** includes a surviving allocation.

3 *Note* ***Surviving allocation*** is defined in s 110.

4 **Division 5.2 Driller's licences**

5 **33 Driller's licence—requirement**

6 A person commits an offence if the person—

- 7 (a) does bore work; and
8 (b) does not hold a driller's licence to do the bore work.

9 Maximum penalty: 50 penalty units, imprisonment for 6 months or
10 both.

11 **34 Driller's licence—application**

- 12 (1) A person may apply to the authority for a driller's licence.

13 *Note 1* If a form is approved under s 108 for this provision, the form must be
14 used.

15 *Note 2* A fee may be determined under s 107 for this provision.

- 16 (2) The authority may, by written notice given to the applicant, require
17 the applicant to give the authority additional information or
18 documents the authority reasonably needs to decide the application.

- 19 (3) If the applicant does not comply with a requirement under
20 subsection (2), the authority may refuse to consider the application
21 further.

22 **35 Driller's licence—decision on application**

- 23 (1) On application by a person for a driller's licence, the authority
24 must—

- 25 (a) issue the licence; or

- 1 (b) refuse to issue the licence.
- 2 (2) The authority must not issue a driller's licence unless satisfied
- 3 that—
- 4 (a) the applicant has the qualifications (if any) approved under
- 5 subsection (3); and
- 6 (b) it is appropriate to issue the licence having regard to—
- 7 (i) the applicant's environmental record; and
- 8 (ii) anything else the authority considers relevant.
- 9 (3) The authority may approve qualifications that must be held by a
- 10 person who holds a driller's licence.
- 11 (4) An approval is a notifiable instrument.

12 *Note* A notifiable instrument must be notified under the Legislation Act.

13 **36 Driller's licence—conditions**

- 14 (1) A driller's licence is subject to any condition—
- 15 (a) prescribed by regulation; or
- 16 (b) imposed on the licence by the authority.
- 17 (2) A condition imposed by the authority must not be inconsistent with
- 18 any condition prescribed by regulation that applies to the licence.

19 **Division 5.3 Bore work licences**

20 **37 Bore work licence—requirement**

- 21 (1) A person who is the owner or occupier of land commits an offence
- 22 if—
- 23 (a) bore work is done on the land; and

1 (b) the person does not have a bore work licence for the bore
2 work.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

5 (2) A person who is the holder of a driller's licence commits an offence
6 if—

7 (a) the person does bore work on land; and

8 (b) the owner or occupier of the land does not have a bore work
9 licence for the bore work.

10 Maximum penalty: 50 penalty units, imprisonment for 6 months or
11 both.

12 (3) This section does not apply to bore work that is exempt from the
13 requirement for a bore work licence under a regulation.

14 **38 Bore work licence—application**

15 (1) A person may apply to the authority for a licence to do bore work.

16 *Note 1* If a form is approved under s 108 for this provision, the form must be
17 used.

18 *Note 2* A fee may be determined under s 107 for this provision.

19 (2) The authority may, by written notice given to the applicant, require
20 the applicant to give the authority additional information or
21 documents the authority reasonably needs to decide the application.

22 (3) If the applicant does not comply with a requirement under
23 subsection (2), the authority may refuse to consider the application
24 further.

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- 1 **39 Bore work licence—decision on application**
- 2 (1) On application by a person for a bore work licence, the authority
- 3 must—
- 4 (a) issue the licence; or
- 5 (b) refuse to issue the licence.
- 6 (2) The authority must not issue a bore work licence unless satisfied
- 7 that—
- 8 (a) the applicant holds a water access entitlement or surviving
- 9 allocation in relation to ground water to be taken from the
- 10 proposed bore; and
- 11 (b) it is appropriate to grant the licence having regard to—
- 12 (i) the proximity of any existing bores; and
- 13 (ii) anything else the authority considers relevant.

14 **40 Bore work licence—conditions**

- 15 (1) A bore work licence is subject to any condition—
- 16 (a) prescribed by regulation; or
- 17 (b) imposed on the licence by the authority.
- 18 (2) A condition imposed by the authority must not be inconsistent with
- 19 any condition prescribed by regulation that applies to the licence.

20 **Division 5.4 Waterway work licences**

21 **41 Definitions—div 5.4**

22 In this division:

23 *water structure* means—

- 24 (a) a dam (whether or not it is in or on a waterway); or

(b) another water retention structure in or on a waterway.

waterway work means—

(a) constructing or altering a water structure; or

(b) doing other work in or on a waterway.

42 Waterway work licence—requirement

(1) A person commits an offence if—

(a) the person does waterway work; and

(b) the work adversely affects, or may adversely affect, the flow or quality of water, or the aquatic habitat, in the waterway; and

(c) the person does not have a waterway work licence for the waterway work.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(2) This section does not apply to the construction or alteration of—

(a) a water structure that has a capacity of less than 2ML and is not in a waterway; or

(b) a structure prescribed by regulation.

43 Waterway work licence—application

(1) A person may apply to the authority for a licence to do waterway work.

Note 1 If a form is approved under s 108 for this provision, the form must be used.

Note 2 A fee may be determined under s 107 for this provision.

(2) The authority may, by written notice given to the applicant, require the applicant to give the authority additional information or documents the authority reasonably needs to decide the application.

- 1 (3) If the applicant does not comply with a requirement under
2 subsection (2), the authority may refuse to consider the application
3 further.

4 **44 Waterway work licence—decision on application**

- 5 (1) On application by a person for a waterway work licence, the
6 authority must—

- 7 (a) issue the licence; or
8 (b) refuse to issue the licence.

- 9 (2) The authority must not issue a waterway work licence unless
10 satisfied it is appropriate to do so having regard to—

- 11 (a) whether issuing the licence would or may—

- 12 (i) adversely affect the environmental flows for a particular
13 waterway or aquifer that are required under the
14 environmental flow guidelines; or

- 15 (ii) adversely affect the environment in any other way; or

- 16 (iii) adversely affect the interests of other water users; and

- 17 (b) whether the work would be in the interests of the public; and

- 18 (c) for work that involves the construction or alteration of a water
19 structure—

- 20 (i) whether the structure is designed to allow water to pass
21 over, under or through it; and

- 22 (ii) the need for the structure and whether another more
23 appropriate approach is available; and

- 24 (d) anything else the authority considers relevant.

1 **45 Waterway work licence—conditions**

- 2 (1) A waterway work licence is subject to any condition—
- 3 (a) prescribed by regulation; or
- 4 (b) imposed on the licence by the authority.
- 5 (2) A condition imposed by the authority must not be inconsistent with
- 6 any condition prescribed by regulation that applies to the licence.

7 **46 Planning and Development Act not affected**

8 This division does not affect the operation of the *Planning and*

9 *Development Act 2007*.

10 **Division 5.5 Recharge licences**

11 **47 Recharge licence—requirement**

- 12 A person commits an offence if the person—
- 13 (a) does any of the following work for the purpose of increasing
- 14 the quantity of groundwater:
- 15 (i) constructs works;
- 16 (ii) operates works;
- 17 (iii) alters works; and
- 18 (b) does not have a recharge licence for the work.
- 19 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 20 both.

21 **48 Recharge licence—application**

- 22 (1) A person may apply to the authority for a recharge licence.

23 *Note 1* If a form is approved under s 108 for this provision, the form must be

24 used.

25 *Note 2* A fee may be determined under s 107 for this provision.

- 1 (2) The authority may, by written notice given to the applicant, require
2 the applicant to give the authority additional information or
3 documents the authority reasonably needs to decide the application.
- 4 (3) If the applicant does not comply with a requirement under
5 subsection (2), the authority may refuse to consider the application
6 further.

7 **49 Recharge licence—decision on application**

- 8 (1) On application by a person for a recharge licence, the authority
9 must—
- 10 (a) issue the licence; or
- 11 (b) refuse to issue the licence.
- 12 (2) The authority must not issue a recharge licence unless satisfied it is
13 appropriate to do so having regard to—
- 14 (a) the applicant's environmental record; and
- 15 (b) the risk of the rising level of ground water damaging soil, rock
16 or structures; and
- 17 (c) the risk of damaging ecosystems that depend on the area in
18 question; and
- 19 (d) the risk of affecting the natural drainage of surface water of the
20 area in question; and
- 21 (e) anything else the authority considers relevant.

22 **50 Recharge licence—conditions**

- 23 (1) A recharge licence is subject to any condition—
- 24 (a) prescribed by regulation; or
- 25 (b) imposed on the licence by the authority.

- 1 (2) A condition imposed by the authority must not be inconsistent with
2 any condition prescribed by regulation that applies to the licence.

3 **51 Recharge licence—cancellation**

4 The authority may cancel a recharge licence if satisfied that the
5 work being carried out under the licence is—

- 6 (a) damaging soil, rock or structures; or
7 (b) damaging ecosystems that depend on the area in question; or
8 (c) affecting the natural drainage of surface water of the area in
9 question.

10 *Note* A recharge licence may also be cancelled under pt 6 (Disciplinary
11 action) or s 106 (Nonpayment of fees).

12 **Division 5.6 Licences—general provisions**

13 **52 Licences—term**

14 A licence is issued for the term stated in the licence.

15 **53 Licences—renewal**

- 16 (1) The holder of a licence may apply, in writing, to the authority for
17 renewal of the licence.

18 *Note 1* If a form is approved under s 108 for this provision, the form must be
19 used.

20 *Note 2* A fee may be determined under s 107 for this provision.

- 21 (2) The application must be made not later than 14 days before the end
22 of the licence period.

- 23 (3) If the application is made in accordance with subsection (2), the
24 licence remains in force, subject to this Act, until the application is
25 decided.

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- 1 (4) On application to renew a licence, the authority must—
2 (a) renew the licence; or
3 (b) refuse to renew the licence.
4 (5) If the authority renews the licence, the renewal of the licence begins
5 on the day after the day the licence being renewed ends.
6 (6) A suspended licence may be renewed, but the renewed licence is
7 suspended until the suspension ends.

8 **54 Licences—not transferable**

9 A licence is not transferable.

10 **55 Licences—amendment**

- 11 (1) The authority may amend a licence, including by imposing a
12 condition on, or amending an existing condition of, the licence.
13 (2) However, the authority may amend a licence only if—
14 (a) the authority has given the licence holder written notice of the
15 proposed amendment; and
16 (b) the notice states that written comments on the proposal may be
17 made to the authority before the end of a stated period of at
18 least 14 days after the day the notice is given to the holder; and
19 (c) the authority has considered any written comments made
20 before the end of the stated period.
21 (3) Subsection (2) does not apply if the holder applied for, or agreed in
22 writing to, the proposed amendment.
23 (4) A condition imposed or amended by the authority must not be
24 inconsistent with any condition prescribed by regulation that applies
25 to the licence.

- 1 (5) The amendment of a licence takes effect on—
2 (a) the date on which notice of the amendment is given to the
3 holder; or
4 (b) if a later date is stated in the notice—that date.

5 **56 Licences—surrender**

6 The holder of a licence may surrender the licence to the authority by
7 written notice accompanied by the licence.

8 **57 Offence—failing to produce licence**

- 9 (1) The holder of a licence must, if asked by the authority, produce the
10 holder's licence to the authority when carrying out an activity under
11 the licence.

12 Maximum penalty: 5 penalty units.

- 13 (2) An offence against this section is a strict liability offence.

14 **58 Offence—contravening licence conditions**

- 15 (1) The holder of a licence commits an offence if the holder contravenes
16 a condition of the licence.

17 Maximum penalty: 50 penalty units.

- 18 (2) An offence against this section is a strict liability offence.

19 **59 Offences—contravening certain conditions of licence to**
20 **take water**

- 21 (1) The holder of a licence to take water commits an offence if—
22 (a) the holder's licence is subject to a condition requiring the
23 holder to install a water meter; and

- 1 (b) the holder contravenes the condition.
2 Maximum penalty: 25 penalty units.
- 3 (2) The holder of a licence to take water commits an offence if—
4 (a) the holder's licence is subject to a condition requiring the
5 holder to maintain a water meter in working condition; and
6 (b) the holder contravenes the condition.
7 Maximum penalty: 25 penalty units.
- 8 (3) The holder of a licence to take water commits an offence if—
9 (a) the holder's licence is subject to a condition requiring the
10 holder to record water meter readings at stated times or
11 intervals; and
12 (b) the holder contravenes the condition.
13 Maximum penalty: 10 penalty units.
- 14 (4) The holder of a licence to take water commits an offence if—
15 (a) the holder's licence is subject to a condition requiring the
16 holder to give water meter data to the authority; and
17 (b) the holder contravenes the condition.
18 Maximum penalty: 25 penalty units.
- 19 (5) The holder of a licence to take water commits an offence if—
20 (a) the holder's licence is subject to a condition limiting the use of
21 the water; and
22 (b) the holder contravenes the condition.
23 Maximum penalty: 50 penalty units.
- 24 (6) An offence against this section is a strict liability offence.

1 **Part 6 Disciplinary action**

2 **60 Grounds for disciplinary action**

3 Each of the following is a *ground* for disciplinary action against a
4 person who holds a water access entitlement, surviving allocation or
5 licence:

- 6 (a) the person gave information to the Minister or authority in
7 relation to the application for, or an application for amendment
8 of, the entitlement, allocation or licence that was false or
9 misleading in a material particular;
- 10 (b) the person has contravened, or is contravening, a condition of
11 the entitlement, allocation or licence;
- 12 (c) the person has contravened, or is contravening, this Act (or a
13 requirement made under this Act), whether or not the holder
14 has been convicted or found guilty of an offence for the
15 contravention;
- 16 (d) the person has contravened, or is contravening, a territory law
17 (other than this Act) or a law of the Commonwealth, a State or
18 another Territory, whether or not the holder has been convicted
19 or found guilty of an offence for the contravention.

20 *Note* A reference to an Act includes a reference to the statutory instruments
21 made or in force under the Act, including any regulation (see
22 Legislation Act, s 104).

23 **61 Disciplinary action**

24 Each of the following is *disciplinary action* when taken against a
25 person who is the holder of a water access entitlement, surviving
26 allocation or licence:

- 27 (a) reprimanding the person;

- 1 (b) for a driller's licence—requiring the person to complete a
2 stated course of training to the satisfaction of the authority or
3 another stated person;
- 4 (c) amending the entitlement, allocation or licence, including by
5 imposing a condition on it or amending any of its conditions;
- 6 (d) suspending the entitlement, allocation or licence—
7 (i) for a stated period; or
8 (ii) until a stated event happens;
- 9 (e) cancelling the entitlement, allocation or licence;
- 10 (f) cancelling the entitlement, allocation or licence and
11 disqualifying the person from applying for an entitlement or
12 licence—
13 (i) for a stated period; or
14 (ii) until a stated event happens.

15 **62 Taking disciplinary action**

- 16 (1) If the authority proposes to take disciplinary action in relation to a
17 person, the authority must give the person a written notice
18 (a *disciplinary notice*) that—
- 19 (a) states the proposed action (including any proposed suspension
20 or disqualification period or amendment of an entitlement,
21 allocation or licence); and
- 22 (b) states the grounds for the proposed action; and
- 23 (c) tells the person that the person may, not later than 14 days after
24 the day the person receives the notice, give a written response
25 to the authority about the notice.
- 26 (2) In deciding whether to take disciplinary action, the authority must
27 consider any response given to the authority by the person in
28 accordance with the notice.

- 1 (3) The authority may take the proposed disciplinary action in relation
2 to the person if satisfied that a ground for taking disciplinary action
3 has been established in relation to the person.
- 4 (4) The authority must give the person written notice of the authority's
5 decision.
- 6 (5) Disciplinary action under this section takes effect on—
7 (a) the day when notice of the decision is given to the person; or
8 (b) if the notice states a later date of effect—that date.

9 **63 Effect of suspension of entitlement, allocation or licence**

- 10 (1) If a water access entitlement, surviving allocation or licence is
11 suspended—
12 (a) the entitlement, allocation or licence does not authorise the
13 holder to do anything authorised under the entitlement,
14 allocation or licence during the suspension; and
15 (b) the holder is, during the suspension—
16 (i) taken not to hold the entitlement, allocation or licence;
17 and
18 (ii) disqualified from applying for an entitlement or licence.
- 19 (2) However, the entitlement may still be transferred, and the allocation
20 may still be surrendered, in accordance with this Act.
- 21 (3) The authority may end the suspension of an entitlement that is
22 transferred or an allocation that is surrendered.

Part 7 Administration

64 Functions of environment protection authority

- (1) The authority has the following functions under this Act:
- (a) to keep the state and condition of the water resources of the Territory under review;
 - (b) to coordinate policies in relation to water resource management;
 - (c) to regulate the allocation of water from waterways;
 - (d) to compile and maintain up-to-date information about the water resources of the Territory;
 - (e) to promote the importance, and encourage the efficient use, of water resources;
 - (f) to foster public education about the management of water resources;
 - (g) to implement national water resource measures made under national scheme laws or intergovernmental agreements relating to water resource management;
 - (h) to confer, and exchange information, with any entity having functions corresponding to those of the authority under a law of the Commonwealth, a State or another Territory relating to water resource management;
 - (i) any other functions given to the authority under this Act.
- (2) In exercising the authority's functions under this Act, the authority must have regard to the objects set out in section 6 and, where appropriate, promote an integrated approach to water resource management, environment protection and water catchment management.

65 Delegation

The authority may delegate its functions under this Act to a public employee.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

66 Register

- (1) The authority must keep a register for this Act.
- (2) The register may be kept in any form, including electronically, that the authority decides.
- (3) The register must include details of each of the water access entitlements granted, surviving allocations in force, licences issued and transfers made under this Act.
- (4) The register may also include—
 - (a) information required to be provided to the authority under a water access entitlement, surviving allocation or licence; and
 - (b) information given to the authority about third party interests in water access entitlements, surviving allocations or licences; and
 - (c) other information collected by the authority in carrying out its functions under this Act; and

Example

the results of monitoring, testing or recording carried out by the authority

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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-
-
- (d) any other information given to or held by the authority in relation to the water resources of the Territory (whether current or historical).

1 **67 Inspection of register**

2 (1) The register must be available for public inspection at reasonable
3 times.

4 (2) A person may, on payment of the reasonable copying costs, obtain a
5 copy of any information in the register.

Part 8 Assessment of water resources

68 Water resources investigation

(1) The authority must ensure, as far as possible, that a continuous program for the assessment of water resources of the Territory is carried out.

(2) For this part, the authority may—

(a) construct, repair, alter or remove gauging, recording and monitoring stations or drill bores; and

(b) systematically gauge stream flow, record climate data and monitor ground water levels; and

(c) operate or maintain gauging, recording and monitoring stations; and

(d) carry out investigations to determine the existence, location and nature of bores and water structures; and

(e) monitor bores and water structures; and

(f) sample and analyse water.

(3) The authority may, at all reasonable times, enter land to take measures and carry out work that is reasonably required for the purpose of doing something mentioned in subsection (2) and with the people and equipment that is reasonably required.

Note The Criminal Code, s 361 and s 363 contain offences for obstructing Territory public officials.

(4) However, the authority must not enter land to do work mentioned in subsection (2) (a) unless, at least 14 days before the entry day, the authority gave the owner or occupier of the land written notice (a **works notice**) of—

(a) the land proposed to be entered; and

-
- 1 (b) the work proposed to be done; and
- 2 (c) any vehicle, plant or machinery proposed to be used to carry
- 3 out the work.
- 4 (5) The authority may, at all reasonable times, enter land on which work
- 5 mentioned in a works notice is being, or has been, done for the
- 6 purpose of doing something mentioned in subsection (2) (b), (c), (d),
- 7 (e) or (f) and with the people and equipment that is reasonably
- 8 required.
- 9 (6) This section does not authorise entry into a part of premises that is
- 10 being used for residential purposes other than with the occupier's
- 11 consent.
- 12 (7) A person who enters land under this section is not authorised to
- 13 remain on the land if, on request by the occupier of the land, the
- 14 person does not produce—
- 15 (a) for an authorised officer—the officer's identity card; or
- 16 (b) in any other case—a certificate signed by the authority for this
- 17 section that the person is authorised to carry out an activity
- 18 mentioned in the certificate.

19 **69 Cooperation etc with other jurisdictions**

20 For this part, the authority may liaise and work in cooperation with

21 the Commonwealth or a State in the investigation of water resources

22 in which there is a shared interest.

23 **70 Things fixed to land by authority not taken to be fixtures**

24 If, in the exercise of a function, the authority attaches anything to

25 land, it is taken not to be—

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

Part 9 Protection of water resources

71 Notice prohibiting or restricting taking of water

(1) This section applies if—

(a) temporary water restrictions are in force under the *Utilities (Water Conservation) Regulation 2006*; or

(b) the Minister is satisfied that—

(i) because of contamination of surface water or ground water, taking the water may pose a risk to the health or safety of people or of damage to property or the environment; or

(ii) for any other reason, taking surface water or ground water may adversely affect the environment.

(2) The Minister may, by written notice, prohibit or restrict the taking of surface water or groundwater.

(3) The notice is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 The power to make a statutory instrument (including a notifiable instrument) includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).

(4) The authority must also give a copy of the notice to each licence holder who is affected by it.

(5) The notice expires on the date (not later than 12 months after the day it is notified under the Legislation Act) stated in the notice.

- 1 (6) A person commits an offence if the person engages in conduct that
2 contravenes a prohibition or restriction under a notice under this
3 section.

4 Maximum penalty: 100 penalty units, imprisonment for 1 year or
5 both.

6 **72 Direction to modify or remove water structure**

- 7 (1) The Minister may give the owner or occupier of land where a water
8 structure is located a written direction to modify or remove the
9 structure to allow water to pass over, under or through it.

- 10 (2) A person commits an offence if the person engages in conduct that
11 contravenes a direction given to the person under this section.

12 Maximum penalty: 100 penalty units, imprisonment for 1 year or
13 both.

14 **73 Direction to rectify effect of unauthorised activity etc**

- 15 (1) This section applies if a person has—

16 (a) done bore work or waterway work that is not authorised under
17 a licence; or

18 (b) contravened a condition of a licence issued under this Act.

- 19 (2) The authority may give the owner or occupier of the land where the
20 work was done or the contravention happened a written direction to
21 take—

22 (a) stated action to rectify the effect of the work or contravention;
23 and

24 (b) any other stated action the authority considers appropriate.

- 25 (3) The direction may state a period within which the person must
26 comply with the direction.

- 1 (4) A person commits an offence if the person engages in conduct that
2 contravenes a direction given to the person under this section.

3 Maximum penalty: 100 penalty units, imprisonment for 1 year or
4 both.

5 **74 Direction to prevent or rectify damage to bed or bank of**
6 **waterway**

- 7 (1) It is the duty of the owner or occupier of land on which there is a
8 waterway or that adjoins a waterway to take reasonable steps to
9 prevent damage to the bed or banks of the waterway.

- 10 (2) If the authority is satisfied that the owner or occupier of land has
11 failed to carry out the duty, the authority may give the owner or
12 occupier a written direction to take stated action the authority
13 considers appropriate—

14 (a) to prevent damage mentioned in subsection (1); and

15 (b) to rectify any damage that has already happened.

- 16 (3) The direction may state a period within which the person must
17 comply with the direction.

- 18 (4) A person commits an offence if the person engages in conduct that
19 contravenes a direction given to the person under this section.

20 Maximum penalty: 100 penalty units.

- 21 (5) In this section:

22 *damage* does not include—

23 (a) damage caused in the normal course of an activity authorised
24 under this Act; or

25 (b) damage of a minor nature.

75 Directions in relation to unlicensed taking of surface water

(1) This section applies if the authority is satisfied that a person who does not have a licence to take water from a waterway—

(a) has taken or is taking water from the waterway; or

(b) has pumping equipment in or near the waterway that may be used to take water from the waterway.

(2) The authority may give the person a written direction to do 1 or more of the following:

(a) not take the water;

(b) stop taking the water;

(c) not use the pumping equipment;

(d) stop using the pumping equipment;

(e) remove the pumping equipment from the waterway.

(3) A person commits an offence if the person contravenes a direction given to the person under this section.

Maximum penalty: 50 penalty units.

76 Directions in relation to bores

(1) This section applies if the authority is satisfied that something done or not done in relation to a bore may result, directly or indirectly, in the pollution or deterioration, inequitable distribution, loss, wastage or undue depletion of water, or unlicensed taking of water.

(2) The authority may give the owner or occupier of the land where the bore is located a written direction to do 1 or more of the following:

(a) shut off the supply of ground water from the bore in the way stated in the direction;

- 1 (b) restrict or limit the amount of water taken from the bore to the
2 extent stated in the direction;
- 3 (c) install and maintain a suitable meter to record the amount of
4 water taken or discharged from the bore;
- 5 (d) discontinue the use of the bore;
- 6 (e) close, or partly or completely plug, seal off or backfill the bore
7 in the way stated in the direction;
- 8 (f) use the water taken from the bore for the purpose stated in the
9 direction;
- 10 (g) do any other stated thing necessary for the protection of ground
11 water or an aquifer.
- 12 (3) The direction may state a period within which the person must
13 comply with the direction.
- 14 (4) A person commits an offence if the person engages in conduct that
15 contravenes a direction given to the person under this section.
- 16 Maximum penalty: 50 penalty units.
- 17 (5) An offence against this section is a strict liability offence.
- 18 **77 Action by authority if notice or direction contravened**
- 19 (1) This section applies if the authority has reasonable grounds for
20 believing that a person has engaged in conduct that contravened—
- 21 (a) a prohibition or restriction under a notice given to the person
22 under section 71; or
- 23 (b) a direction given to the person under this part.
- 24 (2) An authorised officer, or someone else authorised by the authority
25 for this section, may—
- 26 (a) enter the relevant land and take any action stated in the notice
27 or direction; and

- 1 (b) do anything else necessary to give effect to the notice or
2 direction.
- 3 (3) A person who enters land under this section is not authorised to
4 remain on the land if, on request by the occupier of the land, the
5 person does not produce—
- 6 (a) for an authorised officer—the officer's identity card; or
- 7 (b) in any other case—a certificate signed by the authority for this
8 section that the person is authorised to carry out an activity
9 mentioned in the certificate.
- 10 (4) The reasonable costs incurred by the authority in taking action under
11 this section are a debt owing to the Territory by the person to whom
12 the notice or direction was given.

Part 10 Enforcement

Division 10.1 General

78 Definitions—pt 10

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

premises includes land.

Division 10.2 Powers of authorised officers

79 Power to enter premises

(1) For this Act, an authorised officer may—

- (a) at any reasonable time, enter premises to which a licence relates to carry out an inspection authorised under the licence; or

- 1 (b) at any reasonable time, enter premises where a bore is located
2 to inspect the bore and take samples from it; or
3 (c) at any time, enter premises with the occupier's consent; or
4 (d) enter premises in accordance with a search warrant.
- 5 (2) However, subsection (1) (a) does not authorise entry into a part of
6 premises that is being used for residential purposes.
- 7 (3) An authorised officer may, without the consent of the occupier of
8 premises, enter land around the premises to ask for consent to enter
9 the premises.
- 10 (4) To remove any doubt, an authorised officer may enter premises
11 under subsection (1) without payment of an entry fee or other
12 charge.

13 **80 Production of identity card**

14 An authorised officer must not remain at premises entered under this
15 part if the authorised officer does not produce the officer's identity
16 card when asked by the occupier.

17 **81 Consent to entry**

- 18 (1) When seeking the consent of an occupier of premises to enter
19 premises under section 79 (1) (c), an authorised officer must—
- 20 (a) produce the officer's identity card; and
21 (b) tell the occupier—
- 22 (i) the reason for the entry; and
23 (ii) that anything found and seized under this part may be
24 used in evidence in court; and
25 (iii) that consent may be refused.

- 1 (2) If the occupier consents, the authorised officer must ask the occupier
2 to sign a written acknowledgment (an ***acknowledgement of***
3 ***consent***)—
4 (a) that the occupier was told—
5 (i) the reason for the entry; and
6 (ii) that anything found and seized under this part may be
7 used in evidence in court; and
8 (iii) that consent may be refused; and
9 (b) that the occupier consented to the entry; and
10 (c) stating the time and date when consent was given.
11 (3) If the occupier signs an acknowledgment of consent, the authorised
12 officer must immediately give a copy to the occupier.
13 (4) A court must find that the occupier did not consent to entry to the
14 premises by the authorised officer under this part if—
15 (a) the question arises in a proceeding in the court whether the
16 occupier consented to the entry; and
17 (b) an acknowledgment of consent is not produced in evidence;
18 and
19 (c) it is not proved that the occupier consented to the entry.

20 **82 General powers on entry to premises**

- 21 (1) An authorised officer who enters premises under this part may, for
22 this Act, do 1 or more of the following in relation to the premises or
23 anything on the premises:
24 (a) inspect or examine;
25 (b) take measurements or conduct tests;
26 (c) take samples;

(d) take photographs, films, or audio, video or other recordings;

(e) require the occupier, or anyone at the premises, to give the authorised officer reasonable assistance to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

(2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

83 Power to seize things

(1) An authorised officer who enters premises under this part with the occupier's consent may seize anything at the premises if—

(a) the authorised officer is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.

(2) An authorised officer who enters premises under a warrant under this part may seize anything at the premises that the authorised officer is authorised to seize under the warrant.

(3) An authorised officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—

(a) the thing is connected with an offence against this Act; and

(b) the seizure is necessary to prevent the thing from being—

(i) concealed, lost or destroyed; or

(ii) used to commit, continue or repeat the offence.

- 1 (4) Also, an authorised officer who enters premises under this part
2 (whether with the consent of a person in charge of the premises,
3 under a warrant or otherwise) may seize anything at the premises if
4 satisfied, on reasonable grounds, that the thing poses a risk to the
5 health or safety of people or of damage to property or the
6 environment.
- 7 (5) The powers of an authorised officer under subsections (3) and (4)
8 are additional to any powers of the authorised officer under
9 subsections (1) and (2) or any other territory law.
- 10 (6) Having seized a thing, an authorised officer may—
11 (a) remove the thing from the premises where it was seized (the
12 *place of seizure*) to another place; or
13 (b) leave the thing at the place of seizure but restrict access to it.
- 14 (7) A person commits an offence if the person —
15 (a) interferes with a seized thing, or anything containing a seized
16 thing, to which access has been restricted under subsection (6);
17 and
18 (b) does not have an authorised officer's approval to interfere with
19 the thing.
- 20 Maximum penalty: 50 penalty units.

21 **84 Power to require name and address**

- 22 (1) An authorised officer may require a person to state the person's
23 name and home address if the authorised officer believes, on
24 reasonable grounds, that the person is committing or has just
25 committed an offence against this Act.

26 *Note* A reference to an Act includes a reference to the statutory instruments
27 made or in force under the Act, including any regulation (see
28 Legislation Act, s 104).

- 1 (2) The authorised officer must tell the person the reason for the
2 requirement and, as soon as practicable, record the reason.
- 3 (3) The person may ask the authorised officer to produce the officer's
4 identity card for inspection by the person.
- 5 (4) A person must comply with a requirement made of the person under
6 subsection (1) if the authorised officer—
- 7 (a) tells the person the reason for the requirement; and
- 8 (b) complies with any request made by the person under
9 subsection (3).
- 10 Maximum penalty: 10 penalty units.
- 11 (5) An offence against this section is a strict liability offence.
- 12 (6) In this section:
- 13 *home address*, of a person, means the address of the place where the
14 person usually lives.

15 **Division 10.3 Search warrants**

16 **85 Warrants generally**

- 17 (1) An authorised officer may apply to a magistrate for a warrant to
18 enter premises.
- 19 (2) The application must be sworn and state the grounds on which the
20 warrant is sought.
- 21 (3) The magistrate may refuse to consider the application until the
22 authorised officer gives the magistrate all the information the
23 magistrate requires about the application in the way the magistrate
24 requires.

- 1 (4) The magistrate may issue a warrant only if satisfied there are
2 reasonable grounds for suspecting—
- 3 (a) there is a particular thing or activity connected with an offence
4 against this Act; and
- 5 (b) the thing or activity—
- 6 (i) is, or is being engaged in, at the premises; or
- 7 (ii) may be, or may be engaged in, at the premises within the
8 next 7 days.
- 9 (5) The warrant must state—
- 10 (a) that an authorised officer may, with any necessary assistance
11 and force, enter the premises and exercise the authorised
12 officer's powers under this part; and
- 13 (b) the offence for which the warrant is issued; and
- 14 (c) the things that may be seized under the warrant; and
- 15 (d) the hours when the premises may be entered; and
- 16 (e) the date, within 7 days after the day of the warrant's issue, the
17 warrant ends.

18 **86 Warrants—application made other than in person**

- 19 (1) An authorised officer may apply for a warrant by phone, fax, radio
20 or other form of communication if the authorised officer considers it
21 necessary because of—
- 22 (a) urgent circumstances; or
- 23 (b) other special circumstances.
- 24 (2) Before applying for the warrant, the authorised officer must prepare
25 an application stating the grounds on which the warrant is sought.
- 26 (3) The authorised officer may apply for the warrant before the
27 application is sworn.

- 1 (4) After issuing the warrant, the magistrate must immediately fax a
2 copy to the authorised officer if it is practicable to do so.
- 3 (5) If it is not practicable to fax a copy to the authorised officer—
- 4 (a) the magistrate must tell the authorised officer—
- 5 (i) the warrant's terms; and
- 6 (ii) the date and time the warrant was issued; and
- 7 (b) the authorised officer must complete a form of warrant (the
8 *warrant form*) and write on it—
- 9 (i) the magistrate's name; and
- 10 (ii) the date and time the magistrate issued the warrant; and
- 11 (iii) the warrant's terms.
- 12 (6) The faxed copy of the warrant, or the warrant form properly
13 completed by the authorised officer, authorises the entry and the
14 exercise of the authorised officer's powers under this part.
- 15 (7) The authorised officer must, at the first reasonable opportunity, send
16 to the magistrate—
- 17 (a) the sworn application; and
- 18 (b) if the authorised officer completed a warrant form—the
19 completed warrant form.
- 20 (8) On receiving the documents, the magistrate must attach them to the
21 warrant.
- 22 (9) A court must find that a power exercised by the authorised officer
23 was not authorised by a warrant under this section if—
- 24 (a) the question arises in a proceeding in the court whether the
25 exercise of power was authorised by a warrant; and
- 26 (b) the warrant is not produced in evidence; and

- 1 (c) it is not proved that the exercise of power was authorised by a
2 warrant under this section.

3 **87 Search warrants—announcement before entry**

- 4 (1) An authorised officer must, before anyone enters premises under a
5 search warrant—

6 (a) announce that the authorised officer is authorised to enter the
7 premises; and

8 (b) give anyone at the premises an opportunity to allow entry to
9 the premises; and

10 (c) if the occupier of the premises, or someone else who
11 apparently represents the occupier, is present at the premises—
12 identify himself or herself to the person.

- 13 (2) The authorised officer is not required to comply with subsection (1)
14 if the authorised officer believes, on reasonable grounds, that
15 immediate entry to the premises is required to ensure—

16 (a) the safety of anyone (including the authorised officer or any
17 person assisting); or

18 (b) that the effective execution of the warrant is not frustrated.

19 **88 Details of search warrant to be given to occupier etc**

20 If the occupier of premises, or someone else who apparently
21 represents the occupier, is present at the premises while a search
22 warrant is being executed, the authorised officer or a person
23 assisting must make available to the person—

24 (a) a copy of the warrant; and

25 (b) a document setting out the rights and obligations of the person.

89 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
- (a) to do so would impede the search; or
- (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 10.4 Return and forfeiture of things seized

90 Receipt for things seized

- (1) As soon as practicable after an authorised officer seizes a thing under this part, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt, secured conspicuously, at the place of seizure under section 83 (Power to seize things).
- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
- (b) an explanation of why the thing was seized;
- (c) the authorised officer's name, and how to contact the authorised officer;
- (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

- (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

- (b) the occupier of the premises agrees in writing.

- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.

- (3) An authorised officer may apply to a magistrate for an extension of time if the authorised officer believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.

- (4) The authorised officer must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the authorised officer must, if practicable—

- (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
- (b) allow the occupier or the occupier's representative to be present during the examination or processing.

- 1 (6) The provisions of this part relating to the issue of search warrants
2 apply, with any necessary changes, to the giving of an extension
3 under this section.

4 **92 Access to things seized**

5 A person who would, apart from the seizure, be entitled to inspect a
6 thing seized under this part may—

- 7 (a) inspect it; and
8 (b) if it is a document—take extracts from it or make copies of it.

9 **93 Return or forfeiture of things seized**

- 10 (1) A thing seized under this part must be returned to its owner, or
11 reasonable compensation must be paid by the Territory to the owner
12 for the loss of the thing, if—

13 (a) an infringement notice for an offence relating to the thing is
14 not served on the owner within 90 days after the day of the
15 seizure and a prosecution for an offence relating to the thing—

- 16 (i) is not started within the 90-day period; or
17 (ii) is started within the 90-day period but the court does not
18 find the offence proved; or

19 (b) an infringement notice for an offence relating to the thing is
20 served on the owner within 90 days after the day of the seizure,
21 the infringement notice is withdrawn and a prosecution for an
22 offence relating to the thing—

- 23 (i) is not started within the 90-day period; or
24 (ii) is started within the 90-day period but the court does not
25 find the offence proved; or

- 1 (c) an infringement notice for an offence relating to the thing is
2 served on the owner and not withdrawn within 90 days after
3 the day of the seizure, liability for the offence is disputed in
4 accordance with the *Magistrates Court Act 1930*, section 132
5 (Disputing liability for infringement notice offence) and an
6 information—
- 7 (i) is not laid in the Magistrates Court against the person for
8 the offence within 60 days after the day notice is given
9 under section 132 that liability is disputed; or
- 10 (ii) is laid in the Magistrates Court against the person for the
11 offence within the 60-day period, but the Magistrates
12 Court does not find the offence proved.
- 13 (2) If anything seized under this part is not required to be returned or
14 reasonable compensation is not required to be paid under
15 subsection (1), the thing—
- 16 (a) is forfeited to the Territory; and
- 17 (b) may be sold, destroyed or otherwise disposed of as the
18 authority directs.

Part 11 Review of decisions

94 Reviewable decisions

Each of the following decisions of the authority is a *reviewable decision*:

- (a) amending a water access entitlement under section 24;
- (b) refusing to approve the transfer of the whole or part of a water access entitlement under section 26;
- (c) refusing to issue a licence to take water under section 30;
- (d) imposing a condition on a licence to take water under section 31;
- (e) refusing to issue a driller's licence under section 35;
- (f) imposing a condition on a driller's licence under section 36;
- (g) refusing to issue a bore work licence under section 39;
- (h) imposing a condition on a bore work licence under section 40;
- (i) refusing to issue a waterway work licence under section 44;
- (j) imposing a condition on a waterway work licence under section 45;
- (k) refusing to issue a recharge licence under section 49;
- (l) imposing a condition on a recharge licence under section 50;
- (m) refusing to renew a licence under section 53;
- (n) imposing a condition, on or amending an existing condition of, a licence under section 55;
- (o) taking, under section 62, disciplinary action mentioned in section 61 (c), (d), (e) or (f);

Section 95

- 1 (p) giving a direction under section 72 (Direction to modify or
2 remove water structure);
- 3 (q) giving a direction under section 73 (Direction to rectify effect
4 of unauthorised activity);
- 5 (r) giving a direction under section 74 (Direction to prevent or
6 rectify damage to bed or bank of waterway);
- 7 (s) giving a direction under section 75 (Directions in relation to
8 unlicensed taking of surface water);
- 9 (t) giving a direction under section 76 (Directions in relation to
10 bores).

11 **95 Review of decisions**

12 Application may be made to the AAT for review of a reviewable
13 decision.

14 **96 Notice of reviewable decisions**

- 15 (1) The authority must give notice of a reviewable decision to—
- 16 (a) for a decision mentioned in section 94 (a) or (b)—the holder of
17 the water access entitlement; or
- 18 (b) for a decision mentioned in section 94 (c) to (n)—the applicant
19 for or the holder of the licence; or
- 20 (c) for a decision mentioned in section 94 (o)—the holder of the
21 water access entitlement, water allocation or licence; or
- 22 (d) for a decision mentioned in section 94 (p) to (t)—the person to
23 whom the direction was given.
- 24 (2) The notice must be in accordance with the requirements of the code
25 of practice in force under the *Administrative Appeals Tribunal*
26 *Act 1989*, section 25B (1).

Part 12 Miscellaneous

97 Protection of officials from liability

(1) In this section:

official means—

(a) the authority; or

(b) anyone else exercising a function under this Act.

(2) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for conduct engaged in honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(3) Any civil liability that would, apart from subsection (2), attach to an official attaches instead to the Territory.

98 Damage etc to be minimised

(1) In the exercise, or purported exercise, of a function under this Act, an authorised officer must take all reasonable steps to ensure that the authorised officer, and any person assisting the authorised officer, causes as little inconvenience, detriment and damage as practicable.

(2) If an authorised officer, or a person assisting an authorised officer, damages anything in the exercise or purported exercise of a function under this Act, the authorised officer must give written notice of the particulars of the damage to the person the authorised officer believes, on reasonable grounds, is the owner of the thing.

- 1 (3) If the damage happens at premises entered under this Act in the
2 absence of the occupier, the notice may be given by leaving it,
3 secured conspicuously, at the premises.

4 **99 Compensation for exercise of powers**

- 5 (1) A person may claim compensation from the Territory if the person
6 suffers loss or expense—
7 (a) in complying with a notice given to the person under
8 section 72 (Direction to modify or remove water structure); or
9 (b) because of the exercise, or purported exercise, of a function
10 under any of the following provisions by an authorised officer,
11 a person assisting an authorised officer or someone else
12 authorised by the authority:
13 (i) part 8 (Assessment of water resources);
14 (ii) section 77 (Action by authority if notice or direction
15 contravened);
16 (iii) part 10 (Enforcement).
17 (2) Compensation may be claimed and ordered in a proceeding for—
18 (a) compensation brought in a court of competent jurisdiction; or
19 (b) an offence against this Act brought against the person making
20 the claim for compensation.
21 (3) A court may order the payment of reasonable compensation for the
22 loss or expense only if satisfied it is just to make the order in the
23 circumstances of the particular case.
24 (4) A regulation may prescribe matters that may, must or must not be
25 taken into account by the court in considering whether it is just to
26 make the order.

1 **100 Incorporation of documents**

2 A statutory instrument under this Act may apply, adopt or
3 incorporate an instrument, as in force from time to time.

4 *Note 1* The text of an applied, adopted or incorporated instrument, whether
5 applied as in force from time to time or at a particular time, is taken to
6 be a notifiable instrument (see Legislation Act s 47 (5) and (6)).
7 However, that requirement does not apply if—

- 8 • section 102 is complied with; or
- 9 • the operation of the Legislation Act, s 47 (5) or (6) is otherwise
10 disapplied (see that Act, s 47 (7)).

11 *Note 2* A notifiable instrument must be notified under the Legislation Act.

12 **101 Inspection of incorporated documents**

- 13 (1) This section applies to an incorporated document, or an amendment
14 of, or replacement for, an incorporated document.

15 *Note* For the meaning of *incorporated document*, see the dictionary.

- 16 (2) The authority must ensure that the document, amendment or
17 replacement is made available for inspection free of charge to the
18 public on business days at reasonable times at the office of the
19 authority.

- 20 (3) In this section:

21 *amendment*, of an incorporated document—see section 102 (6).

22 *replacement*, for an incorporated document—see section 102 (6).

- 1 **102 Notification of certain incorporated documents**
- 2 (1) This section applies to—
- 3 (a) an incorporated document; or
- 4 (b) an amendment of, or replacement for, an incorporated
- 5 document.
- 6 **Example of replacement document**
- 7 a new edition of the incorporated document
- 8 *Note 1* For the meaning of *incorporated document*, see the dictionary.
- 9 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
- 10 does not limit, the meaning of the provision in which it appears (see
- 11 Legislation Act, s 126 and s 132).
- 12 (2) The authority may prepare a written notice (an *incorporated*
- 13 *document notice*) for the incorporated document, amendment or
- 14 replacement that contains the following information:
- 15 (a) for an incorporated document—details of the document,
- 16 including its title, author and date of publication;
- 17 (b) for an amendment—the date of publication of the amendment
- 18 (or of the document as amended) and a brief summary of the
- 19 effect of the amendment;
- 20 (c) for a replacement—details of the replacement, including its
- 21 title, author and date of publication;
- 22 (d) for an incorporated document or any amendment or
- 23 replacement—
- 24 (i) a date of effect (no earlier than the day after the day of
- 25 notification of the notice); and
- 26 (ii) details of how access to inspect the document,
- 27 amendment or replacement may be obtained under
- 28 section 101; and

- 1 (iii) details of how copies may be obtained, including an
2 indication of whether there is a cost involved.
- 3 (3) An incorporated document notice is a notifiable instrument.
- 4 *Note* A notifiable instrument must be notified under the Legislation Act.
- 5 (4) An incorporated document, and any amendment or replacement of
6 an incorporated document, has no effect under this Act unless—
- 7 (a) an incorporated document notice is notified in relation to the
8 document, amendment or replacement; or
- 9 (b) the document, amendment or replacement is notified under the
10 Legislation Act, section 47 (6).
- 11 (5) The Legislation Act, section 47 (7) does not apply in relation to
12 incorporated documents.
- 13 (6) In this section:
- 14 *amendment*, of an incorporated document, includes an amendment
15 of a replacement for the incorporated document.
- 16 *replacement*, for an incorporated document, means—
- 17 (a) a document that replaces the incorporated document; or
- 18 (b) a document (an *initial replacement*) that replaces a document
19 mentioned in paragraph (a); or
- 20 (c) a document (a *further replacement*) that replaces an initial
21 replacement or any further replacement.

22 **103 Evidentiary certificates**

23 In a prosecution for an offence against this Act, a certificate signed
24 by the authority that includes any of the following statements is
25 evidence of the matters stated:

- 26 (a) a statement that, at a stated time or during a stated period, a
27 stated person was or was not the holder of a stated licence;

- 1 (b) a statement that, at a stated time or during a stated period, a
2 stated person was or was not the owner of stated land;
- 3 (c) a statement that a stated place is, or is not, a waterway or bore;
- 4 (d) a statement that, at a stated time or during a stated period, there
5 was or was not, on stated land, a channel or other means
6 (including mechanical means) by which water could be taken;
- 7 (e) a statement that, at a stated time or during a stated period, there
8 were or were not, at a stated place, works to increase ground
9 water;
- 10 (f) a statement that, at a stated time or during a stated period, there
11 was or was not, a water structure on stated land.

12 **104 Criminal liability of corporation officers**

- 13 (1) An officer of a corporation commits an offence if—
- 14 (a) the corporation commits an offence (a *relevant offence*) by
15 contravening a provision of this Act; and
- 16 (b) the officer was reckless about whether the contravention would
17 happen; and
- 18 (c) the officer was in a position to influence the conduct of the
19 corporation in relation to the contravention; and
- 20 (d) the officer failed to take all reasonable steps to prevent the
21 contravention.

22 Maximum penalty: The maximum penalty that may be imposed for
23 the commission of the relevant offence by an individual.

- 24 (2) This section applies whether or not the corporation is prosecuted for,
25 or convicted of, the relevant offence.

- 1 (3) In deciding whether the officer took, or failed to take, reasonable
2 steps to prevent the contravention, a court must have regard to the
3 following:
- 4 (a) any action the officer took directed towards ensuring the
5 following (to the extent that the action is relevant to the act or
6 omission):
- 7 (i) that the corporation arranged regular professional
8 assessments of the corporation's compliance with the
9 contravened provision;
- 10 (ii) that the corporation implemented any appropriate
11 recommendation arising from such an assessment;
- 12 (iii) that the corporation's employees, agents and contractors
13 had a reasonable knowledge and understanding of the
14 requirement to comply with the contravened provision;
- 15 (b) any action the officer took when the officer became aware that
16 the contravention was, or might be, about to happen.
- 17 (4) Subsection (3) does not limit the matters to which the court may
18 have regard.
- 19 (5) This section does not apply if the corporation would have a defence
20 to a prosecution for the relevant offence.
- 21 (6) In this section:
- 22 *officer*, of a corporation, means—
- 23 (a) a director or secretary of the corporation; or
- 24 (b) a person—
- 25 (i) who makes, or takes part in making, decisions that affect
26 all, or a substantial part, of the business of the
27 corporation; or

- 1 (ii) in accordance with whose instructions or wishes the
2 directors of the corporation are accustomed to act
3 (excluding advice given by the person in the proper
4 exercise of functions attaching to the person's
5 professional capacity or business relationship with the
6 directors or the corporation); or
- 7 (iii) a receiver, or receiver and manager, of the corporation's
8 property; or
- 9 (c) an administrator of the corporation; or
- 10 (d) an administrator of a deed of company arrangement executed
11 by the corporation; or
- 12 (e) a liquidator of the corporation; or
- 13 (f) a trustee or other person administering a compromise or
14 arrangement made between the corporation and someone else.

15 **105 Selfincrimination etc**

- 16 (1) This section applies if a person is required to give information or
17 produce a document under this Act.
- 18 (2) The person can not rely on the common law privileges against
19 selfincrimination and exposure to the imposition of a civil penalty to
20 refuse to give the information or produce the document.
- 21 *Note* The Legislation Act, s 171 deals with client legal privilege.
- 22 (3) However, any information, document or other thing obtained,
23 directly or indirectly, because of the giving of the information or
24 producing of the document, is not admissible in evidence against the
25 person in a criminal proceeding, other than a proceeding for—
- 26 (a) an offence in relation to the failure to give the information or
27 produce the document; or
- 28 (b) any offence in relation to the falsity or the misleading nature of
29 the information or document.

1 **106 Nonpayment of fees**

2 If a fee payable in relation to a water access entitlement or licence is
3 not paid before the end of 30 days after the day it is payable, the
4 authority may—

- 5 (a) suspend the entitlement or licence until the fee is paid; or
6 (b) cancel the entitlement or licence.

7 **107 Determination of fees**

- 8 (1) The Minister may determine fees for this Act.

9 *Note* The Legislation Act contains provisions about the making of
10 determinations and regulations relating to fees (see pt 6.3).

- 11 (2) A determination is a disallowable instrument.

12 *Note* A disallowable instrument must be notified, and presented to the
13 Legislative Assembly, under the Legislation Act.

14 **108 Approved forms**

- 15 (1) The authority may approve forms for this Act.

- 16 (2) If the authority approves a form for a particular purpose, the
17 approved form must be used for that purpose.

18 *Note* For other provisions about forms, see the Legislation Act, s 255.

- 19 (3) An approved form is a notifiable instrument.

20 *Note* A notifiable instrument must be notified under the Legislation Act.

21 **109 Regulation-making power**

- 22 (1) The Executive may make regulations for this Act.

23 *Note* Regulations must be notified, and presented to the Legislative
24 Assembly, under the Legislation Act.

- 1 (2) A regulation may apply, adopt or incorporate an instrument as in
2 force from time to time.

3 *Note 1* The text of an applied, adopted or incorporated instrument, whether
4 applied as in force from time to time or as at a particular time, is taken
5 to be a notifiable instrument if the operation of the Legislation Act,
6 s 47 (5) or (6) is not disappplied (see s 47 (7)).

7 *Note 2* A notifiable instrument must be notified under the Legislation Act.

- 8 (3) A regulation may create offences and fix maximum penalties of not
9 more than 10 penalty units for the offences.

Part 13 Surviving allocations

110 Survival of allocations

A water allocation in force under the repealed Act immediately before the commencement day (a *surviving allocation*) continues in force subject to this Act.

111 Surviving allocations—surrender generally

- (1) A surviving allocation can not be transferred or amended but, subject to section 112 and section 113, may be surrendered to the authority at any time.
- (2) If a person who holds a surviving allocation surrenders it to the authority, the person may request that a water access entitlement be granted to the person.
- (3) On request under subsection (2), the authority must grant to the person—
 - (a) if the surrendered allocation was for surface water only—
a water access entitlement for surface water; or
 - (b) if the surrendered allocation was for ground water only—
a water access entitlement for ground water; or
 - (c) if the surrendered allocation was partly for surface water and partly for ground water (a *mixed allocation*)—a water access entitlement for surface water and a water access entitlement for ground water.
- (4) A water access entitlement granted to a person under subsection (3) must state—
 - (a) the person's name; and
 - (b) the amount of surface water or ground water that may be taken; and

- 1 (c) the water management area to which the amount relates; and
- 2 (d) if the person does not have access to urban water supply and
- 3 the surrendered allocation was for water for stock or domestic
- 4 use—
- 5 (i) that the water is for stock or domestic use; and
- 6 (ii) the place where the water may be taken; and
- 7 (e) if no fee was paid under the repealed Act for the grant of the
- 8 surrendered allocation—the place where the water may be
- 9 taken; and
- 10 *Note* For removal of this statement, see s 25.
- 11 (f) anything else required under this Act to be stated in the water
- 12 access entitlement.
- 13 (5) For subsection (4) (b), the amount stated must be—
- 14 (a) if a fee was paid under the repealed Act for the grant of the
- 15 surrendered allocation—the percentage of the water available
- 16 for taking in the water management area that is equivalent to
- 17 the volume of the allocation (or, for a mixed allocation, the
- 18 relevant part of the allocation); and
- 19 (b) if no fee was paid under the repealed Act for the grant of the
- 20 surrendered allocation—the percentage of the water available
- 21 for taking in the water management area that is equivalent to
- 22 the lesser of—
- 23 (i) the volume of the allocation (or, for a mixed allocation,
- 24 the relevant part of the allocation); and
- 25 (ii) the amount that, under the determination in force under
- 26 section 18 (Amounts of water reasonable for uses), is a
- 27 reasonable amount for the existing use.

1 **112 Surviving allocations—surrender by water utility**

- 2 (1) This section applies to a surviving allocation held by a water utility.
- 3 (2) The utility may surrender the allocation to the authority and request
- 4 a water access entitlement under section 111 before the end of
- 5 6 months after the commencement day.
- 6 (3) If the utility does not surrender the allocation to the authority before
- 7 the end of that 6-month period, the allocation is taken to be
- 8 surrendered to the authority and the authority must grant a water
- 9 access entitlement to the utility under section 111.

10 **113 Surviving allocations—surrender by holder no longer**

11 **owner or occupier of land**

- 12 (1) This section applies to the holder of a surviving allocation (other
- 13 than a water utility) if the holder is not the owner or occupier of the
- 14 land to which the allocation relates.
- 15 (2) The holder may surrender the allocation to the authority and request
- 16 a water access entitlement under section 111 before the end of the
- 17 later of—
- 18 (a) 6 months after the day the person ceases to be the owner or
- 19 occupier of the land; and
- 20 (b) 6 months after the commencement day.
- 21 (3) If the holder does not surrender the allocation to the authority before
- 22 the end of that 6-month period, the allocation is taken to be
- 23 surrendered to the authority and the holder must not be granted a
- 24 water access entitlement under section 111 in relation to the
- 25 allocation.

1 **Part 20 Transitional**

2 **200 Environmental flow guidelines**

- 3 (1) The environmental flow guidelines in force under the repealed Act
4 are taken to be environmental flow guidelines under this Act,
5 section 12 (Environmental flow guidelines) and apply, with any
6 necessary changes, for this Act.
- 7 (2) To remove any doubt and without limiting subsection (1), the
8 environmental flow guidelines mentioned in subsection (1) may be
9 amended or repealed as if they had been approved under this Act,
10 section 12.
- 11 (3) To remove any doubt, the environmental flow guidelines mentioned
12 in subsection (1) are taken—
- 13 (a) to have been notified under the Legislation Act on the day this
14 Act is notified; and
- 15 (b) to have commenced on the commencement day; and
- 16 (c) not to be required to be presented to the Legislative Assembly
17 under the Legislation Act, section 64 (1).
- 18 (4) Subsections (1), (2) and (3) are laws to which the Legislation Act,
19 section 88 (Repeal does not end effect of transitional laws etc)
20 applies.

21 **201 Existing licences and permits**

- 22 (1) A licence in force under the repealed Act, section 35 (Licence to
23 take water) is taken to be a licence to take water under this Act,
24 section 30.
- 25 (2) A licence in force under the repealed Act, section 39 (Unlicensed
26 drilling) is taken to be a driller's licence under this Act, section 35.

- 1 (3) A permit in force under the repealed Act, section 44 (Bore
2 construction permit) is taken to be a bore work licence under this
3 Act, section 39.
- 4 (4) A licence in force under the repealed Act, section 47 (Unlicensed
5 recharge) is taken to be a recharge licence under this Act,
6 section 49.
- 7 (5) A permit in force under the repealed Act, section 69 (Water control
8 structures—permit to construct etc) is taken to be a waterway work
9 licence under this Act, section 44.
- 10 (6) Any condition to which the licence or permit was subject under the
11 repealed Act continues to apply but may be amended in accordance
12 with this Act.
- 13 (7) This section is a law to which the Legislation Act, section 88
14 (Repeal does not end effect of transitional laws etc) applies.

15 **202 Water access entitlement for certain existing licence**
16 **holders**

- 17 (1) This section applies to a person who—
- 18 (a) was the holder of a licence to take ground water in force under
19 the repealed Act, section 35; but
- 20 (b) did not have a water allocation under that Act on which to base
21 the taking of ground water under the licence.
- 22 (2) The authority must grant a water access entitlement to the person for
23 a percentage of the ground water available in the relevant water
24 management area that is equivalent to the lesser of—
- 25 (a) the amount of ground water the person could take under the
26 licence; and
- 27 (b) the amount that, under the determination in force under
28 section 18 (Amounts of water reasonable for uses), is a
29 reasonable amount for the existing use.

- 1 (3) The water access entitlement must state—
- 2 (a) the person's name; and
- 3 (b) the amount of ground water that may be taken; and
- 4 (c) the water management area to which the amount relates; and
- 5 (d) the place where the water may be taken; and
- 6 *Note* For removal of this statement, see s 25.
- 7 (e) if the person does not have access to urban water supply and
- 8 the entitlement is for water for stock or domestic use—that the
- 9 water is for stock or domestic use; and
- 10 (f) anything else required under this Act to be stated in the water
- 11 access entitlement.

12 **203 Information on register**

- 13 (1) The authority may include on the register under this Act any
- 14 information held on the register under the repealed Act.
- 15 (2) This section is a law to which the Legislation Act, section 88
- 16 (Repeal does not end effect of transitional laws etc) applies.

17 **204 References to Planning and Development Act**

- 18 (1) A reference in this Act to the *Planning and Development Act 2007*
- 19 includes a reference to the *Land (Planning and Environment)*
- 20 *Act 1991*.
- 21 (2) A reference in this Act to the *Planning and Development Act 2007*,
- 22 chapter 7 (Development approvals) includes a reference to the *Land*
- 23 *(Planning and Environment) Act 1991*, part 6 (Approvals and
- 24 orders).

25 **205 Transitional regulations**

- 26 (1) A regulation may prescribe transitional matters necessary or
- 27 convenient to be prescribed because of the enactment of this Act.

1 (2) A regulation may modify part 13 or this part to make provision in
2 relation to anything that, in the Executive's opinion, is not, or is not
3 adequately or appropriately, dealt with in either part.

4 (3) A regulation under subsection (2) has effect despite anything
5 elsewhere in this Act.

6 **206 Expiry—pt 20**

7 This part expires 1 year after the commencement day.

- 1 **Part 21** **Repeals and consequential**
2 **amendments**
- 3 **207** **Legislation repealed**
- 4 (1) The *Water Resources Act 1998* A1998-63 is repealed.
- 5 (2) The following legislative instruments are repealed:
- 6 (a) the *Water Resources Regulation 2006* SL2006-14;
- 7 (b) the *Water Resources (Fees) Determination 2006 (No 1)*
8 DI2006-138;
- 9 (c) the *Water Resources Management Plan 2004* DI2004-66;
- 10 (d) all notifiable instruments under the *Water Resources Act 1998*.
- 11 **208** **Administrative Decisions (Judicial Review) Act 1989**
12 **Schedule 1, item 18**
- 13 *omit*
- 14 **209** **Gunghalin Drive Extension Authorisation Regulation 2004**
15 **Section 4 (e)**
- 16 *substitute*
- 17 (e) the *Water Resources Act 2007*.
- 18 **210** **Land (Planning and Environment) Regulation 1992**
19 **Schedule 1, item 3 (d)**
- 20 *after*
- 21 *Water Resources Act 1998*
- 22 *insert*
- 23 *or the Water Resources Act 2007*
-

- 1 **211 Utilities Act 2000**
2 **Section 20 (2) (l)**
3 *substitute*
4 (l) the *Water Resources Act 2007*.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- environment protection authority
- function
- infringement notice.

aquifer means a geological formation or structure, or an artificial landfill, permeated or capable of being permeated (whether permanently or intermittently) with water.

authorised officer means an authorised officer under the *Environment Protection Act 1997*, section 14 (3).

authority means the environment protection authority.

bore means a bore, hole, well, excavation or other opening in the ground or an underground cavity (whether occurring naturally or having been artificially constructed or modified)—

- (a) that is used, or is capable of being used, to intercept or collect ground water; or
- (b) from which ground water is, or is capable of being, obtained or used; or
- (c) that is used, or is capable of being used, for the disposal of water or waste below the surface of the ground; or
- (d) that extends into an aquifer.

bore work means any of the following:

- (a) drilling, constructing, altering, plugging, backfilling or sealing off a bore;

(b) removing, replacing, altering, slotting or repairing the casing, lining or screen of a bore;

(c) deepening a bore (in the course of construction or otherwise).

bore work licence means a licence under section 39.

commencement day means the day this Act commences.

connected with an offence, for part 10 (Enforcement)—see section 78.

corresponding water access entitlement—see section 27.

disciplinary action—see section 61.

disciplinary notice—see section 62.

driller's licence means a licence under section 35.

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

environmental flow guidelines means environmental flow guidelines under section 12.

environmental record, of a person, means the person's environmental record both in the ACT and elsewhere so far as it relates to water, and includes any action taken in relation to the person under—

(a) this Act or the repealed Act; or

(b) a licence issued under this Act or the repealed Act; or

(c) a law of the Commonwealth, a State or another Territory that relates to water.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- 1 **flow**, in relation to surface water and ground water, includes the
2 discharge, release, escape or passage of the water.
- 3 **ground**, for disciplinary action—see section 60.
- 4 **ground water**—see section 9.
- 5 **incorporated document** means an instrument applied, adopted or
6 incorporated by a statutory instrument under this Act.
- 7 **land** includes a building or structure on land.
- 8 **licence** means a licence under this Act.
- 9 **licence to take water** means a licence under section 30.
- 10 **occupier**, of premises, for part 10 (Enforcement)—see section 78.
- 11 **offence**, for part 10 (Enforcement)—see section 78.
- 12 **owner**, of land, includes the lessee of the land.
- 13 **premises**, for part 10 (Enforcement)—see section 78.
- 14 **recharge licence** means a licence under section 49.
- 15 **register** means the register under section 66.
- 16 **repealed Act** means the *Water Resources Act 1998*.
- 17 *Note* A reference to a repealed Act is a reference to the Act as in force
18 immediately before it was repealed (see Legislation Act, s 103).
- 19 **reviewable decision**—see section 94.
- 20 **stock or domestic use** of water by a person means 1 or more of the
21 following:
- 22 (a) use for the person, or the person’s family or employees, for
23 domestic purposes;
- 24 (b) use for drinking water for stock—
- 25 (i) not exceeding the number of stock normally depastured
26 on the relevant land having regard to seasonal fluctuations
27 in the carrying capacity of the land; and

- 1 (ii) not held in close concentration for a purpose other than
2 grazing;
- 3 (c) use for irrigating a garden, not larger than 2 hectares, that is for
4 domestic use and not for the sale, barter or exchange of goods
5 produced in the garden.
- 6 **surface water**—see section 8.
- 7 **surviving allocation**—see section 110.
- 8 **take** water—see section 11.
- 9 **urban residential property** means any of the following, within the
10 meaning of the Territory plan, that has access to urban water supply:
- 11 (a) single dwelling housing;
- 12 (b) multi-unit housing;
- 13 (c) a boarding house;
- 14 (d) a guest house.
- 15 **urban water supply** means water supplied by a water utility, other
16 than treated sewage.
- 17 **water** means surface water or ground water, and includes water that
18 contains impurities.
- 19 **water access entitlement**—see section 19.
- 20 **water management areas**—see section 16.
- 21 **water structure**—see section 41.
- 22 **water utility** means a utility licensed under the *Utilities Act 2000* to
23 provide a water service.
- 24 **waterway**—see section 10.
- 25 **waterway work**—see section 41.
- 26 **waterway work licence** means a licence under section 44.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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