

**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY  
2007**

**Water Resources Bill 2007**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
Minister for Environment, Water and Climate Change  
Mr Jon Stanhope MLA

This Explanatory Statement relates to the *Water Resources Bill 2007* (the Bill) as introduced into the Legislative Assembly.

## Overview of Bill

This Bill has effectively rewritten the Water Resources Act 1998. Its main purpose is to introduce changes that will enable and ensure efficient and equitable management of the Territory's water resources, in particular the allocation of water that takes into account community value and equity rather than a first come first served approach. These amendments introduce a new system of water allocation designed to maximise community benefit. It has also addressed some of the legal issues raised in the cases of both *EPA v Rashleigh* and *Potts v DPP*.

The key changes are as follows:

- Linkages within the Act now expressly provide for integrated management of water resources.
- Consistent with the objects of the Act, the regulation making powers have been broadened to provide for regulations on a range of matters including the preparation of catchment management plans.
- The specification of possible future use water trading rules through regulation to meet the Territory's objectives and the National Water Initiative requirements.
- The need for licensing arrangements to foster water sensitive urban design, particularly the use of stormwater to foster environmental protection and its substitution of mains water use.
- Consistent with fostering more efficient use of our water resources including stormwater the explicit exemption from the requirement of the need for a licence to collect and use rainwater and storm water in certain circumstances.
- The grant of licences to take account of potential environmental degradation rather than actual degradation which will help prevent harm rather than wait until actual harm has occurred.(thus in effect implementing the precautionary principle)
- A range of smaller matters to make the legislation clearer and consistent with the objects of the act and the implementation of parts of the think water act water policy.
- New provisions have been introduced to ensure that compliance and enforcement matters can be more effective. (Part 10 Enforcement)

## Summary

The substantive changes in the Bill include:

- The implementation of a more efficient and equitable system of water allocation with the new basic management unit known as a water management area, (WMAs) There will be 13 WMAs. Previously the basic management unit was based on a sub catchment, of which there were 32.
- New users can get access to water if there is water available within the WMA; the changes provide greater opportunity for access to water. The environmental impacts of the water allocations are addressed in the water resource management plan and the licence and its conditions.
- Different water users are accorded different priorities with stock and domestic use having the highest priority where there is no access to mains water, followed by public and commercial uses consistent with the Canberra Plan and the lowest priority being urban residential.
- Water access entitlements (WAEs) replace water allocations and are made on the basis of sustainable yield.
- No new WAEs will be issued for the direct use on urban residential properties.
- All ground water use is treated the same as surface water and requires a WAE.
- A volume of water in each management area can be reserved to meet future demands and is accessed through regulation. A clear link is established between sustainable yield and decision to allocate water.

### **Use of Strict Liability**

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Strict liability offences are primarily aimed at conduct on the less serious side of the criminal spectrum. Strict liability offences have two essential features. The first is that there is no requirement to prove a fault element, such as intention or recklessness. However, the prosecution is still required to prove the physical elements of the strict liability offence beyond a reasonable doubt and disprove beyond a reasonable doubt any defences that the defendant has put in issue.

Strict liability can be applied to the whole of an offence or to just a particular element of the offence. If strict liability only applies to a particular element of the offence, it means that there is no fault element for that physical element, but there will be a fault element for each other physical element of the offence. In effect, the offence remains a fault element offence, though in relation to one of the physical elements, fault does not have to be proven.

### **Financial Implications**

Nil

## Summary on Clauses

**Clause 1 - Name of Act** – provides that the Act is called the *Water Resources Act 2007*.

**Clause 2 - Commencement** – provides that the Act commences on a day fixed by the Minister by written notice.

**Clause 3 – Dictionary** – provides that the dictionary (at the end of the Act) is part of the Act.

**Clause 4 – Notes** – provides that a note included in the Act is not part of the Act, it is purely explanatory.

**Clause 5 – Offences against Act – application of Criminal Code etc** – provides that the *Criminal Code 2002* applies to all offences in this Act.

## Part 2 – Main Principles and Concepts

**Clause 6 - Objects of Act** – provides the objects of the Act. This includes the core principles of sustainability including the concept of inter-generational equity, which should be taken into account in developing policy and making decisions under the Act.

**Clause 7 – Territory rights to water** – provides that the right to the use, flow and control all water is vested in the Territory.

**Clause 8 – Surface water** – provides the definition of ‘surface water’ for this Act.

**Clause 9 – Ground water** – provides the definition of ‘ground water’ for this Act.

**Clause 10 – Waterway** – provides the definition of ‘waterway’ for this Act and ‘stormwater’ and ‘stormwater system’ for section 10 of the Act.

**Clause 11 – Taking Water** – provides what the meaning of ‘take’ is for this Act.

## Part 3 – Environmental flow guidelines

**Clause 12 - Environmental flow guidelines** – provides that the Minister may approve guidelines for working out the flow of water that is needed to maintain aquatic ecosystems. Environmental flow guidelines are a disallowable instrument.

**Clause 13 – Environment flow guidelines – preparation by authority** – provides that the authority must prepare draft guidelines for the Minister’s approval. The authority must consider principally the ecological needs of aquatic ecosystems and may also take into account the environmental, economic and social impact of the guidelines.

**Clause 14 – Environmental flow guidelines – consultation** – provides that after preparing draft guidelines, a consultation notice must be prepared. This notice must contain a brief description of the draft guidelines, the notice would also state where copies are available and this is normally via the internet. The consultation period is at least 60 days.

**Clause 15 – Environmental flow guidelines – submission to Minister** – provides that the authority must submit the draft guidelines to the Minister for approval together with a written report about the authority’s consultation with the public and with any particular person or entity about the draft guidelines and the report must set out the issues raised in the comments given to the authority under section 14. The Minister may in receiving the draft guidelines for approval either approve the draft guidelines submitted or refer them back to the Authority with a direction to do one or more things stated in (2)(b) (i) to (iii). If the Minister refers the draft guidelines back to the Authority under subsection 2(b) then the Authority must then comply with the Minister’s directions.

## **Part 4 –Water access entitlements**

**Clause 16 – Water management areas** – provides that the Minister must determine areas to be used for the purpose of managing the water resources of the Territory. A determination is a disallowable instrument,

**Clause 17 – Amount of water available from areas** – provides that the Minister must determine the total amount of surface water that is available for taking in each water management area and the total amount of ground water that is available for taking in each water management area. The amounts must be determined taking into account the environmental flow guidelines, the total water resources of the territory and any investigation undertaken by the authority to establish sustainable yields, for the water management area. The Minister may also determine what needs to be taken into account regarding amount of water available and the amount to be reserved for future use. These determinations are disallowable instruments.

**Clause 18 – Amount of water available for uses** – provides that the Minister may determine the amounts of water that are reasonable for a particular use. A determination is a disallowable instrument.

**Clause 19 – Water access entitlements** – outlines what a ‘water access entitlement’ is. That is the amount of surface water or ground water stated in the entitlement. The amount must be stated as a percentage of the total amount of surface water or ground water available for the taking in the water management area.

**Clause 20 – Water access entitlement –application** – outlines how a person may apply to the Minister for a water access entitlement and what information is required. The Minister may by written notice given to the applicant require the applicant to give the Minister additional information or documents the Minister reasonably needs to decide the application.

**Clause 21 – Water access entitlement – decision on application** – outlines what the Minister must do when a person applies for a water access entitlement. The Minister must not grant a water access entitlement unless certain criteria are satisfied. Subsection 2(a)-(e). Subsection (4) deals with the issue of who has priority in multiple applications.

**Clause 22 – Water access entitlement – content** – provides that a water access entitlement must state the name of the holder of the entitlement, the water management area from which water may be taken, the amount of water that may be taken and the purpose for which the water may be used.

**Clause 23 – Water access entitlement – conditions** – provides that the Minister may grant water access entitlement subject to conditions. A regulation may prescribe these conditions. This section also outlines how the authority may impose or amend conditions.

**Clause 24 – Water access entitlement – amendment**– provides that the authority may amend a water access entitlement including by imposing a condition on or amending an existing condition of the entitlement. Subsection (2) describes both the circumstances in which the authority can amend an entitlement. and the process that must be followed.

**Clause 25 - Water access entitlement – special provision for certain entitlements based on surviving allocations etc**– the intention of this provision is to facilitate the development of a water trading market to enable new users to enter the market or for water to be traded to higher value uses. The statement that restricts the use of entitlement at another location can be removed under this clause if other changes are sought to the entitlement for example the transfer of the entitlement. A schedule fee would apply.

**Clause 26 – Water access entitlement – transfer** – provides that the holder of a water access entitlement may transfer the whole or part of the entitlement to someone else subject to the authority’s approval. This section also outlines the conditions that must be satisfied in order for the authority to approve the transfer of a water access entitlement. One of these key conditions is (2) (b) the transferee’s environmental record.

**Clause 27 – Water access entitlement – effect of transfer on licence to take water** – provides that if a person permanently transfers the whole of a water access entitlement or corresponding water access entitlement to which a licence to take water relates, the licence is taken to be cancelled. Subsection (2) provides that if a person transfers for a limited period the whole of a water access entitlement or corresponding water access entitlement to which a licence to take water relates, the licence is taken to be suspended for the period.

Under subsection (3) if a person permanently transfers part of a water access entitlement or corresponding water access entitlement to which a licence to take water

relates, the amount of water the person is authorised to take under the licence is taken to be reduced by the amount of the transfer. Subsection (4) covers the situation when the entitlement is transferred for a limited period

## **Part 5 – Licences**

### **Division 5.1 Licences to take water**

**Clause 28 – Licence to take water – requirement** – provides that a person commits an offence if the person takes surface water or ground water from a place and the person does not have a licence to take the water from the place. The maximum is penalty 6 months imprisonment or 50 penalty units or both.

Under subsection (2) a person who is the current owner or occupier of land commits an offence if the person takes ground water from a bore on the land and does not have a licence to take ground water. The maximum penalty for this offence is 50 penalty units. This is a strict liability offence.

Under subsection (4) a person commits an offence if the person in the conduct of a business carrying or extracting water takes surface water from a place and does not have a licence to take surface water then the maximum penalty is a 50 penalty units, it is a strict liability offence

Exemptions apply to taking water from a waterway for camping or similar purposes, watering travelling stock, taking of rainwater collected in a rainwater tank, and to the actions of a relevant person under the *Emergencies Act 2004*. The meaning of ‘relevant person’ is provided. The exemptions also cover the taking of water by a person who is exempt under regulation from the requirement to have a licence.

**Clause 29 – Licence to take water – application** – provides that a person may apply to the authority for a licence to take water from a stated waterway or place. The authority may by written notice given to the applicant require the applicant to provide additional information or documents to process the application. The authority may refuse to consider the application if an applicant does not comply with the requirement...

**Clause 30 – Licence to take water – decision on application** – provides that when a person applies for a licence to take water, the authority must issue the licence or refuse to issue the licence. This section also outlines the things that the authority needs to consider to ensure that they are satisfied with issuing a licence to the applicant. If not satisfied they must not issue the licence. However subsection (2) does not apply to a water utility, or if the entitlement was granted under certain sections or proviso.

**Clause 31 – Licence to take water – conditions** – provides that a licence to take water is subject to any condition prescribed by regulation or imposed on the licence by the authority.

**Clause 32 – Licence to take water – where water may be taken** - provides that a licence to take water held by a utility may authorise the utility to take surface water under the licence from a place in the water management area stated in the water access entitlement on which the licence is based; a place in a waterway that is downstream from that water management area; or any other water management area for which the utility holds a water access entitlement.

A licence to take water held by a person other than a utility may authorise the person to take surface water under the licence from the water management area stated in the water access entitlement on which the licence is based; or if that water management area is prescribed by regulation for this paragraph a place in a waterway that is downstream from that water management area.

## **Division 5.2 Driller’s licences**

**Clause 33 – Driller’s licence - requirement** – provides that a person commits an offence if the person drills or constructs a bore, deepens or enlarges a bore, removes, replaces alters or repairs the casing, lining or screen of a bore, plugs, backfills or seals off a bore and the person does not hold a driller’s licence to do the work. The maximum penalty is imprisonment for 6 months or 50 penalty units, or both.

**Clause 34 – Driller’s licence – application** – provides that a person may apply to the authority for a licence to do driller’s work as mentioned in section 34. The authority may by written notice given to the applicant require the applicant to give the authority additional information or documents the authority needs in order to determine an application for a driller’s licence. The authority may refuse to consider the application if an applicant does not comply.

**Clause 35 – Driller’s licence – decision on application** – provides that on application by a person for a driller’s licence, the authority must issue the licence or refuse to issue the licence. This section also outlines the conditions that need to be satisfied by the authority in order for the authority to issue a driller’s licence. If the authority is not satisfied it must not issue the licence see subsection (2). An approval is a notifiable instrument.

**Clause 36 – Driller’s licence – conditions** – provides that a driller’s licence is subject to any conditions prescribed by regulation or imposed on the licence by the authority. A condition imposed must not be inconsistent with any condition prescribed by regulation that applies to the licence, to ensure consistency.

## **Division 5.3 Bore work licences**

**Clause 37 – Bore work licence – requirement** – provides what the words ‘bore work’ means for this section. A person who is the owner or occupier of land commits an offence if bore work is done on the land and the person does not have a bore work licence for the bore work. The maximum penalty is imprisonment for 6 months or 50 penalty units, or both. This section also provides that a person who is the holder of a driller’s licence commits an offence if the person does bore work on land and the owner or occupier of the land does not have a bore work licence for the bore work. The maximum penalty is 50 penalty units, imprisonment for 6 months or both. These



offence provisions do not apply to bore work that is exempt from the requirement for a bore work licence under a regulation.

**Clause 38 – Bore work licence – application** – provides that a person may apply to the authority for a licence to do bore work. The authority may by written notice given to the applicant require the applicant to provide the authority with additional information or documents in order to assess a person’s application for a bore work licence. The authority may refuse to consider the application if an applicant does not comply

**Clause 39 – Bore work licence – decision on application** – provides that on an application by a person for a bore work licence, the authority must issue the licence or refuse to issue the licence. The authority must not issue a bore work licence unless the applicant holds a water access entitlement or surviving allocation in relation to ground water to be taken from the proposed bore. In deciding whether to issue a bore work licence, the authority may consider the distance between the proposed bore and any existing bores, as well as anything else the authority considers relevant.

**Clause 40 – Bore work licence – conditions** – provides that a bore work licence is subject to any conditions prescribed by regulation or imposed on the licence by the authority. A condition imposed must not be inconsistent with any condition prescribed by regulation that applies to the licence, to ensure consistency.

#### **Division 5.4 Waterway work licences**

**Clause 41 – Definitions** – div 5.4 provides definitions of ‘water structure’ and ‘waterway work’.

**Clause 42 – Waterway work licence – requirement** – provides that a person commits an offence if the person does waterway work and the work adversely affects or may affect the flow or quality of water or the aquatic habitat in the waterway and the person does not have a waterway work licence for the waterway work. The maximum penalty is 100 penalty units, imprisonment for 1 year or both. This section does not apply to the construction or alteration of a water structure that has a capacity of less than 2ML and is not in a waterway or a structure prescribed by regulation.

**Clause 43 – Waterway work licence – application** – provides that a person may apply to the authority for a licence to do waterway work. The authority may by written notice given to the applicant require the applicant to provide the authority with additional information or documents in order to assess a person’s application for a waterway work licence. The authority may refuse to consider the application if an applicant does not comply with these requirements.

**Clause 44 – Waterway work licence – decision on application** – provides that the authority must issue the licence or refuse to issue the licence if a person applies for a waterway work licence. This section also outlines certain matters that the authority needs to consider when deciding an application for a waterway work licence, for example whether the work is in the interests of the public and whether environmental flows will be protected.

**Clause 45 – Waterway work licence – conditions** – provides that a waterway work licence is subject to any condition prescribed by regulation or imposed on the licence by the authority. A condition imposed must not be inconsistent with any condition prescribed by regulation that applies to the licence, to ensure consistency.

**Clause 46 – Planning and Development Act not affected** – provides that this division does not affect the operation of the *Planning and Development Act 2007*.

### **Division 5.5 Recharge licences**

**Clause 47 – Recharge licence – requirement** – provides that a person commits an offence if the person constructs work, operates work, alters work and the person does not have a recharge licence for the purpose of increasing the quantity of ground water. The maximum penalty is imprisonment for 6 months, 50 penalty units or both.

**Clause 48 – Recharge licence – application** – provides that a person may apply to the authority for a recharge licence. The authority may by written notice given to the applicant require the applicant to provide the authority with additional information or documents in order to assess a person's application for a recharge licence. The authority may refuse to consider the application if an applicant does not comply with these requirements.

**Clause 49 – Recharge licence – decision on application** – provides that the authority must issue the licence or refuse to issue the licence on an application by a person for a recharge licence. The authority must not issue the recharge licence unless satisfied that it is appropriate to issue the licence having regards to the applicant's environmental record and anything else the authority considers relevant. This section also outlines certain conditions the authority must consider when deciding on whether to issue a recharge licence.

**Clause 50 – Recharge licence – conditions** – provides that a recharge licence is subject to any conditions prescribed by regulations or imposed on the licence by the authority. A condition imposed must not be inconsistent with any condition prescribed by regulation that applies to the licence, to ensure consistency.

**Clause 51 – Recharge licence – cancellation** – outlines the reasons why the authority may cancel a licence.

### **Division 5.6 Licences –general provisions**

**Clause 52 – Licences –term** – provides that a licence is issued for the term stated in the licence.

**Clause 53 – Licences – renewal** – provides that the holder of a licence may apply to the authority for the renewal of a licence. The application must be made not later than 14 days before the end of the licence period. On application, the authority must renew the licence or refuse to renew the licence. If the licence is renewed under this section the licence remains in force until the application is decided.

**Clause 54 - Licences –not transferable** -provides that a licence is not transferable

**Clause 55 – Licences – amendment**— provides that the authority may amend a licence including by imposing a condition on or amending an existing condition of the licence. Subsection (2) to (4) deals with the requirements that must be followed for the authority may amend a licence. Subsection (5) provides that the amendment of a licence takes effect on the date on which the notice of the amendment is given to the holder or if a later date is stated in the notice – on that date.

**Clause 56 – Licences – surrender** – provides that the holder of a licence may surrender the licence to the authority by written notice accompanied by the licence.

**Clause 57 - Offence – failing to produce licence** – provides that the holder of a licence must, if asked by the authority, produce their holder’s licence when carrying out an activity under the licence. The maximum penalty is 5 penalty units. An offence against this section is a strict liability offence.

**Clause 58 – Offence – contravening licence conditions**- provides that the holder of a licence must not contravene a condition of the licence. The maximum penalty is 50 penalty units. An offence against this section is a strict liability offence.

**Clause 59 – Offences – contravening certain conditions of licence to take water** – provides that the holder of a licence to take water commits a strict liability offence if the holders licence is subject to the stated conditions and the holder contravened these conditions. The penalties range from 10 penalty units to 50 penalty units depending on the offence

## **Part 6 – Disciplinary Action**

**Clause 60 — Grounds for disciplinary action** – outlines what constitutes a ‘ground’ for disciplinary action.

**Clause 61 – Disciplinary action** - outlines what things constitute a ‘disciplinary action’.

**Clause 62 – Taking disciplinary action** – provides that the authority must give a person a written notice if the authority proposed to take disciplinary action in relation to a person. The authority must consider any response given to the authority by the person in accordance with a notice. The authority may take disciplinary action if satisfied that grounds exist for taking disciplinary action. This section also provides that the authority must give the person written notice of the authority’s decision.

**Clause 63 – Effect of suspension of entitlement, allocation or licence** – provides that if a water access entitlement, surviving allocation or licence is suspended the entitlement, allocation or licence does not authorise the holder to do anything authorised under the entitlement, allocation or licence during the suspension and the holder is, during the suspension taken not to hold the entitlement, allocation or licence and disqualified from applying for an entitlement or licence. However an entitlement may still be transferred and the allocation may still be surrendered in accordance with this Act. The authority may however end the suspension of an entitlement that is transferred or an allocation that is surrendered.

## **Part 7 – Administration**

**Clause 64 – Functions of environment protection authority** – this clause outlines the functions of the authority under this Act.

**Clause 65 – Delegation** – provides that the authority may delegate the authority’s functions under this Act to a public employee.

**Clause 66 – Register** – provides that the authority must establish and maintain a register for this Act, in any format that the Authority chooses and outlines what details the register must include. See (a) to (d).

**Clause 67 – Inspection and searches of register** – provides that the register must be available for public inspection at reasonable times and that a person may, on payment of the reasonable copying costs, obtain a copy of any information in the register.

## **Part 8 - Assessment of water resources**

**Clause 68 — Water resources investigation** – provides that the authority must ensure, as far as possible, that a continuous program for the assessment of water resources of the Territory is carried out. This section also outlines how the assessment of water resources is to be carried out. The authority may at all reasonable times enter the land to take measures and carry out work that is reasonably required for the purpose of doing something in subsection (2).

The authority cannot carry out work listed in subsection 2(a) unless notice was given at least 14 days before the entry day to the owner or occupier of the land of the land proposed to be entered and the work proposed to be done and any vehicle plant or machinery proposed to be used to carry out the work. The authority may at all reasonable times enter land on which work under subsection 2(b)-(f) is being done with the people and equipment that is reasonably required to carry out that work. If the premises are being used for residential purposes then the occupiers consent is required to enter. The authorised officer must produce their Identity card and in any other case a certificate signed by the authority showing that this person is authorised to carry out an activity mentioned in the certificate.

**Clause 69 – Cooperation etc with other jurisdictions** - provides that for this part the authority may liaise and work in cooperation with the commonwealth or a state in the investigation of a water resource in which there is a shared interest.

**Clause 70 -Things fixed to land by authority not taken to be fixtures** -.provides that if in the exercise of a function the authority attaches anything to land it is not taken to be a fixture to the land that gives a propriety right to the owner or occupier or an improvement.

## **Part 9 – Protection of water resources**

**Clause 71 –Notice prohibiting or restricting taking of water** – provides that this section only applies if temporary water restrictions are in force under the *Utilities (Water Conservation) Regulation 2006* or (b) upon the Minister’s satisfaction of certain scenarios in (i) and (ii). The Minister may by written notice prohibit or restrict the taking of surface water or ground water. The notice is a notifiable instrument. This section also provides that a person commits an offence if the person engages in conduct that contravenes a notice under this section. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

**Clause 72– Direction to modify or remove water structure** – provides that the Minister has power under this section to give the owner or occupier of the land where a water structure is located a written direction to modify or remove the structure to allow water to pass over, under or through it. A person commits an offence if the person engages in conduct that contravenes a direction given to the person under this section. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

**Clause 73 – Direction to rectify effects of unauthorised activity etc**– this section applies if a person has done bore work or waterway work that is not authorised under a licence or contravened a condition of a licence issued under this Act. Subsection (2) provides that the authority may give the owner or occupier of the land on which the activity was undertaken a written direction to take stated action to rectify the effects of the activity and any other stated action the authority considers appropriate. The direction may state a period within which the person must comply with the direction. A person commits an offence if the person engages in conduct that contravenes a direction given to the person under this section. The maximum penalty is 100 penalty units, imprisonment for 1 year or both.

**Clause 74 – Duty to prevent or rectify damage to bed or bank of waterways** – provides that it is the duty of the owner or occupier of land on which there is a waterway or that adjoins a waterway to take reasonable steps to prevent damage to the bed and banks of the waterway. If the authority considers that the owner or occupier of the land has failed to carry out this duty under (1) the authority may give the owner or occupier a written direction to take stated action that the authority considers appropriate to prevent damage and to rectify damage that has already happened. A person commits an offence if the person engages in conduct that contravenes a direction given to the person under this section. The maximum penalty is 100 penalty units.

**Clause 75 – Directions in relation to unlicensed taking of surface water** –provides that if the authority is satisfied that a person who does not have a licence to take water from a waterway has taken or is taking water from the waterway or has pumping equipment in or near the waterway that may be used to take water from the waterway.. Under subsection (2) the authority may give the person a written direction to do one or more of the actions listed in (a) to (e). A person commits an offence if the person contravenes a direction. given under this section. The maximum penalty is 50 penalty units.

**Clause 76 – Directions in relation to bores** – 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. The authority may give the owner or occupier of land where the bore is located a written direction to do one or more of the actions listed in (a) to (g). The direction may state a period within which the person must comply with a direction. It is an offence for a person to whom a direction is given to engage in conduct that contravenes a direction given to that person under this section. The maximum penalty for this strict liability offence is 50 penalty units.

**Clause 77 – Action by authority if notice or direction contravened** – provides that this section applies if the authority has reasonable grounds for believing that a person has engaged in conduct that contravened a prohibition or restriction under a notice given to the person under section 71, or a direction given to the person under this part. An authorised officer or someone else authorised by the authority for this section such as an environment protection officer with delegated powers, may enter the land and take any action stated in the notice or direction and do anything else necessary to give effect to the notice or direction. Under subsection (3) a person who enters land under this section is not authorised to remain on the land if on request by the occupier of the land the person does not produce for an authorised officer his or her identity card and in any other case a certificate signed by the authority for this section that the person is authorised to carry out an activity mentioned in the certificate.

## **Part 10 – Enforcement**

### **Division 10.1 General**

**Clause 78 - Definitions** – Pt 10 contains definitions.

### **Division 10.2 Powers of authorised officers**

**Clause 79 – Power to enter premises** – outlines the powers that an authorised officer has to enter a premises.

**Clause 80 – Production of identity card** – provides that an authorised officer must not remain at premises entered under this part if the authorised officer does not produce their identity card when asked by the occupier.

**Clause 81 – Consent to entry** – outlines what an authorised officer must do when seeking consent of an occupier to enter premises. It includes asking the occupier to sign a written acknowledgement of consent, if the occupier consents

**Clause 82 – General powers on entry to premises** – outlines what an authorised officer can do - (1) (a) to (e) upon entry of a premises, in relation to the premises or anything on the premises. A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e) the maximum penalty is 50 penalty units.

**Clause 83 – Power to seize things** – outlines what powers an authorised officer has in relation to seizure of anything on the premises.

A person commits an offence if the person interferes with a seized thing or anything containing a seized thing, to which access has been restricted under subsection (6) and the person does not have an authorised officer's approval to interfere with the thing. The maximum penalty is 50 penalty units.

**Clause 84 – Power to require name and address** – outlines what powers an authorised officer has when requiring a person's name and address. A person who does not comply with a requirement made by the authorised officer under subsection (1) commits a strict liability offence with a maximum penalty of 10 penalty units.

### **Division 10.3 Search warrants**

**Clause 85 – Warrants generally** – outlines what an authorised officer is required to do in order to get a warrant to enter a premises.

**Clause 86 – Warrants – application made other than in person** – outlines in (1) the forms of communication by which an authorised officer may apply for a warrant e.g. fax, in (a) urgent circumstances or (b) other special circumstances followed by what the authorised officer must (2) to (5) do in order get that warrant. This is to ensure that in certain circumstances a warrant can be obtained quickly to ensure that premises may be searched before certain evidence is removed or even destroyed.

**Clause 87 – Search warrants – announcement before entry** – outlines the procedures that need to be undertaken before an authorised officer enters premises under a search warrant.

**Clause 88 – Details of search warrant to be given to occupier etc** – provides that if the occupier of the premises or someone else at the premises representing the occupiers is present at the premises while a search warrant is being executed, the authorised officer or a person assisting must make available to the person a copy of the warrant and a document setting out the rights and obligations of the person.

**Clause 89 – Occupier entitled to be present during search etc** – provides that a person (the occupier or someone representing the occupier) is entitled to observe the search being conducted. Subsection 2(a) and (b) list the circumstances in which this is an exception to the rule.

### **Division 10.4 Return and forfeiture of things seized**

**Clause 90 – Receipt for things seized** – provides that 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. Subsection 3 also outlines the information that must be contained in the receipt (a) to (d) receipt must include.

**Clause 91 – Moving things to another place for examination or processing under search warrant** – provides that 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, there are reasonable grounds for believing that the thing is or contains something to which the warrant relates and it is significantly more practicable to do so have regard to the timeliness and cost of

examining or processing the thing at another place and the availability of expert assistance or the occupier of the premises agrees in writing. The thing may be moved to another place for examination or processing for no longer than 72 hours. Or an extension may be sought from a magistrate (see subsection 3)

**Clause 92 – Access to things seized** – provides that a person entitled to inspect a thing seized may inspect it and if it is a document, take extracts from it or make copies of it.

**Clause 93 – Return or forfeiture of things seized** – provides that a thing seized must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing under certain circumstances. See (1) (a) to (c). Under subsection (2) if anything seized under this part is not required to be returned or reasonable compensation is not required to be paid under subsection (1) the thing is forfeited to the Territory and may be sold destroyed or otherwise disposed of as the chief executive directs.

## **Part 11 – Review of decisions**

**Clause 94 — Reviewable decisions** – lists the decisions made under the Act that can be reviewed.

**Clause 95 – Review of decisions** – provides that an application may be made to the AAT for review of a reviewable decision.

**Clause 96 – Notice of reviewable decisions** – provides that if the Minister or authority makes a reviewable decision, the Minister or authority must give written notice of the decision to the applicant. The notice must be in accordance with the code of practice in force under the *Administrative Appeals Tribunal Act 1989*.

## **Part 12 – Miscellaneous**

**Clause 97 – Protection of officials from liability** – provides the protection of people exercising functions under the Act from civil liability arising from their conduct in exercising their functions provided that they act honestly and without recklessness in exercising a function under the Act or purporting to exercise a function under the Act. Civil liability that would apart from subsection (2) be attached to the official or person acting under the direction of the official (for example a consultant or contractor) attaches to the Territory instead.

**Clause 98 - Damage to be minimised** – provides that 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 (for example an environment protection officer) causes as little inconvenience detriment and damage as practicable. Under subsection (2) the authorised officer or person assisting the authorised officer must give written notice of the particulars of damage to the person the authorised officer believes on reasonable grounds is the owner of the thing. If this damage happens in the absence of the occupier the notice must be left at the premises where it is secured conspicuously.



**Clause 99 - Compensation for exercise of powers** – sets out the circumstances in which a person can claim compensation from the Territory, how that compensation may be sought and the type of order a court may make in relation to the claim.

**Clause 100 - Incorporation of documents** – provides that a statutory instrument under this Act may apply, adopt or incorporate an instrument as in force from time to time

**Clause 101 - Inspection of incorporated documents** – provides that the authority must ensure that the incorporated document, or an amendment of or replacement for an incorporated document be made available for inspection free of charge to the public at reasonable times at the office of the authority on business days.

**Clause 102 - Notification of certain incorporated documents** – provides that this section applies to an incorporated document or an amendment of, or replacement for an incorporated document. Subsection (2) lists the information that must be included in a written notice for the incorporated document, amendment or replacement prepared by the authority. An incorporated document is a notifiable instrument and will appear on the register.

**Clause 103 — Evidentiary certificates** – outlines the statements that can be made in an evidentiary certificate in a prosecution for an offence under this Act.

**Clause 104 – Criminal liability of corporation officers** – outlines the grounds on which an officer of a corporation can commit an offence.

**Clause 105 – Selfincrimination etc** – provides that this section applies if a person is required to give information or produce a document under this Act.

**Clause 106 – Non-payment of fees** – provides that if a fee payable in relation to water access entitlement or licence is not paid before the end of 30 days after the day it is payable, the authority may suspend or cancel the entitlement or licence until the fee is paid.

**Clause 107 – Determination of fees** – provides that the Minister may determine fees. A determination is a disallowable instrument.

**Clause 108 – Approved forms** – provides that that authority may approve forms for this Act. An approved form is a notifiable instrument.

**Clause 109 - Regulation-making power** – provides that the Executive may make regulations for this Act. This includes a regulation that may create offences and fix maximum penalties of not more than 10 penalty units.

## **Part 13 – Surviving allocations**

**Clause 110 – Survival of allocations** –provides that a water allocation in force under the repealed Act immediately before the commencement day (known as a surviving allocation) continues in force subject to this Act).

**Clause 111 – Surviving allocations – surrender generally** – provides that a surviving allocation can not be transferred or amended but subject to section 113 and 114 may be surrendered to the authority. 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. Subsection (3) state what type of entitlement the Authority must grant on request, subsection (4) lists the information that must be stated on the water access entitlement including the amount of surface water or ground water that may be taken and the water management area to which it relates. Subsection (5) deals with fees paid.

**Clause 112 – Surviving allocations - surrender by water utility** - this provides for the surrender of a surviving allocation held by a utility to the authority and a request for a water access entitlement under section 111 within 6 months after the commencement day of this Act and subsection (2) deals with the situation when the 6 month date has passed.

**Clause 113 - Surviving allocations – surrender by holder no longer owner or occupier of land** – this section applies to a holder of a surviving allocation who is not a utility, if the holder is not the owner or occupier of the land to which the allocation relates, The holder may surrender the allocation to the authority and request a water access entitlement under section 111 before the end of the later of 6 months after the day that the person ceases to be the owner or occupier of the land, and 6 months after the commencement day. Surrender must be done within these dates or the holder will loose their right the entitlement and must not be granted a water access entitlement under section 111.

## **Part 20 Transitional**

**Clause 200 – Environmental flow guidelines** – provides that the previous environmental flow guidelines under the previous act will before that act is repealed be taken to be approved by the Minister under section 12 as guidelines for the purposes of this new Act. In short that is the environmental flow guidelines will remain the same under this new Act. The guidelines are taken as being notified under the *Legislation Act* on the day that this Act is notified and to have commenced on the commencement day and are not required to be presented to the Legislative Assembly

**Clause 201 – Existing licences and permits-** this section deals with the different types of licences issue under the previous Act and their continuation under this new act for certain licences there is a minor name change see (3) and (5).

**Clause 202 – Water access entitlements for certain existing licence holders** – this section applies to a person who was the holder of a licence to take ground water under the 1998 Act but did not have a water allocation under that Act on which to base the taking of ground water under the licence. On request by that person the authority must grant a water access entitlement based on the provisions in 2(a) and (b). Subclause (3) details the information that a water access entitlement must contain.

**Clause 203 -Information on the register** – provides that the authority may include under this new Act may include any information from the register held under the repealed act

**Clause 204 – References to Planning and Development.** – this provides that a references in this Act to the *Planning and Development Act 2007* also includes a reference to the *Land (Planning and Environment )Act 1991* and that a reference to chapter 7 of the 2007 act includes a reference to part 6 of the 1991 act as mentioned above.

**Clause 205 - Transitional regulations** – this provides for the type of transitional regulations that may be made, including anything under (2) a regulation that may modify this part to make provision in relation to anything that in the Executives opinion is or is not adequately or appropriately dealt with in this part.

**Clause 206 -Expiry pt 20** - this part expires 1 year after commencement day

## **Part 21 – Repeals and consequential amendments**

**Clause 207 — Legislation repealed** – outlines what Legislation is repealed.

**Clause 208 — Administrative Decisions (Judicial Review) Act 1989 Schedule 1, item 18** – removes reference to decisions made under section 63A of the *Water Resources Act 1998* (moratorium on granting licences etc) as this part is not present in the new Act

**Clause 209 – Gungahlin Drive Extension Authorisation regulation 2004 4(e).** – this substitutes for (e) the words *Water Resources Act 2007*.

**Clause 210 -Land (Planning and Environment) Regulation 1992 Schedule 1 item 3 (d)** - this inserts after the words *Water Resources Act 1998* or the *Water Resources Act 2007*.

**Clause 211 – Utilities Act 2000 – Section 20(2) (1)** – substitutes the *Water Resources Act 2007*.

**Dictionary** – contains definitions.