South Australia

Water Industry Act 2012

An Act to facilitate planning in connection with water demand and supply; to regulate the water industry, including by providing for the establishment of a licensing regime and providing for the regulation of prices, customer service standards, technical standards for water and sewerage infrastructure and installations and plumbing, and by providing performance monitoring of the water industry; to provide for other measures relevant to the use and management of water; and for other purposes.

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Objects
4 Interpretation
5 Interaction with other Acts
5A Provisions related to operation of Part 9A

Part 2—Water planning

6 Water planning

Part 3—Administration

Division 1—Functions and powers of Commission

7 Functions and powers of Commission

Division 2—Technical Regulator

8 Technical Regulator
9 Functions of Technical Regulator
10 Delegation
11 Technical Regulator's power to require information
12 Obligation to preserve confidentiality
13 Annual report

Division 3—Advisory committees

14 Consumer advisory committee
15 Technical advisory committee
16 Other advisory committees

Part 4—Water industry

Division 1—Declaration as regulated industry

17 Declaration as regulated industry

Division 2—Licensing of water industry entities

18 Requirement for licence
19 Application for licence
20 Consideration of application
21 Licences may be held jointly
22 Authority conferred by licence
23 Term of licence
24 Licence fees and returns
25 Licence conditions
27 Offence to contravene licence conditions
28 Variation of licence
29 Transfer of licence
30 Consultation with consumer bodies
31 Notice of licence decisions
32 Surrender of licence
33 Suspension or cancellation of licences
34 Register of licences

Division 3—Price regulation

35 Price regulation

Division 4—Standard terms and conditions for retail services

36 Standard terms and conditions for retail services

Division 5—Customer hardship policies

37 Customer hardship policies

Division 6—Commission's powers to take over operations

38 Power to take over operations
39 Appointment of operator

Division 7—Related matters

40 Ministerial directions

Part 5—Powers and duties relating to land and infrastructure

Division 1—Water industry officers

41 Appointment of water industry officers
42 Conditions of appointment
43 Identity cards

Division 2—Management of land and infrastructure

44 Power to enter land to conduct investigations
45 Power to carry out work on land
46 Acquisition of land

47 Infrastructure does not merge with land
48 Requirement to connect to infrastructure

Part 6—Protection and use of infrastructure, equipment and water and powers in relation to installations

Division 1—Protection of infrastructure, equipment and services

49 Encroachments
50 Protection of infrastructure and equipment
51 Notice of work that may affect water/sewerage infrastructure
52 Duty to give notice before paving a road etc
53 Unlawful abstraction, removal or diversion of water or sewage
54 Water meters
55 Discharge of unauthorised material into water infrastructure
56 Discharge of unauthorised material into sewerage infrastructure
57 Work to be carried out by owner at requirement of water industry entity with respect to sewerage infrastructure
58 Power to disconnect drains or to restrict services

Division 2—Protection and use of water supply

59 Power to restrict or discontinue water supply
60 Power to require the use of devices to reduce flow
61 Power to test and protect water

Division 3—Powers in relation to infrastructure and installations

62 Entry to land and related powers
63 Disconnection etc if entry refused
64 Disconnection in an emergency
65 Special legislation not affected

Part 7—Technical and safety issues

66 Standards
67 Performance of regulated work
68 Responsibilities of water industry entity
69 Responsibilities of customers
70 Prohibition of sale or use of unsuitable items
71 Public warning statements about unsuitable components, practices etc

Part 8—Enforcement

Division 1—Appointment of authorised officers

72 Appointment of authorised officers
73 Conditions of appointment
74 Identity cards

Division 2—General powers of authorised officers

75 Power of entry
76 Inspection powers

Division 3—Specific powers in relation to infrastructure and equipment

77 Disconnection of supply

78 Power to make infrastructure etc safe

Division 4—Related matters

79 Power to require information or documents
80 Enforcement notices
81 Self-incrimination
82 Warning notices and assurances
83 Injunctions

Part 9—Reviews and appeals

84 Review of decisions by Commission or Technical Regulator
85 Appeals
86 Minister's power to intervene

Part 9A—Third party access regime

Division 1—Preliminary

86A Interpretation
86B Application

Division 2—Regulator

86C Appointment of regulator
86D Report to Minister

Division 3—Information to facilitate access proposals

86E Segregation of accounts and records
86F Information brochure
86G Specific information to assist proponent to formulate proposal
86H Information to be provided on non-discriminatory basis

Division 4—Negotiation of access

86I Access proposal
86J Duty to negotiate in good faith
86K Existence of dispute

Division 5—Conciliation

86L Settlement of dispute by conciliation
86M Voluntary and compulsory conferences

Division 6—Reference of dispute to arbitration

86N Power to refer dispute to arbitration
86O Application of *Commercial Arbitration Act 2011*
86P Principles to be taken into account
86Q Parties to the arbitration
86R Representation
86S Participation by other parties
86T Arbitrator's duty to act expeditiously
86U Hearings to be in private
86V Procedure on arbitration
86W Procedural powers of arbitrator
86X Giving of relevant documents to the arbitrator

86Y Power to obtain information and documents
86Z Confidentiality of information
86ZA Proponent's right to terminate arbitration before an award is made
86ZB Arbitrator's power to terminate arbitration
86ZC Time limit for arbitration
86ZD Formal requirements related to awards
86ZE Consent awards
86ZF Proponent's option to withdraw from award
86ZG Termination or variation of award
86ZH Costs
86ZI Contractual remedies
86ZJ Appeal on question of law
86ZK Injunctive remedies
86ZL Compensation

Division 7—Related matters

86ZM Confidential information
86ZN Access by agreement
86ZO Copies of access contracts to be supplied to regulator
86ZP Regulated operator's duty to supply information and documents
86ZQ Unfair discrimination
86ZR Review of Part

Part 10—Miscellaneous

87 Consumer Advocacy and Research Fund
88 Minister's power to require information
89 Delegation by Minister
90 Consultation between agencies
91 Seizure and dismantling of infrastructure
92 Water conservation measures
95 Immunity
96 Impersonation of officials etc
97 Obstruction of officials etc
98 Fire plugs
99 Report on installation of separate meters on properties
100 Obstruction of works by occupiers
101 False or misleading information
102 Offences
103 General defence
104 Offences by bodies corporate
105 Continuing offences
106 Order for payment of profit from contravention
107 Statutory declarations
108 Power of exemption
109 Application and issue of warrant
110 Urgent situations
111 Evidence
112 Service
113 Ventilators
114 Protection of tenants and lessees of residential premises
115 Regulations
116 Review of Act

Schedule 1—Appointment and selection of experts for District Court

Schedule 2—Transitional provisions

Part 10—Transitional provisions

Division 1—Preliminary

20 Preliminary

Division 2—Special provisions relating to repeal of *Sewerage Act 1929*

21 Interpretation
22 Rates—transitional financial year
23 Rates—related provisions
24 Notices and authorisations
25 Vesting of undertaking in SA Water
26 Capital contribution where capacity of undertaking increased
27 Authorisation to discharge material into sewerage infrastructure
28 Requirement to carry out work
29 Power to disconnect drains
30 Exemption

Division 3—Special provisions relating to repeal of *Water Conservation Act 1936*

31 Interpretation
32 Rates and charges—transitional financial year
33 Water rates—related provisions
34 Notices and authorisations
35 Land etc vested in Minister
36 Agreements to bind subsequent owners and occupiers
37 Water conservation reserves

Division 4—Special provisions relating to repeal of *Waterworks Act 1932*

38 Interpretation
39 Rates and charges—transitional financial year
40 Rates and charges—related provisions
41 Notices and authorisations
42 Vesting of waterworks etc in SA Water
43 Fire plugs and pipes
44 Exemption
45 Capital contribution where capacity of waterworks increased

Division 5—Other matters

46 Approved schemes
47 References to rates
48 Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Water Industry Act 2012*.

2—Commencement

(1) This Act will come into operation on a day to be fixed by proclamation.

(2) Sections 18 and 26 must be brought into operation on the same day.

3—Objects

The objects of this Act are—

(a) to promote planning associated with the availability of water within the State to respond to demand within the community; and

(b) to promote efficiency, competition and innovation in the water industry; and

(c) to provide mechanisms for the transparent setting of prices within the water industry and to facilitate pricing structures that reflect the true value of services provided by participants in that industry; and

(d) to provide for and enforce proper standards of reliability and quality in connection with the water industry, including in relation to technical standards for water and sewerage infrastructure and installations and plumbing; and

(e) to protect the interests of consumers of water and sewerage services; and

(f) to promote measures to ensure that water is managed wisely; and

(g) to promote the economically efficient use and operation of, and investment in, significant infrastructure so as to promote effective competition in upstream and downstream markets.

4—Interpretation

(1) In this Act, unless the contrary intention appears—

adjacent land, in relation to other land, means land that abuts on the other land;

authorised officer means a person appointed under Part 8 as an authorised officer;

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

condition includes a limitation or restriction;

connection point means—

(a) the point at which a customer's pipes connect with any water infrastructure or sewerage infrastructure; or

(b) in any prescribed circumstances—such other point as may be prescribed by the regulations;

consumer means a person supplied with retail services as a consumer or user of those services;

contravention includes a failure to comply;

council means a council within the meaning of the *Local Government Act 1999*;

customer means a person who owns land in relation to which a retail service is provided and includes—

(a) where the context requires, a person seeking the provision of a retail service; and

(b) in prescribed circumstances—a person supplied with retail services as a consumer or user of those services (without limiting the application of this definition to owners of land); and

(c) a person of a class declared by the regulations to be customers;

designated customers—see subsections (2) and (3);

District Court means the Administrative and Disciplinary Division of the District Court;

draining work means the installation, alteration, repair, maintenance or disconnection of sanitary drains;

drains—a drain may include a pressurised system for the removal of sewage;

equipment includes—

(a) pipes, fittings and apparatus; and

(b) any component of any equipment;

Health Department means the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *South Australian Public Health Act 2011*;

industry ombudsman scheme means the scheme applying for the purposes of section 25(1)(h);

infrastructure includes—

(a) pipes, conduits and associated fittings and apparatus;

(b) pumping stations;

(c) storage tanks;

(d) bores and wells;

(e) dams, reservoirs and wetlands;

(f) embankments, walls, channels, drains, drainage holes or other forms of works or earthworks;

(g) treatment facilities;

(h) testing or monitoring equipment;

(i) roads and other works to provide for the movement of vehicles or equipment or to provide access to land, works or other forms of infrastructure;

(j) bridges and culverts;

(k) buildings and structures;

(l) components of any infrastructure;

(m) other items brought within the ambit of this definition by the regulations;

land includes—

(a) an estate or interest in land (including an easement); or

(b) a right or power over or in respect of land;

Minister's Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

occupier of land or a place means a person who has, or is entitled to, lawful possession or control of the land or place;

owner of land means—

(a) if land is unalienated Crown land—the Crown; or

(b) if the land is alienated from the Crown by grant in fee simple—the owner of the estate in fee simple; or

(c) if the land is held from the Crown by lease or licence—the lessee or licensee,

and includes an occupier of the land;

plumbing means—

(a) water plumbing work, sanitary plumbing work or draining work on the customer's side of any connection point; or

(b) any other work brought within the ambit of this definition by the regulations;

retail service means a service constituted by—

(a) the sale and supply of water to a person for use (and not for resale other than in prescribed circumstances (if any)) where the water is to be conveyed by a reticulated system; or

(b) the sale and supply of sewerage services for the removal of sewage,

(even if the service is not actually used) but does not include any service, or any service of a class, excluded from the ambit of this definition by the regulations;

River Murray has the same meaning as in the *River Murray Act 2003*;

road means a street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis by the use of vehicles or as pedestrians or both and includes—

(a) a bridge, viaduct or subway; or

(b) an alley, laneway or walkway;

sanitary drain means pipes and equipment to collect and convey sewage from a sanitary plumbing installation to an on-site treatment facility or a sewerage or effluent disposal system;

sanitary plumbing work means the installation, alteration, repair, maintenance or disconnection of pipes or equipment to receive and convey sewage to sanitary drains (including associated plumbing ventilation equipment);

SA Water means *South Australian Water Corporation* established under the *South Australian Water Corporation Act 1994*;

sewage includes any form of waste that may be appropriately removed or dealt with through the use of a sewerage service;

sewerage infrastructure means—

(a) any infrastructure that is, or is to be, used for—

(i) the collection or storage of sewage and includes the connection point; or

(ii) the conveyance or reticulation of sewage; or

(iii) the treatment of sewage, including any outfall pipe or other work that stores or conveys water leaving infrastructure used for the treatment of sewage; or

(b) any other infrastructure used in connection with sewage and brought within the ambit of this definition by the regulations,

but does not include—

(c) any pipe, fitting or apparatus that is situated upstream of a customer's connection point; or

(d) infrastructure situated entirely within one site and not connected to any other infrastructure situated within another site; or

(e) any other infrastructure used in connection with sewage that is excluded from the ambit of this definition by the regulations;

sewerage service means—

(a) a service constituted by the collection, storage, treatment or conveyance of sewage through the use of a reticulated system; or

(b) any other service, or any service of a class, brought within the ambit of this definition by the regulations;

site means an area of land constituting a single land holding;

stormwater drain means pipes and equipment to collect and convey stormwater to a public stormwater disposal system;

Technical Regulator means the person holding the office of Technical Regulator under Part 3;

water includes rainwater, stormwater, desalinated water, recycled water and water that may include any material or impurities, but does not include sewage;

water industry means any operations associated with the provision of water services or sewerage services;

water industry entity means—

(a) a person licensed under Part 4; or

(b) a person recognised by the Minister under subsection (4) as a water industry entity for the purposes of this Act,

and includes (where the context requires) a person who has been licensed under Part 4 whose licence has been suspended or cancelled or has expired or a person who is to be treated as a water industry entity under the regulations;

water industry officer means a person appointed under Part 5 as a water industry officer;

water infrastructure means—

(a) any infrastructure that is, or is to be, used for—

(i) the collection or storage of water, including a dam or reservoir, a water production plant or a wetland; or

(ii) the treatment of water; or

(iii) the conveyance or reticulation of water and includes the connection point; or

(b) any other infrastructure used in connection with water and brought within the ambit of this definition by the regulations,

but does not include—

(c) any pipe, fitting or apparatus that is situated downstream of a customer's connection point; or

(d) any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a stormwater drain; or

(e) infrastructure situated entirely within one site and not connected to any other infrastructure situated within another site; or

(f) any other infrastructure used in connection with water that is excluded from the ambit of this definition by the regulations;

water plumbing work means the installation, alteration, repair, maintenance or disconnection of pipes or equipment (including water heaters) to be connected directly or indirectly to a water supply system;

water service means—

(a) a service constituted by the collection, storage, production, treatment, conveyance, reticulation or supply of water; or

(b) any other service, or any service of a class, brought within the ambit of this definition by the regulations;

water/sewerage infrastructure means water infrastructure or sewerage infrastructure (or both).

(2) A reference in this Act to designated customers, or designated classes of customers (or customers of a designated class), is a reference to customers, or classes of customers, designated by the Minister by notice in the Gazette.

(3) The Minister may—

(a) in acting under subsection (2), make different designations with respect to different sections of this Act;

(b) by further notice in the Gazette, vary or revoke a previous notice under subsection (2).

(4) The Minister may, for the purposes of the definition of ***water industry entity***, by notice in the Gazette—

(a) recognise a person within the water industry as a water industry entity for the purposes of this Act, or specified provisions of this Act;

(b) vary or revoke the recognition of a particular person under paragraph (a).

(5) For the purposes of this Act, a right to the provision of a particular service by a water industry entity may be taken to constitute the supply of a service by that entity.

5—Interaction with other Acts

(1) Subject to this section, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

(2) This Act does not apply to or in relation to—

(a) an irrigation trust, or any services provided or infrastructure held by an irrigation trust, under the *Irrigation Act 2009*;

(b) the Renmark Irrigation Trust, or any services provided or infrastructure held by the Renmark Irrigation Trust, under the *Renmark Irrigation Trust Act 2009*;

(c) any other person providing irrigation services designated by the Minister by notice in the Gazette,

except to the extent prescribed by the regulations.

(3) The Minister may, by further notice, vary or revoke a previous notice under subsection (2)(c).

(4) This Act does not apply to any person or entity, or any circumstance, excluded from the operation of this Act by the regulations.

5A—Provisions related to operation of Part 9A

(1) The Governor may, by proclamation made under this subsection, declare the extent to which Part 9A will apply in relation to—

(a) specified water infrastructure or sewerage infrastructure, or a specified class of such infrastructure; or

(b) specified infrastructure services, or a specified class of such services.

(2) A proclamation under subsection (1) will have effect according to its terms (including so as to limit the operation of Part 9A or a proclamation made under that Part).

(3) The Governor may, by proclamation, vary or revoke a proclamation under subsection (1).

(4) Subject to subsection (5), the provisions of Part 9A are declared to be Commonwealth water legislation displacement provisions for the purposes of section 250D of the *Water Act 2007* of the Commonwealth in relation to the operation of Part 4 Division 1 of that Act.

(5) Subsection (4) has operation if or when the Governor, by proclamation made under this subsection, declares that that subsection takes effect as a law of the State.

Part 2—Water planning

6—Water planning

(1) The Minister must prepare and maintain a document to be called the *State Water Demand and Supply Statement*.

(2) The *State Water Demand and Supply Statement* must—

(a) assess the state of South Australia's water resources and the extent of water supplies available within the State; and

(b) assess current and future demand for water within the State; and

(c) outline policies, plans and strategies relevant to ensuring that the State's water supplies are secure and reliable and are able to sustain economic growth within the State.

(3) The *State Water Demand and Supply Statement* may—

(a) address any other matter considered to be relevant by the Minister; and

(b) take into account any policy, plan or strategy determined to be relevant by the Minister.

(4) The Minister must comprehensively review the *State Water Demand and Supply Statement* at least once in every 5 years.

(5) The Minister may amend the *State Water Demand and Supply Statement* at any time.

(6) The Minister must, in relation to a proposal—

(a) to create the *State Water Demand and Supply Statement*; or

(b) to undertake a comprehensive review of the *State Water Demand and Supply Statement*,

invite interested persons to make written representations on the proposal in such manner, and within a period, specified by the Minister.

(7) The Minister must, within 14 days after the finalisation of the *State Water Demand and Supply Statement*, or the finalisation of a comprehensive review of the *State Water Demand and Supply Statement*, cause copies of the statement (or the Statement as revised) to be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.

(8) The Minister must—

(a) make appropriate provision for the publication of the *State Water Demand and Supply Statement*; and

(b) ensure that copies of the *State Water Demand and Supply Statement* are reasonably available for inspection (without charge) and purchase by the public at places determined by the Minister; and

(c) ensure that notice of any amendment to the *State Water Demand and Supply Statement* is published in the Gazette within a reasonable time after the amendment is made.

(9) The Minister must, on or before 31 March in each year, prepare a report that relates to the *State Water Demand and Supply Statement* and that—

(a) provides information about the water demand and supply status of the various regions of the State; and

(b) identifies and analyses the impacts of any emerging risks or significant issues associated with the State's water supplies; and

(c) reports on such other matters as the Minister thinks fit.

(10) The Minister must, immediately after the finalisation of the report under subsection (9), cause copies of the report to be delivered to the President of the Legislative Council and the Speaker of the House of Assembly.

(11) When the President of the Legislative Council and the Speaker of the House of Assembly receive a statement or report under this section, the President and the Speaker must—

(a) immediately cause the statement or report to be published; and

(b) lay the statement or report before their respective Houses at the earliest opportunity.

(12) If the President of the Legislative Council or the Speaker of the House of Assembly is absent at the time that a statement or report is delivered to the Parliament under this section, the Clerk of the relevant House will receive the statement or report on behalf of the President or the Speaker (as the case may be) (and the statement or report will then be taken to have been received by the President or the Speaker).

(13) If a statement or report is received by the President of the Legislative Council or the Speaker of the House of Assembly at a time when Parliament is not sitting, the statement or report will be taken to have been published under subsection (11) at the expiration of 1 clear day after the day of receipt of the report.

(14) A statement or report will, when published under subsection (11), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

(15) A statement or report under this section is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).

Part 3—Administration

Division 1—Functions and powers of Commission

7—Functions and powers of Commission

(1) The Commission has (in addition to the Commission's functions and powers under the *Essential Services Commission Act 2002*)—

(a) the licensing, price regulation and other functions and powers conferred by this Act; and

(b) any other functions and powers conferred by regulation under this Act.

(2) If water industry entities are required by licence condition to participate in an ombudsman scheme, the Commission must, in performing licensing functions under this Act, liaise with the ombudsman appointed under the scheme.

Division 2—Technical Regulator

8—Technical Regulator

(1) There is to be a *Technical Regulator*.

(2) The Technical Regulator will be appointed by the Minister.

(3) The office of Technical Regulator may be held in conjunction with a position in the Public Service.

(4) The Minister may assign an employee in the Public Service to act as the Technical Regulator—

(a) during a vacancy in the office of Technical Regulator; or

(b) when the Technical Regulator is absent from, or unable to discharge, official duties.

9—Functions of Technical Regulator

The Technical Regulator has the following functions:

(a) to develop technical standards in connection with the water industry;

(b) to monitor and regulate technical standards with respect to—

(i) water and sewerage installations and associated equipment, products and materials (including on the customer's side of any connection point); and

(ii) plumbing;

(c) to provide advice in relation to safety or technical standards—

(i) in the water industry to the Commission at the Commission's request; and

(ii) in the plumbing industry;

(d) any other function assigned to the Technical Regulator under this or any other Act or conferred by regulation under this Act.

10—Delegation

(1) The Technical Regulator may delegate a function or power conferred on the Technical Regulator under this Act—

(a) to a particular person or body; or

(b) to the person for the time being occupying a particular office or position.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be subject to conditions or limitations specified in the instrument of delegation; and

(b) does not derogate from the power of the Technical Regulator to act in a matter; and

(c) is revocable at will by the Technical Regulator.

(4) The Technical Regulator must keep a public register of delegations under this section.

(5) In any legal proceedings an apparently genuine certificate, purportedly given by the Technical Regulator, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

11—Technical Regulator's power to require information

(1) The Technical Regulator may, by written notice, require a person to give the Technical Regulator, within a time stated in the notice (which must be reasonable), the information in the person's possession that the Technical Regulator reasonably requires for the performance of the Technical Regulator's functions (whether under this Act or any other Act).

(2) A person required to give information under this section must provide the information within the time stated in the notice.

Maximum penalty: $20 000.

(3) A person is not required to give information under this section if the information might tend to incriminate the person of an offence.

12—Obligation to preserve confidentiality

(1) The Technical Regulator must preserve the confidentiality of information gained by the Technical Regulator (including information gained by an authorised officer under this Act) that—

(a) could affect the competitive position of a water industry entity or other person; or

(b) is commercially sensitive for some other reason.

(2) Despite subsection (1), the Technical Regulator may disclose confidential information in the following circumstances:

(a) as reasonably required in connection with the administration or enforcement of this Act (including to the Minister, the Commission and persons assisting the Commission), or as otherwise related to the performance of the Technical Regulator's functions (whether under this Act or any other Act);

(b) to a person concerned in the administration or enforcement of another law of the State, or a law of the Commonwealth or another State or Territory of the Commonwealth, for the purposes related to the administration or operation of that other law;

(c) to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for purposes related to the performance of its functions (or to a person acting on behalf of such a government agency or instrumentality);

(d) with the consent of the person who gave the information or to whom the information relates;

(e) as required by a court or tribunal constituted by law;

(f) as authorised by the Minister.

(3) Information classified by the Technical Regulator as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

13—Annual report

(1) The Technical Regulator must, within 3 months after the end of each financial year, deliver to the Minister a report on the Technical Regulator's operations during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

Division 3—Advisory committees

14—Consumer advisory committee

(1) The Commission must establish an advisory committee comprising representatives of consumers (the ***consumer advisory committee***)—

(a) to provide advice to the Commission in relation to the performance of its licensing functions under Part 4; and

(b) to provide advice to the Commission, either on its own initiative or at the request of the Commission, on any other matter relating to the water industry.

(2) Despite subsection (1), the consumer advisory committee will, if the Commission so determines, be the same committee as the committee of that name established under Division 4 of Part 2 of the *Electricity Act 1996* and have the functions referred to in subsection (1) in addition to its functions under that Division.

15—Technical advisory committee

The Technical Regulator must establish an advisory committee (the ***technical advisory committee***) including representatives of—

(a) water industry entities; and

(b) contractor and employee associations involved in the water industry; and

(c) persons involved in the administration of public health legislation; and

(d) local government; and

(e) other entities determined by the Technical Regulator,

to provide advice to the Technical Regulator, either on its own initiative or at the request of the Technical Regulator, on any matter relating to the functions of the Technical Regulator.

16—Other advisory committees

The Minister, the Commission or the Technical Regulator may establish other advisory committees to provide advice on specified aspects of the administration of this Act.

Part 4—Water industry

Division 1—Declaration as regulated industry

17—Declaration as regulated industry

The water industry is declared to constitute a regulated industry for the purposes of the *Essential Services Commission Act 2002*.

Division 2—Licensing of water industry entities

18—Requirement for licence

(1) A person must not provide a retail service unless the person holds a licence under this Part authorising the relevant services, operation or activity.

Maximum penalty: $1 000 000.

(2) SA Water is entitled by the force of this section to hold a non-transferable licence under this Part appropriate to the services, operations or activities provided, carried on or undertaken by it from time to time.

(3) In connection with the operation of subsection (2)—

(a) the Commission must issue SA Water with the appropriate licence or licences; and

(b) the Commission must comply with any requirements specified by the Minister as to the terms and conditions of a licence and rights conferred by a licence.

(4) The requirements of the Minister as to the conditions of a licence under subsection (3) must be consistent with the provisions of this Act as to such conditions.

(5) To avoid doubt, a licence under subsection (3) cannot be transferred, suspended or cancelled.

(6) In connection with the operation of this section—

(a) the Minister must establish a set of community service obligations that require SA Water to continue to provide services within those areas of the State in which services are provided immediately before the commencement of subsection (2) unless the Minister grants an approval for the discontinuance of any such service; and

(b) if the Minister grants an approval under paragraph (a), the Minister must immediately prepare a report in relation to the matter and cause copies of the report to be laid before both Houses of Parliament within 6 sitting days after the approval is given.

19—Application for licence

(1) An application for the issue of a licence must—

(a) be made to the Commission in a form approved by the Commission; and

(b) contain the information specified in the form.

(2) The applicant must pay to the Commission an application fee fixed by the Treasurer of an amount that the Treasurer considers appropriate to meet the reasonable costs of determining the application.

(3) The Commission may, as the Commission considers appropriate, accept a single application from an applicant in respect of different operations of the applicant or operations of the applicant at different locations or may require separate applications.

(4) The applicant must give the Commission any further relevant information requested by the Commission.

20—Consideration of application

(1) The Commission must consider an application for the issue of a licence and may, subject to this Division, issue or refuse to issue the licence.

(2) The Commission must have regard to the general factors specified in Part 2 of the *Essential Services Commission Act 2002* and, subject to this section, may only issue a licence if satisfied that—

(a) the applicant is a suitable person to hold the licence; and

(b) the applicant will be able to meet reasonably foreseeable obligations under contracts for the sale or supply of water or the sale or supply of sewerage services (or both), as the case may require; and

(c) the water infrastructure or the sewerage infrastructure (or both), as the case may require, to be used in connection with the relevant service is (or proposed infrastructure will be) appropriate for the purposes for which it will be used; and

(d) the applicant has the capacity (including financial, technical, organisational and other necessary capacity) to provide the services safely and to appropriate standards that would be authorised by the licence; and

(e) the applicant meets any special requirements imposed by the regulations for the holding of the licence; and

(f) the grant of the licence would be consistent with criteria (if any) prescribed by the regulations.

(3) In deciding whether an applicant is a suitable person to hold a licence, the Commission may consider—

(a) the applicant's previous commercial and other dealings and the standard of honesty and integrity shown in those dealings; and

(b) the financial, technical and human resources available to the applicant; and

(c) the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity shown in those dealings (including breaches of statutory and other legal obligations); and

(d) other matters prescribed by regulation or considered relevant by the Commission.

(4) If—

(a) a person carries on or proposes to carry on operations for which a licence is required as agent of another person; and

(b) the agent makes application for the issue of such a licence on the agent's own behalf and on behalf of the principal; and

(c) the Commission is satisfied that the criteria for the issue of the licence are met in relation to the agent,

the Commission may, at the Commission's discretion, dispense with the requirement that the Commission be satisfied that the criteria are met in relation to the principal and issue the licence to the agent and the principal to be held by them jointly.

21—Licences may be held jointly

(1) A licence may be held jointly by 2 or more persons.

(2) If a licence is held jointly by 2 or more persons, those persons are jointly and severally liable to meet requirements imposed under this Act or the *Essential Services Commission Act 2002*.

22—Authority conferred by licence

(1) A licence authorises the person named in the licence to provide services or to carry on operations or activities in accordance with the terms and conditions of the licence.

(2) Any services, operations or activities authorised by a licence need not be all of the same character or undertaken at the same location but may consist of a combination of different services, operations or activities provided or carried on at 1 or more locations.

23—Term of licence

A licence may be issued for an indefinite period or for a term specified in the licence.

24—Licence fees and returns

(1) A person is not entitled to the issue of a licence unless the person first pays to the Commission the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

(2) The holder of a licence issued for a term of 2 years or more must—

(a) in each year lodge with the Commission, before the date prescribed for that purpose, an annual return containing the information required by the Commission by condition of the licence or by written notice; and

(b) in each year (other than a year in which the licence is due to expire) pay to the Commission, before the date prescribed for that purpose, the relevant annual licence fee, or the first instalment of the relevant annual licence fee, as the case may require.

(3) The annual licence fee for a licence is the fee fixed, from time to time, by the Treasurer in respect of that licence as an amount that the Treasurer considers to be a reasonable contribution towards prescribed costs after taking into account advice contained in a written report furnished to the Treasurer by the Commission for the purposes of this subsection.

(4) The Treasurer must, within 14 days after the receipt of a report under subsection (3), cause a copy of the report to be published on the Department of Treasury and Finance's website.

(5) The annual licence fee may, if the Commission so determines, be paid in equal instalments at intervals fixed by the Commission.

(6) If the holder of a licence fails to lodge the annual return or pay the annual licence fee (or an instalment of the annual licence fee) in accordance with this section, the Commission may, by written notice, require the holder to make good the default and, in addition, to pay to the Commission the amount prescribed as a penalty for default.

(7) An annual licence fee (including any instalment of an annual licence fee or any penalty for default) payable under this section is recoverable as a debt due to the Crown.

(8) In this section—

holder of a licence includes the holder of a licence that has been suspended;

prescribed costs means—

(a) the costs of administration of this Act; and

(b) any costs of administration of the *Essential Services Commission Act 2002* relating to the water industry; and

(c) any costs associated with the development by the State Government of policies relating to the water industry; and

(d) other costs prescribed by regulation.

25—Licence conditions

(1) The Commission must make a licence subject to conditions determined by the Commission—

(a) requiring compliance with applicable codes or rules made under the *Essential Services Commission Act 2002* as in force from time to time; and

(b) requiring the water industry entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002*) relating to the following matters with respect to designated customers, or designated classes of customers:

(i) standard contractual terms and conditions to apply to the sale or supply (or the sale and supply) of designated services;

(ii) minimum standards of service that take into account relevant national benchmarks developed from time to time;

(iii) limitations on the grounds on which the supply of designated services may be discontinued or disconnected;

(iv) the processes to be followed before designated services are discontinued or disconnected; and

(c) requiring the water industry entity, at the request of a designated customer, to provide designated services at the water industry entity's standard contract price and subject to the water industry entity's standard contractual terms and conditions; and

(d) requiring the water industry entity to comply with code provisions as in force from time to time (which the Commission must make under the *Essential Services Commission Act 2002* on or before a prescribed date) relating to the provision of pricing information to designated customers, or designated classes of customers; and

(e) requiring the water industry entity to include in each account for services provided to designated customers, or customers of a designated class, information prescribed by the regulations; and

(f) requiring the water industry entity to maintain specified accounting records and to prepare accounts according to specified principles; and

(g) requiring a specified process to be followed to resolve disputes between the water industry entity and its customers; and

(h) if the water industry entity provides designated services to designated customers, or designated classes of customers, requiring the water industry entity to participate in an ombudsman scheme determined or approved by the Commission; and

(i) requiring the water industry entity to monitor and report as required by the Commission on indicators of service performance determined by the Commission; and

(j) relating to the water industry entity's financial or other capacity to provide services or to continue operations or activities under the licence; and

(k) requiring the water industry entity to maintain specified kinds and levels of insurance; and

(l) requiring the water industry entity to have all or part of the services, operations or activities authorised by the licence audited and to report the results of the audit to the Commission; and

(m) requiring the water industry entity to notify the Commission about changes to officers and, if applicable, major shareholders of the entity; and

(n) requiring the water industry entity to provide, in the manner and form determined by the Commission, such other information as the Commission may from time to time require; and

(o) requiring the water industry entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by water industry entities; and

(p) requiring the water industry entity to comply with the requirements of any scheme approved and funded by the Minister for the purposes of providing specified exemptions from the requirement to pay for the provision of specified services.

(2) The Commission must, in acting under subsection (1), have regard to the scale and nature of the operations of the water industry entity (with the scale and nature being determined by the Commission after consultation with the entity or a person or body nominated by the entity).

(3) The Commission must make a licence subject to further conditions that the Commission is required by regulation to impose on the issue of such a licence.

(4) The Commission may make a licence subject to further conditions considered appropriate by the Commission.

(5) A code or set of rules under subsection (1)(a) must include provisions to assist customers who may be suffering specified types of hardship relevant to the supply of any services (being provisions that comply with any direction of the Minister and that will apply under the code or rules despite any provision made by the *Essential Services Commission Act 2002*).

(6) The Commission must provide to the Minister any information that the Minister requires for the purposes of the administration of a scheme—

(a) for the provision by the State of customer concessions, or the performance of community service obligations, relating to the sale or supply of water or the sale or supply of sewerage services; or

(b) for the provision of exemptions from the requirement to pay for the provision of various services.

(7) For the purposes of this section, the Minister may—

(a) by notice in the Gazette, designate various services;

(b) by further notice in the Gazette, vary or revoke a previous notice under paragraph (a).

27—Offence to contravene licence conditions

(1) A water industry entity must not contravene a condition of its licence.

Maximum penalty: $1 000 000.

(2) An offence against subsection (1) may be prosecuted as an indictable offence or a summary offence at the discretion of the prosecutor but, if prosecuted as a summary offence, the maximum penalty that may be imposed is a fine not exceeding $20 000.

28—Variation of licence

(1) The Commission may vary the terms or conditions of a water industry entity's licence by written notice to the entity.

(2) A variation under subsection (1) may only be made—

(a) on application by the water industry entity or with the water industry entity's agreement; or

(b) after giving the water industry entity reasonable notice of the proposed variation and allowing the entity a reasonable opportunity to make representations about the proposed variation (and giving due consideration to any such representations).

(3) The conditions of a licence prescribed by the regulations may be varied from time to time by further regulations.

(4) The conditions of a licence may be varied by the addition, substitution or deletion of one or more conditions.

29—Transfer of licence

(1) A licence may be transferred with the Commission's agreement.

(2) The Commission may impose conditions on the transfer of a licence, or vary the terms and conditions of the licence on its transfer.

(3) The Commission must not agree to the transfer of a licence if the transferee would not be entitled to the issue of the licence.

(4) An application for agreement to the transfer of a licence must—

(a) be made by the transferor with the consent of the transferee to the Commission in a form approved by the Commission; and

(b) contain the information specified in the form.

(5) The applicant must pay to the Commission an application fee fixed by the Treasurer of an amount that the Treasurer considers appropriate to meet the reasonable costs of determining the application.

(6) The applicant must give the Commission further relevant information requested by the Commission.

30—Consultation with consumer bodies

The Commission may, before issuing a licence, agreeing to the transfer of a licence or determining or varying conditions of a licence, consult with and have regard to the advice of—

(a) the Technical Regulator; and

(b) the Ombudsman holding office under the industry ombudsman scheme; and

(c) the consumer advisory committee under Part 3.

31—Notice of licence decisions

(1) The Commission must give an applicant for a licence, or for agreement to the transfer of a licence, written notice of the Commission's decision on the application.

(2) The Commission must give the holder of a licence written notice of any decision by the Commission affecting the terms or conditions of the licence.

32—Surrender of licence

(1) A water industry entity may, by written notice given to the Commission, surrender its licence.

(2) The notice must be given to the Commission so as to comply with a period of notice required under the terms of the licence.

(3) The Commission may, by agreement with the water industry entity, shorten the required period of notice.

33—Suspension or cancellation of licences

(1) The Commission may, if satisfied that—

(a) the holder of a licence obtained the licence improperly; or

(b) the holder of a licence has been guilty of a material contravention of a requirement imposed by or under this Act or any other Act in connection with the operations authorised by the licence; or

(c) the holder of a licence has ceased to carry on operations authorised by the licence; or

(d) there has been any act or default such that the holder of a licence would no longer be entitled to the issue of such a licence,

suspend or cancel the licence with effect from a specified date.

(2) A suspension under this section may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Commission.

(3) Before the Commission acts under this section, the Commission must—

(a) notify the holder of the licence in writing of the proposed action specifying the reasons for the proposed action; and

(b) allow the holder of the licence at least 14 days within which to make submissions to the Commission in relation to the proposed action.

34—Register of licences

(1) The Commission must keep a register of the licences currently held by water industry entities under this Act.

(2) The register must include—

(a) the terms and conditions of each licence; and

(b) other information required under the regulations.

(3) A person may, without payment of a fee, inspect the Register.

Division 3—Price regulation

35—Price regulation

(1) Subject to this section, the Commission may make a determination under the *Essential Services Commission Act 2002* regulating prices, conditions relating to prices, and price-fixing factors for retail services.

(2) Despite the provisions of the *Essential Services Commission Act 2002*, the operation of a determination of a kind referred to in subsection (1) is not to be stayed pending the determination of an application for review or appeal under Part 6 of that Act.

(3) In addition to the requirements of section 25(4) of the *Essential Services Commission Act 2002*, the Commission must, in acting under subsection (1), comply with the requirements of any pricing order issued by the Treasurer under this section.

(4) The Treasurer may, for the purposes of subsection (3), issue an order (a ***pricing order***) that—

(a) sets out any policies or other matters that the Commission must have regard to when making a determination contemplated by this section;

(b) specifies various parameters, principles or factors that the Commission must adopt or apply in making a determination contemplated by this section;

(c) relates to any other matter that the Treasurer considers to be appropriate in the circumstances.

(5) A pricing order—

(a) takes effect on a date specified in the order; and

(b) cannot be varied (except as contemplated by the order) or revoked (but this paragraph does not prevent new pricing orders being made from time to time).

(6) Notice of the making of a pricing order must be published in the Gazette.

(7) The notice must include a brief description of the nature and effect of the pricing order and state how a copy may be inspected or purchased.

(8) The Treasurer must—

(a) send a copy of a pricing order to each water industry entity to which the order may relate; and

(b) ensure that a copy of the order is published on the Department of Treasury and Finance's website; and

(c) ensure that copies of the order are available for inspection and purchase by members of the public.

(9) In this section—

price includes price range.

Division 4—Standard terms and conditions for retail services

36—Standard terms and conditions for retail services

(1) A water industry entity may, from time to time, fix standard terms and conditions governing the provision of services by the entity to customers of a designated class.

(2) A water industry entity must publish in the Gazette a notice setting out any standard terms and conditions fixed by the entity.

(3) A water industry entity must, when it publishes a notice in the Gazette under subsection (2), also publish a notice in a newspaper circulating generally in the State describing the general nature of the standard terms and conditions and advising where a person may read or obtain a copy of the standard terms and conditions.

(4) Standard terms and conditions fixed under this section—

(a) must comply with the conditions of any relevant licence; and

(b) must not fix prices that exceed maximum prices fixed under this Act; and

(c) come into force on the day specified by the entity in the notice of the standard terms and conditions published in the Gazette under this section, being a day not earlier than the day on which the notice is published; and

(d) when in force are contractually binding on the water industry entity and the class of customers to which the terms and conditions are expressed to apply.

(5) Subject to the conditions of a licence, a standard term or condition fixed under this section may be modified or excluded by express agreement between the water industry entity and a customer of the entity.

(6) A water industry entity that has fixed standard terms and conditions under this section must—

(a) supply a copy of the standard terms and conditions, without charge, on request made to the entity at a place approved by the Commission; and

(b) publish the standard terms and conditions on a website maintained by the entity.

Maximum penalty: $2 500.

Division 5—Customer hardship policies

37—Customer hardship policies

(1) The Minister must develop and publish a customer hardship policy in respect of the residential customers of water industry entities that sets out—

(a) processes to identify residential customers experiencing payment difficulties due to hardship, including identification by a water industry entity and self-identification by a residential customer; and

(b) an outline of a range of processes or programs that a water industry entity should use or apply to assist customers identified under paragraph (a).

(2) The Minister may vary a policy under subsection (1) from time to time.

(3) A water industry entity must—

(a) adopt a customer hardship policy published by the Minister under this section; or

(b) with the approval of the Commission, adopt such a policy with modifications.

(4) It will be a condition of a water industry entity's licence that it complies with the customer hardship policy applying in relation to the entity under subsection (3).

(5) In this section—

residential customer means a customer or consumer who is supplied with retail services for use at residential premises.

Division 6—Commission's powers to take over operations

38—Power to take over operations

(1) If—

(a) a water industry entity contravenes this Act, or a water industry entity's licence ceases, or is to cease, to be in force; and

(b) it is necessary, in the Commission's opinion, to take over the entity's operations (or some of them) to ensure an adequate supply of water to customers or the proper provision of any sewerage service (as the case may require),

the Governor may make a proclamation under this section.

(2) Before a proclamation is made under this section, the Commission must give the water industry entity a reasonable opportunity to make written representations giving reasons why the proclamation should not be made.

(3) A proclamation under this section—

(a) authorises the Commission to take over the water industry entity's operations or a specified part of the water industry entity's operations; and

(b) may contain ancillary directions (and may, in particular, contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with).

(4) A direction under subsection (3)(b) operates to the exclusion of rights that are inconsistent with it.

(5) The Governor may, by subsequent proclamation, vary or revoke a proclamation made under this section.

39—Appointment of operator

(1) When a proclamation is made under this Division, the Commission must appoint a suitable person (who may, but need not, be a water industry entity) to take over the relevant operations on agreed terms and conditions (including as to remuneration and indemnities).

(2) A person appointed to take over a water industry entity's operations is referred to in this section as the ***operator***.

(3) The water industry entity must facilitate the take over of the relevant operations by the operator.

(4) The operator may have access to the property of a water industry entity for the purposes of carrying on the relevant operations.

(5) A person must not obstruct the operator's access to property or the exercise by the operator of the operator's responsibilities under this Division.

Maximum penalty: $250 000.

(6) A person must comply with reasonable directions given by the operator in the exercise of the operator's responsibilities under this Division.

Maximum penalty: $250 000.

(7) The remuneration of the operator and all other costs and expenses arising out of the exercise of the operator's responsibilities under this Division are payable out of the funds of the water industry entity.

Division 7—Related matters

40—Ministerial directions

(1) Despite section 7 of the *Essential Services Commission Act 2002*, the Minister may, in relation to any prescribed matter, by notice published in the Gazette, give directions to the Commission as to—

(a) whether or not a prescribed matter—

(i) should be subject to regulation under a code or set of rules made under the *Essential Services Commission Act 2002*;

(ii) should be subject to conditions of a licence under this Part;

(iii) should be subject to any other form of regulation by the Commission under this Act or the *Essential Services Commission Act 2002*; and

(b) insofar as a prescribed matter is subject to any form of regulation under paragraph (a), the extent of the regulation and, if the Minister thinks fit, provisions that will apply with respect to that prescribed matter.

(2) The Minister may, by further notice in the Gazette, vary or revoke a previous notice published by the Minister under this section.

(3) This section does not limit or derogate from any other power of the Minister under this Act.

(4) In this section—

prescribed matter means—

(a) any matter relevant to water meters, including as to their design, features, installation or operation; and

(b) any matter relevant to billing customers in relation to the supply of water under a retail service where a water meter is not available to be used to determine the quantity of water supplied; and

(c) any matter relevant to the disconnection of a retail service (including circumstances or services in relation to which disconnection may not occur).

Part 5—Powers and duties relating to land and infrastructure

Division 1—Water industry officers

41—Appointment of water industry officers

(1) A water industry entity may, subject to conditions or limitations determined by the Minister, appoint a person to be a water industry officer for the entity.

(2) A water industry officer may only exercise powers under this Act subject to the conditions of appointment, any limitations imposed by the Minister, and any directions given by the relevant water industry entity.

42—Conditions of appointment

(1) A water industry officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) A water industry officer may be removed from office by the water industry entity.

43—Identity cards

(1) A water industry entity must give each water industry officer for the entity an identity card.

(2) The identity card must be in a form approved by the Minister and must—

(a) contain a photograph of the water industry officer taken for the purpose; and

(b) identify the water industry officer as a water industry officer for the relevant water industry entity; and

(c) contain any other information determined by the Minister for the purposes of this section.

(3) A water industry officer must, before exercising a power in relation to another person, produce the officer's identity card for inspection by the other person.

(4) A person must, within 2 days after ceasing to be a water industry officer, return the identity card to the water industry entity.

Maximum penalty: $250.

Division 2—Management of land and infrastructure

44—Power to enter land to conduct investigations

(1) A water industry entity may, by agreement with the occupier of land or on the authorisation of the Minister, enter and remain on land to conduct investigations or carry out any other form of work to assess the suitability of the land for the construction or installation of water/sewerage infrastructure.

(2) The Minister may authorise a water industry entity to enter and remain on land under this section on conditions the Minister thinks appropriate.

(3) If a water industry entity enters land under the authorisation of the Minister, the water industry entity—

(a) must give reasonable notice of the proposed entry on land under this section to the occupier; and

(b) must minimise the impact of work carried out by the water industry entity on activities of others on the land; and

(c) must comply with the conditions of the authorisation.

45—Power to carry out work on land

(1) An authorised entity may, at any reasonable time, enter and remain on land (including a road)—

(a) to construct, install, improve or add to any water/sewerage infrastructure; or

(b) to inspect, operate, maintain, test, repair, alter, remove or replace any water/sewerage infrastructure or equipment; or

(c) to lay pipes and install, operate or inspect pumps and other equipment; or

(d) to carry out other work in connection with the establishment or operation of any water/sewerage infrastructure or otherwise connected with any water service or sewerage service; or

(e) to obtain or enlarge a supply of water; or

(f) to protect, improve or restore the quality of water; or

(g) to protect any infrastructure or equipment connected with any water service or sewerage service; or

(h) to perform any other function brought within the ambit of this section by the regulations.

(2) The powers that may be exercised in the performance of a function set out under subsection (1) include—

(a) to dig, break and trench any soil or to excavate any land; and

(b) to remove or use any earth, stone, minerals, trees or other materials or things located on the land; and

(c) to sink wells or shafts; and

(d) to construct, make, maintain, alter, add to or discontinue any water/sewerage infrastructure; and

(e) to divert or hold any water; and

(f) to dig up, form or alter any road; and

(g) to construct workshops, sheds or other buildings of a temporary nature; and

(h) to undertake other activities or work as may be necessary or incidental to the performance of any such function.

(3) Subject to this section, if an authorised entity seeks to enter public land under this section, the entity must—

(a) give the authority responsible for the management of public land not less than 12 hours notice of the entity's intention to carry out work on the land; and

(b) secure the authority's agreement to the carrying out of the work.

(4) An agreement under subsection (3) may contain conditions the authority responsible for the management of the public land considers appropriate in the public interest.

(5) Prior notice is not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

(6) Agreement is not required under subsection (3) for work of a kind prescribed by regulation for the purposes of this subsection.

(7) If a dispute arises between an authorised entity and the authority responsible for managing public land about whether work should be permitted under this section on the land or about the conditions on which work should be permitted on public land, either party to the dispute may refer the dispute to the Minister.

(8) Subsection (7) does not apply to a dispute where the authority responsible for managing the public land is a Minister or a person or body to whom directions may be given by a Minister in relation to the matter in dispute.

(9) If a dispute is referred to the Minister under this section, the Minister must—

(a) allow parties to the dispute the opportunity to make representations to the Minister on the questions at issue in the dispute; and

(b) make a reasonable attempt to get the parties to agree to settlement of the dispute on agreed terms.

(10) If the Minister cannot get the parties to agree, the Minister may make—

(a) an order that the work is or is not permitted on the land;

(b) if the Minister orders that the work is permitted, an order fixing the conditions on which the work is permitted,

as the Minister thinks fit (and any such order will have effect according to its terms).

(11) If an authorised entity seeks to enter land other than public land for the first time, the entity must give prior written notice to the occupier of the land stating the reason and the date and time of the proposed entry.

(12) The regulations may prescribe other circumstances when notice must be given to the occupier of land.

(13) The period of notice under subsection (11) or (12) must be reasonable.

(14) An authorised entity may use reasonable force to enter any land under this section.

(15) When a person enters land under this section on behalf of an authorised entity, the person—

(a) may be accompanied by such assistants as the person considers necessary or appropriate; and

(b) may take any vehicles, equipment or materials the person considers necessary or appropriate for the functions the person is to carry out on the land.

(16) An authorised entity must, at the reasonable request of an owner or occupier of land used for any purpose under this section, separate the land being used for the other part or parts of the land by a fence of reasonable construction and design (with such gates as may be necessary for the convenient use of any land) and, in the case of a dispute as to the fence to be constructed under this section, the matter may be referred to the Magistrates Court for resolution.

(17) An authorised entity must make good any damage caused by the exercise of powers under this section as soon as practicable (including so as to reinstate any road or other place) or pay reasonable compensation for the damage.

(18) This section does not derogate from the obligation to comply with the provisions of any other Act.

(19) In an emergency, an authorised entity may exercise a power under this section at any time and without prior notice or agreement.

(20) In connection with the exercise of a power under this section, a person undertaking work may—

(a) enter and pass over any land; and

(b) bring onto any land any vehicles, plant or equipment; and

(c) temporarily occupy any land.

(21) A person must not, without reasonable excuse, hinder or obstruct a person exercising a power under this section

Maximum penalty: $10 000.

(22) The Minister may, by notice in writing furnished to a water industry entity, impose conditions or limitations on the exercise of a power under this section by that entity.

(23) Subsections (3)(b) and (7) do not apply in relation to SA Water.

(24) In this section—

authorised entity means—

(a) the Minister; or

(b) any water industry entity;

public land means—

(a) land owned by the Crown or an instrumentality or agent of the Crown or by a council or other local government body;

(b) without limiting paragraph (a), a road under the care, control and management of the Crown or an instrumentality or agent of the Crown or a council or other local government body.

46—Acquisition of land

(1) A water industry entity may acquire land in accordance with the *Land Acquisition Act 1969*.

(2) A water industry entity may only acquire land by compulsory process under the *Land Acquisition Act 1969* if the acquisition is authorised in writing by the Minister.

(3) This section does not limit the ability of a water industry entity to acquire land by agreement.

47—Infrastructure does not merge with land

In the absence of agreement in writing to the contrary, the ownership of any infrastructure or equipment is not affected by the fact that it has been laid or installed as water/sewerage infrastructure on or under land (and so the infrastructure or equipment does not become a fixture in relation to the land).

48—Requirement to connect to infrastructure

(1) This section applies to a water industry entity involved (or proposing to be involved) in the sale and supply of sewerage services for the removal of sewage (and the infrastructure to be used for the purposes of those services will be referred to as ***prescribed infrastructure*** under this section).

(2) A water industry entity to which this section applies may apply to the Minister for the approval of a scheme under this section.

(3) A scheme to which an application relates will be a scheme—

(a) that provides for the supply of sewerage services through the use of prescribed infrastructure; and

(b) that proposes that any owner of land adjacent to land where a designated part of the prescribed infrastructure is situated (other than owners (if any) excluded from the scheme) be required to connect to the prescribed infrastructure so as to become a customer of the water industry entity with respect to the sale and supply of the sewerage services under the scheme; and

(c) that has, in relation to the prescribed infrastructure, been approved by a prescribed body as being fit and adequate for the provision of services that are proposed to be offered under the scheme; and

(d) that complies with any other requirements prescribed by the regulations.

(4) A scheme under this section may—

(a) provide that any connection made by a person under the scheme comply with any requirements specified by the water industry entity after consultation with the Technical Regulator and the Health Department; and

(b) provide other requirements relating to the establishment, operation or management of the scheme that must be complied with by any owner of land adjacent to land where any prescribed infrastructure is situated; and

(c) provide for other matters specified by the water industry entity and approved by the Minister under this section.

(5) The Minister may, after taking into account such matters as the Minister thinks fit, determine whether or not to approve a scheme under this section.

(6) If the Minister approves a scheme, the water industry entity may, by notice that complies with any requirements prescribed by the regulations and served on any owner of land adjacent to land where the designated part of the prescribed infrastructure is situated, require the owner to connect drains, equipment or works to the prescribed infrastructure in order to provide for the discharge of sewage into the infrastructure.

(7) If a notice is served on an owner of land under subsection (6)—

(a) the owner must comply with the notice in accordance with the requirements of the notice; and

(b) any drains, equipment or works used for the purposes of making the connection must comply with specifications approved by the Technical Regulator or the Health Department for the purposes of this section (if any); and

(c) the costs incurred by the owner in complying with the notice will be borne by the owner.

(8) The following owners of land will be excluded from a scheme under this section:

(a) any owner, or owner of a specified class, excluded by the Minister from the scheme at the time that the Minister approves the scheme;

(b) any owner of land where it is not reasonably practicable to connect to the prescribed infrastructure;

(c) any owner of a class excluded from the operation of this section by the regulations (if any) or otherwise excluded under the terms of the scheme itself.

(9) If the requirements of a notice under this section are not complied with, the relevant water industry entity may take any action required by the notice.

(10) Action taken by a water industry entity under subsection (9) may be taken on the entity's behalf by a water industry officer or another person authorised by the water industry entity for the purpose.

(11) A person taking action under subsection (10) may enter any relevant land at any reasonable time.

(12) The reasonable costs and expenses incurred by a water industry entity in taking action under subsection (9) or (10) may be recovered by the water industry entity as a debt from the person who failed to comply with the requirements of the notice.

(13) A water industry entity may from time to time, with the approval of the Minister, vary a scheme under this section.

Part 6—Protection and use of infrastructure, equipment and water and powers in relation to installations

Division 1—Protection of infrastructure, equipment and services

49—Encroachments

(1) A person must not, without lawful authority—

(a) construct or place a building, wall, fence or other structure on or over any water/sewerage infrastructure, or create some other form of encroachment over any water/sewerage infrastructure (or any land directly associated with such infrastructure); or

(b) create any form of encroachment over any easement that exists for the purposes of any water service or sewerage service; or

(c) obstruct, fill in, close up or divert any water/sewerage infrastructure; or

(d) excavate or alter any land or structure supporting any water/sewerage infrastructure,

without the consent of a water industry entity that owns, manages or uses the water/sewerage infrastructure or who has the benefit of the easement (as the case may be).

Maximum penalty: $20 000.

(2) If a water industry entity believes on reasonable grounds that a person has acted in contravention of subsection (1)—

(a) the water industry entity may, at any reasonable time, enter land and carry out an inspection of any place; and

(b) as it thinks fit (whether or not an inspection has taken place), by notice that complies with any requirements prescribed by the regulations and served on the person, require the person to take such action as may be specified in the notice to remedy any contravention of subsection (1).

(3) If any entry under subsection (2)(a) is refused or obstructed, a water industry entity may obtain a warrant under Part 10 to enter the land.

(4) If the requirements of a notice under subsection (2)(b) are not complied with, the relevant water industry entity may take any action required by the notice.

(5) A person taking action under subsection (4) may enter any relevant land at any reasonable time.

(6) The reasonable costs and expenses incurred by a water industry entity in taking action under subsection (4) or (5) may be recovered by the water industry entity as a debt from the person who failed to comply with the requirements of the notice.

(7) Action taken by a water industry entity under this section may be taken on the entity's behalf by a water industry officer or another person authorised by the water industry entity for the purpose.

(8) In any proceedings for an offence against this section, or for the recovery of costs and expenses under this section, it is a defence for the defendant to prove that he or she did not know, and could not by the exercise of reasonable diligence have ascertained, the position of any water/sewerage infrastructure (if relevant).

(9) This section does not apply in any circumstances excluded from the operation of this section by the regulations.

50—Protection of infrastructure and equipment

(1) A person must not, without lawful authority—

(a) attach any equipment or other thing, or make any connection, to water/sewerage infrastructure; or

(b) interfere with—

(i) the collection, storage, production, treatment, conveyance, reticulation or supply of water through the use of water infrastructure; or

(ii) the collection, storage, treatment, conveyance or reticulation of sewage through the use of sewerage infrastructure; or

(c) disconnect or interfere with any water/sewerage infrastructure, or any equipment associated with any water/sewerage infrastructure; or

(d) damage any water/sewerage infrastructure, or any equipment associated with any water/sewerage infrastructure.

Maximum penalty: $20 000.

(2) If a water industry entity believes on reasonable grounds that a person has acted in contravention of subsection (1)—

(a) the water industry entity may, at any reasonable time, enter any land and carry out an inspection of any place; and

(b) as it thinks fit (whether or not an inspection has taken place), after complying with any requirements prescribed by the regulations, disconnect, close, turn off or remove anything that has, in the opinion of the entity, been attached or used in connection with the contravention.

(3) If any entry under subsection (2)(a) is refused or obstructed, a water industry entity may obtain a warrant under Part 10 to enter the land.

(4) Action taken by a water industry entity under this section may be taken on the entity's behalf by a water industry officer or another person authorised by the water industry entity for the purpose.

(5) A person must not, without lawful authority, pull up or remove any poles, stakes or other items driven into, or placed in or on, the ground for the purposes of carrying out any works associated with the construction, alteration, maintenance, management or removal of any water/sewerage infrastructure.

Maximum penalty: $5 000.

(6) A person must not, without lawful authority, destroy or damage any works associated with the construction, alteration, maintenance, management or removal of any water/sewerage infrastructure.

Maximum penalty: $20 000.

(7) If a water industry entity suffers loss as a result of a contravention of this section, the entity may recover compensation for the loss from a person guilty of the contravention—

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

(8) For the purposes of this section, water/sewerage infrastructure includes a common drain (including a common drain upstream of a connection point).

51—Notice of work that may affect water/sewerage infrastructure

(1) A person who proposes to do work near water/sewerage infrastructure must give the relevant water industry entity at least 14 days notice of the proposed work if—

(a) there is a risk of equipment or a structure coming into dangerous proximity to water/sewerage infrastructure; or

(b) in the case of water infrastructure—there is a risk of the work affecting the quality of any water within, or reasonably likely to enter, the infrastructure; or

(c) the work may interfere with water/sewerage infrastructure in some other way.

Maximum penalty: $2 500.

(2) It is a defence to a charge of an offence against subsection (1) if, in the circumstances of an emergency, it is not practicable to give the notice required by subsection (1), and the notice is given as soon as practicable.

(3) A person who does work near water/sewerage infrastructure must comply with—

(a) requirements prescribed by regulation that are applicable to the work; and

(b) reasonable requirements made by the water industry entity for the protection of the infrastructure or the safety of the persons carrying out the work.

Maximum penalty: $2 500.

(4) If a water industry entity suffers loss as a result of a contravention of this section, the entity may recover compensation for the loss from a person guilty of the contravention—

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

(5) This section does not apply in a case that is within the ambit of section 52.

52—Duty to give notice before paving a road etc

(1) Before beginning—

(a) to first lay the pavement or hard surface in any road; or

(b) to relay the pavement or hard surface in any road; or

(c) to widen or extend the pavement or hard surface in any road; or

(d) to alter the level of any road; or

(e) to construct or alter any footpaths, gutters, kerbing or water tables in any road; or

(f) to construct or alter any drainage work in any road,

in which there is any water/sewerage infrastructure, the person authorising or intending to do so must give the relevant water industry entity at least 14 days notice of the proposed work (being a notice that includes details of the nature and thickness of the pavement or hard surface proposed to be made or laid in any such work, and of any other work that is proposed to be undertaken).

(2) The water industry entity must, within 14 days after receiving a notice, advise the person who gave the notice of any new water/sewerage infrastructure proposed in the relevant road and of any interference that is expected to be caused to the existing water/sewerage infrastructure.

(3) If any work referred to in subsection (1) would involve any alteration to any water/sewerage infrastructure that is owned or operated by a water industry entity, the person who undertakes the work must, subject to subsection (5), pay to the entity—

(a) unless paragraph (b) applies—half of the actual cost of the alteration or any damage caused by the work;

(b) in prescribed circumstances—an amount determined under the regulations,

and if the regulations prescribe an amount as the cost of any alteration, then that amount must be taken to be the cost of the alteration for the purposes of this subsection.

(4) If an alteration to any water/sewerage infrastructure is of such a nature as to involve expense which in the opinion of the relevant water entity would be excessive, the entity may confer with the person authorised to do the work to determine whether any variations to the proposed work would be advantageous to the parties.

(5) If any work referred to in subsection (1) would involve an alteration to any water/sewerage infrastructure and the relevant water industry entity considers that the infrastructure should be replaced or enlarged, the costs of all materials required for any such replacement or enlargement must, subject to the regulations, be borne by the water industry entity (but all other costs and charges will be payable in accordance with this section).

(6) A water industry entity may, under an agreement between the entity and a person otherwise required to give notice under this section, waive the requirement to give such notice in relation to specified classes of work (and such an agreement may have effect according to its terms).

53—Unlawful abstraction, removal or diversion of water or sewage

(1) A person must not, without proper authority—

(a) abstract or divert water from any water infrastructure; or

(b) abstract or divert any sewage from any sewerage infrastructure.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) A person must not install or maintain a pipe capable of conveying water beyond the boundaries of a site occupied by the person unless—

(a) the person is a water industry entity; or

(b) the person does so with the approval of a water industry entity that supplies water to the site; or

(c) the person is authorised under the regulations or is acting in any prescribed circumstances.

(3) If a water industry entity suffers loss as a result of a contravention of this section, the entity may recover compensation for the loss from a person guilty of the contravention—

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

54—Water meters

(1) A person who is supplied with water by a water industry entity must, if required by the water industry entity—

(a) allow a person authorised by the entity to enter land and fix a meter supplied by the relevant water industry entity;

(b) ensure that a meter of a kind specified by the entity is fixed and used for purposes of measuring water supplied to the person.

Maximum penalty: $10 000.

(2) If a meter is fixed under subsection (1)(a), a person supplied with water by the water industry entity must use the meter.

Maximum penalty: $10 000.

(3) A requirement under subsection (1)(b) may, with the approval of the Commission or in prescribed circumstances, include a requirement that a person fix or use a meter supplied by the relevant water industry entity.

(4) A person must comply with any direction or requirement of a water industry entity with respect to the installation or use of a meter required or supplied by the entity under subsection (1) or (3).

Maximum penalty: $10 000.

(5) The regulations may prescribe exceptions to the operation of a preceding subsection.

(6) A person must not, without proper authority, open, remove, alter, repair or interfere with a meter or other equipment for measuring the amount of water supplied by a water industry entity.

Maximum penalty: $10 000.

(7) A person must not, without proper authority, install, operate or use any pipe or other equipment to by-pass a meter installed for measuring the amount of water supplied by a water industry entity.

Maximum penalty: $10 000.

(8) If, in proceedings for an offence against subsection (6) or (7) it is proved that any equipment has been installed or any other act done, without proper authority, the apparent purpose of which is to abstract or divert water to any particular land or place or to affect the proper measurement of water supplied to any particular land or place, it will be presumed, in the absence of proof to the contrary, that the occupier of the land or place installed the equipment or did the other act with that purpose.

(9) The owner or occupier of land on which a meter or an associated fitting is situated must ensure that access to the meter or fitting for the purposes of reading, replacement, repair or maintenance is not obstructed.

Maximum penalty: $5 000.

(10) If a person fails to comply with subsection (9), a water industry entity may serve written notice on the person requiring him or her to take such action as is specified in the notice to provide access to the meter or fitting.

(11) If a person on whom notice has been served under subsection (10) fails to comply with the notice within 1 month, the water industry entity or a person authorised by the water industry entity may enter the land and take such action (including altering the position of the meter or fitting) as the water industry entity thinks fit to provide access to the meter or fitting.

(12) If a water industry entity suffers loss as a result of a contravention of this section, the entity may recover compensation for the loss from a person found guilty of the contravention—

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

(13) If a water industry entity incurs costs as a result of taking action under subsection (11), the entity may recover those costs as a debt by action in a court of competent jurisdiction.

55—Discharge of unauthorised material into water infrastructure

(1) A person must not, without proper authority, discharge any solid, liquid or gaseous material, or any other item or thing, into any water infrastructure.

Maximum penalty: $25 000.

(2) Subsection (1) does not apply in any circumstances excluded from the operation of this section by the regulations.

(3) If a water industry entity suffers loss as a result of a contravention of this section, the entity may recover compensation for the loss from a person found guilty of the contravention—

(a) on application to a court convicting the person of an offence against this section; or

(b) by action in a court of competent jurisdiction.

56—Discharge of unauthorised material into sewerage infrastructure

(1) A person must not, without proper authority, discharge into any sewerage infrastructure any solid, liquid or gaseous material, or any other item or thing that is likely to damage the infrastructure.

Maximum penalty: $25 000.

(2) Subsection (1) does not apply in any circumstances excluded from the operation of that subsection by the regulations.

(3) Furthermore, a water industry entity may, in relation to any sewerage infrastructure operated by the entity—

(a) on application by any person, authorise the person to discharge waste material referred to in the authorisation into the infrastructure; or

(b) as part of a contract in relation to the provision of a sewerage service, authorise a person to discharge waste material referred to in the contract into the infrastructure.

(4) A person must not—

(a) discharge any solid, liquid or gaseous material, or any other item or thing, prescribed by the regulations without an authorisation under this section; or

(b) discharge any solid, liquid or gaseous material, or any other item or thing, contrary to a contract in relation to the provision of a sewerage service; or

(c) act in a manner contrary to an authorisation under this section.

Maximum penalty: $25 000.

(5) A person must not, without the authorisation of the relevant water industry entity, cause, permit or allow any rainwater, stormwater or surface water to flow into, or to otherwise enter, any sewerage infrastructure.

Maximum penalty: $2 500.

(6) Subsection (5) does not apply in any circumstances excluded from the operation of that subsection by the regulations.

(7) A water industry entity may attach such conditions to an authorisation under this section as the entity thinks fit and may vary or revoke the authorisation at any time.

(8) It will be a defence to a prosecution for an offence against subsection (1), (4) or (5) for the defendant to prove that the person who discharged the material concerned did so in accordance with an authorisation under this section and that the authorisation was in force and applied for the defendant's benefit at that time.

(9) The reasonable costs and expenses incurred by a water industry entity in addressing any damage or loss caused as a result of, or in remedying circumstances caused by, a contravention of this section may be recovered by the water industry entity as a debt from the person in contravention of this section.

57—Work to be carried out by owner at requirement of water industry entity with respect to sewerage infrastructure

(1) In order—

(a) to provide for the proper treatment (including the deodorising) of waste material before it is discharged from land into a drain connected to any sewerage infrastructure; or

(b) to prevent the discharge of rainwater, stormwater or surface water into any sewerage infrastructure or to prevent the discharge into any sewerage infrastructure of waste material that has been prescribed as water material that may not be discharged into any sewerage infrastructure or that is, in the opinion of the relevant water industry entity, likely to damage or be detrimental to any sewerage infrastructure,

the relevant water industry entity may, by notice in writing served on the owner or occupier of the land, require the owner or occupier, within the time stated in the notice, to carry out work specified in the notice.

(2) A notice referred to in subsection (1) may require the person on whom it is served to—

(a) install or construct in such locations as are specified in the notice;

(b) connect to the infrastructure;

(c) alter or replace;

(d) maintain, repair or cleanse;

(e) remove, block or disconnect,

such drains, equipment or works as are specified in the notice in the manner specified in the notice or take other action specified in the notice.

(3) The water industry entity may vary or revoke a notice referred to in subsection (1) by a subsequent notice in writing served on the owner or occupier of the land.

(4) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty: $10 000.

(5) If the requirements of a notice under this section are not complied with, the relevant water industry entity may take any action required by the notice.

(6) Action taken by a water industry entity under subsection (5) may be taken on the entity's behalf by a water industry officer or another person authorised by the water industry entity for the purpose.

(7) A person taking action under subsection (6) may enter any relevant land at any reasonable time.

(8) The reasonable costs and expenses incurred by a water industry entity in taking action under subsection (6) or (7) may be recovered by the water industry entity as a debt from the person who failed to comply with the requirements of the notice.

58—Power to disconnect drains or to restrict services

(1) If a water industry entity has grounds to believe that material—

(a) is being discharged from land into sewerage infrastructure in contravention of this Division; or

(b) has been discharged from land into sewerage infrastructure in contravention of this Division and that it is likely that a similar contravention will occur in the future,

the entity may, after complying with any requirement prescribed by the regulations, close off or disconnect from the sewerage infrastructure 1 or more drains on the land that are connected to the infrastructure or restrict the provision of any sewerage service to the land.

(2) Before reopening or reconnecting a drain closed off or disconnected under this section, the water industry entity may require the owner or occupier of the relevant land to pay the prescribed fee.

Division 2—Protection and use of water supply

59—Power to restrict or discontinue water supply

(1) If a water industry entity believes on reasonable grounds—

(a) —

(i) that the quantity of water available for supply by the entity is, or is likely to be, insufficient to meet the demands of the persons to whom it is required to supply water (either because of a reduction in the quantity of water available or an increase in demand); or

(ii) that the quantity or quality of water available for supply by the entity is, or is likely to be, below a standard set or adopted by the entity for the purposes of this subsection, or prescribed by the regulations; or

(iii) that the capacity of any water infrastructure is, or is likely to be, insufficient to cope with existing or anticipated demand; and

(b) that action under this subsection is justified in the circumstances,

the entity may, after complying with any requirements prescribed by the regulations, exercise 1 or more of the powers specified under subsection (3).

(2) A requirement prescribed by the regulations under subsection (1) may include 1 or more of the following:

(a) that the water industry entity not act without obtaining the approval of the Minister or the Commission;

(b) that the water industry entity comply with any process or procedure before acting under this subsection;

(c) that the water industry entity consult in a manner specified by the regulations;

(d) that the water industry entity review any action taken under this section in accordance with any requirements specified by the regulations;

(e) that the water industry entity provide reports to the Minister or the Commission in accordance with any requirements specified by the regulations, the Minister or the Commission.

(3) The following powers are specified under this subsection, namely, that the water industry entity may:

(a) lessen the supply of water through any infrastructure (to such extent and in such manner as the entity thinks fit);

(b) prohibit the use of water in a specified purpose or purposes, or restrict or regulate the purposes for which water can be used;

(c) prohibit the use of water in a specified manner or by specified means, or restrict or regulate the manner in which, or the means by which, water may be used;

(d) prohibit specified uses of water during specified periods, or restrict or regulate the times at which water may be used;

(e) for such time or times as the entity thinks proper, discontinue the supply of water.

(4) A requirement under subsection (3) may provide that a specified activity involving the use of water cannot occur without the authority of a permit issued by the water industry entity in accordance with the regulations.

(5) A prohibition or notice under subsection (3)—

(a) must be imposed by a notice published or served in accordance with any requirements prescribed by the regulations; and

(b) may be varied or revoked in accordance with any requirements prescribed by the regulations.

(6) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Maximum penalty:

(a) where the offender is a body corporate—$10 000;

(b) where the offender is a natural person—$5 000.

60—Power to require the use of devices to reduce flow

(1) If a water industry entity believes on reasonable grounds that action under this section is justified in the circumstances to supply water during periods of high demand, the entity may serve notice under this section on the owner or occupier of land that is connected to water infrastructure operated by the entity.

(2) The notice may direct the owner or occupier—

(a) to install (at his or her expense) a flow reducing device of the kind specified in the notice at the point specified in the notice (including at a point on the customer's side of any connection point) to enable the flow in the pipes on the land that are connected to the infrastructure to be reduced; and

(b) to use the device to reduce flow in those pipes during the periods specified in the notice.

(3) The notice must specify a reasonable period for compliance with the requirements of the notice referred to in subsection (2)(a).

(4) A person who fails to comply with a notice under this section is guilty of an offence.

Maximum penalty:

(a) where the offender is a body corporate—$10 000;

(b) where the offender is a natural person—$5 000.

(5) If the requirements of a notice under this section are not complied with, the water industry entity may install a flow reducing device to reduce the flow in the pipes on the relevant land notwithstanding that this reduction in flow will operate continuously instead of during the periods specified in the notice.

(6) The reasonable costs and expenses incurred by a water industry entity in taking action under subsection (5) may be recovered by the water industry entity as a debt from the person who failed to comply with the requirements of the notice.

61—Power to test and protect water

(1) An authorised entity may, at any reasonable time, enter and remain on land—

(a) to test any water that constitutes, or is reasonably likely to constitute, water to be supplied in connection with the provision of water services under this Act; or

(b) to avert, eliminate or minimise any risk, or perceived risk, to any water that constitutes, or is reasonably likely to constitute, water to be supplied in connection with the provision of water services under this Act; or

(c) in the event that it appears that water that constitutes, or is reasonably likely to constitute, water to be supplied in connection with the provision of water services under this Act, has been adversely affected, or is reasonably likely to be adversely affected, by any circumstance—to take action to address that situation.

(2) For the purposes of this section—

(a) testing under subsection (1)(a) may include taking samples of any water; and

(b) action taken under subsection (1)(b) or (c) may constitute such action as the authorised entity thinks fit, including by removing anything from any water or any other place; and

(c) action may be taken under this section whether or not the water is located in any infrastructure.

(3) Subject to this section, if an authorised entity seeks to enter land under this section, the entity must give prior written notice to the occupier of the land stating the reason and the date and time of the proposed entry.

(4) The period of notice under subsection (3) must be reasonable.

(5) If the proposed entry is refused or obstructed, an authorised entity may obtain a warrant under Part 10 to enter the land.

(6) In an emergency, an authorised entity may exercise a power of entry under this section—

(a) at any time and without prior notice if it is not practicable to give such notice; and

(b) if necessary in the circumstances, by the use of reasonable force.

(7) When a person enters land under this section, the person—

(a) may be accompanied by such assistants as the person considers necessary or appropriate; and

(b) may take any vehicles or equipment the person considers necessary or appropriate for the functions the person is to carry out on the land.

(8) A person acting under this section must be accompanied by a police officer—

(a) when entering a place under a warrant; or

(b) if it is practicable to do so, when entering a place by force in an emergency.

(9) A person acting under this section must comply with any requirements specified by the Minister from time to time by notice published in the Gazette for the purposes of this section.

(10) The reasonable costs and expenses incurred by an authorised entity in taking action under subsection (1)(b) or (c) may be recovered by the entity as a debt from the person who caused the circumstances that gave rise to the need to take the action.

(11) This section does not limit a power that may be exercised under another provision of this Act.

(12) In this section—

authorised entity means—

(a) an authorised officer; or

(b) a water industry officer holding an authorisation granted by the Minister for the purposes of this section.

Division 3—Powers in relation to infrastructure and installations

62—Entry to land and related powers

(1) A water industry officer for a water industry entity may, at any reasonable time, enter and remain in a place to which a water service or a sewerage service is or has been supplied by the use of water/sewerage infrastructure operated by the entity—

(a) to inspect any infrastructure, equipment or other thing installed or used in connection with the supply, use or storage of water or the collection or removal of sewage (including on the customer's side of any connection point); or

(b) without limiting paragraph (a), to read, or check the accuracy of, a meter for measuring the supply of water; or

(c) to install, repair or replace any infrastructure, meter, equipment or works (including where the infrastructure, meter, equipment or works have been installed by another person or are located on the customer's side of any connection point); or

(d) to investigate suspected theft of water; or

(e) without limiting a preceding paragraph—to investigate whether there has been a contravention of Division 1 or 2; or

(f) without limiting a preceding paragraph—

(i) to see whether a hazard exists in connection with any infrastructure, equipment, works or other thing; or

(ii) to take action to prevent or minimise any hazard in connection with the supply, use or storage of water or the collection or removal of sewage; or

(iii) to open or reconnect any infrastructure or equipment, or to remove any equipment; or

(g) to take samples of any water or other material in any infrastructure, equipment or works, or on any land; or

(h) to exercise any other power prescribed by the regulations.

(2) In an emergency, a water industry officer may exercise a power of entry under this section at any time, and if necessary in the circumstances, by the use of reasonable force.

(3) When a water industry officer enters a place under this section, the water industry officer—

(a) may be accompanied by such assistants as the water industry officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the water industry officer considers necessary or appropriate for the functions the water industry officer is to carry out in the place.

(4) A water industry officer must, if it is practicable to do so, be accompanied by a police officer when entering a place by force in an emergency.

(5) A water industry officer may, if in his or her opinion it is necessary or desirable, excavate land for the purposes of an inspection, to perform any work or to take or obtain any sample.

(6) This section does not limit a power that may be exercised under another provision of this Act.

63—Disconnection etc if entry refused

(1) If a water industry officer seeks to enter a place under this Part and entry is refused or obstructed, the water industry officer may, by written notice to the occupier of the place, ask for consent to entry by the water industry officer.

(2) The notice must state the reason and the date and time of the proposed entry.

(3) If entry is again refused or obstructed, the water industry entity may—

(a) if it is possible to do so—disconnect the supply of water to the place, or the collection of sewage from the place, or restrict the supply of services to that place, without entering the place; or

(b) if it is not possible to act under paragraph (a) without entering the place—obtain a warrant under Part 10 to enter the place for the purpose of making a disconnection or restriction envisaged under paragraph (a), and then enter the place under the warrant and take the relevant action.

(4) A water industry officer may not enter a place under a warrant unless accompanied by a police officer.

(5) The water industry entity must restore a connection if—

(a) the occupier—

(i) consents to the proposed entry; and

(ii) pays the appropriate reconnection fee; and

(b) it is safe to restore the connection; and

(c) there is no other lawful ground for refusing to restore the connection.

64—Disconnection in an emergency

A water industry entity may, without incurring any liability, cut off the supply of water to any region, area, land or place if it is, in the entity's opinion, necessary to do so to avert danger to any person or property.

65—Special legislation not affected

Nothing in this Act affects the exercise of any power, or the obligation of a water industry entity to comply with any direction, order or requirement, under the *Emergency Management Act 2004*, *Environment Protection Act 1993*, *Essential Services Act 1981*, *Fire and Emergency Services Act 2005* or the *South Australian Public Health Act 2011*.

Part 7—Technical and safety issues

66—Standards

(1) The Technical Regulator may, by notice in the Gazette, publish standards—

(a) relating to the design, manufacture, installation, inspection, alteration, repair, maintenance (including cleaning), removal, disconnection or decommissioning of—

(i) any infrastructure that is used, or is capable of being used, in the water industry; or

(ii) any equipment connected to, or any equipment, products or materials used in connection with, any infrastructure that is used, or is capable of being used, in the water industry (including on the customer's side of any connection point); or

(b) relating to plumbing, including plumbing work or any equipment, products or materials used in connection with plumbing; or

(c) providing for any other matter that this Act may contemplate as being dealt with or administered by a standard prepared or published by the Technical Regulator.

(2) Without limiting subsection (1), a standard may—

(a) specify the nature and quality of the materials from which infrastructure or equipment must be constructed; and

(b) specify the design and size of any pipes or other equipment that may be connected to any infrastructure or used in connection with plumbing; and

(c) specify requirements in relation to the construction, installation or positioning of any infrastructure or equipment; and

(d) specify the number of pipes and other equipment that may be connected to any infrastructure or device; and

(e) specify the position of pipes and other equipment connected to any infrastructure or device; and

(f) specify requirements with respect to any products or materials used in connection with any infrastructure or plumbing; and

(g) specify the procedures to be followed when installing, inspecting, replacing, altering, repairing, maintaining, removing, disconnecting or decommissioning any infrastructure or equipment; and

(h) specify requirements relating to the operation, testing or approving of any infrastructure, equipment, products or materials; and

(i) specify examination and testing requirements; and

(j) specify performance or other standards that must be met by any infrastructure, equipment, products or materials (and, in doing so, specify methodologies or other processes or criteria for assessing compliance with those standards, including as to the efficiency, impact or effectiveness of any infrastructure, equipment, products or materials); and

(k) provide for any other matter prescribed by the regulations.

(3) The Technical Regulator may, by further notice in the Gazette, vary or revoke a standard published under subsection (1) (and, as the Technical Regulator thinks fit, publish new or substitute standards).

(4) A standard published by the Technical Regulator may—

(a) be of general or limited application; and

(b) provide that a matter or thing in respect of which the standard applies is to be determined according to the discretion of the Technical Regulator, or any other person determined or approved by the Technical Regulator; and

(c) provide for exemptions to be granted (with or without conditions) by the Technical Regulator, or any other person authorised by the Technical Regulator; and

(d) apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the standard as in force from time to time or as in force at a specified time.

(5) If a code, standard or other document is applied, adopted or incorporated in a standard—

(a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at the office of the Technical Regulator; and

(b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document apparently certified by or on behalf of the Technical Regulator as a true copy of the code, standard or other document.

(6) The Minister must, within 14 sitting days after the publication of a standard, or the variation of a standard, cause a copy of the standard or the variation (as the case may be) to be laid before both Houses of Parliament.

(7) If either House of Parliament—

(a) passes a resolution disallowing a standard laid before it under subsection (6), then the standard ceases to have effect;

(b) passes a resolution disallowing a variation laid before it under subsection (6), then the variation ceases to have effect (and the relevant standard will, from that time, apply as if it has not been varied by that variation).

(8) A resolution is not effective for the purposes of subsection (7) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the standard or variation (as the case may be) is laid before the House.

(9) If a resolution is passed under subsection (7), notice of that resolution must forthwith be published in the Gazette.

(10) Subsections (6), (7) and (8) do not apply—

(a) to the variation of a standard if the Minister certifies, on the advice of the Technical Regulator, that the variation constitutes a minor variation to an existing standard (including a standard that has adopted a national code or standard prepared by another body or authority); or

(b) in any other circumstance prescribed by the regulations.

67—Performance of regulated work

(1) Any work to which this subsection applies must be carried out by a person with qualifications or experience recognised by regulations made for the purposes of this section.

Maximum penalty: $5 000.

(2) A person to whom this subsection applies who carries out specified work—

(a) in relation to any infrastructure that is used in the water industry; or

(b) in relation to any equipment connected to, or used in connection with, any infrastructure that is used in the water industry (including on the customer's side of any connection point); or

(c) without limiting paragraph (b)—in connection with plumbing (including on the customer's side of any connection point),

must ensure that—

(d) the work is carried out as required by a standard published under this Part; and

(e) examinations and tests are carried out as required by standards published under this Part.

Maximum penalty: $5 000.

(3) A standard published by the Technical Regulator under this Part may—

(a) specify work to which subsection (1) applies; and

(b) specify persons to whom subsection (2) applies.

68—Responsibilities of water industry entity

(1) A water industry entity must, in relation to—

(a) any infrastructure used by the entity in the water industry; or

(b) any equipment connected to, or any equipment, products or materials used in connection with, any infrastructure used by the entity in the water industry,

take reasonable steps to ensure that—

(c) the infrastructure, equipment, products or materials comply with, and are used in accordance with, technical and safety requirements specified by—

(i) standards published under this Part; and

(ii) any other technical or safety requirements or standards specified from time to time by the Technical Regulator; and

(d) the infrastructure, equipment, products or materials are safe and in good working order.

Maximum penalty: $250 000.

(2) Without limiting subsection (1), the Technical Regulator may, at any time and as the Technical Regulator thinks fit, require a water industry entity—

(a) to prepare and periodically revise a safety, reliability, maintenance and technical management plan dealing with matters prescribed by regulation in accordance with any requirements specified by the Technical Regulator; and

(b) to obtain the approval of the Technical Regulator to the plan and any revision; and

(c) to comply with the plan as approved from time to time; and

(d) to audit from time to time the entity's compliance with the plans and report the results of those audits to the Technical Regulator.

(3) A water industry entity must not, without reasonable excuse, fail to comply with a requirement under subsection (2).

Maximum penalty: $250 000.

69—Responsibilities of customers

(1) A customer who is supplied with a retail service must—

(a) ensure that any equipment located on his or her premises that is relevant to the operation of that service (being equipment located on the customer's side of the connection point) complies with any relevant technical or safety requirements and is kept in good repair; and

(b) take reasonable steps to prevent—

(i) any water running to waste on the premises; or

(ii) any waste material that should be discharged into a sewerage system to escape.

Maximum penalty: $2 500.

(2) For the purposes of ensuring under this section that any equipment complies with any technical or safety requirements, a person may, subject to the regulations, rely on any certificate of compliance issued under a scheme (if any or if relevant) established or approved by the Technical Regulator for the purposes of this Part.

(3) If a person fails to comply with subsection (1), the Technical Regulator or the water industry entity providing the service may disconnect the supply of water to the place, or the collection of sewerage from the place, or restrict the supply of services to that place.

(4) If an authorised officer or a water industry officer seeks to enter a place for the purposes of taking action under subsection (3) and entry is refused, the authorised officer or water industry officer may do so under a warrant under Part 10.

(5) An authorised officer or a water industry officer may not enter a place under a warrant unless accompanied by a police officer.

70—Prohibition of sale or use of unsuitable items

(1) If, in the Technical Regulator's opinion, a particular component or component of a particular class is, or is likely to become, unsuitable for use in connection with the supply of water or the removal or treatment of sewerage, the Technical Regulator may prohibit the sale or use (or both sale and use) of the component or components of the relevant class.

(2) If, in the Technical Regulator's opinion, a particular component or component of a particular class is, or is likely to become, unsuitable for use in connection with the supply of water or the removal or treatment of sewerage, the Technical Regulator may require traders who have sold the component in the State—

(a) to take specified action to recall the component from use; and

(b) —

(i) to take specified action to render the component suitable for use; or

(ii) if it is not practicable to render the component suitable for use or the trader chooses not to do so—to refund the purchase price on return of the component.

(3) A prohibition or requirement is imposed under this section—

(a) by notice in writing given personally or by post to the person to whom it is addressed; or

(b) if addressed to a class of persons, or the public generally—by public notice,

and may be varied or revoked in the same way.

(4) A person must not contravene or fail to comply with a prohibition or requirement under this section.

Maximum penalty: $10 000.

(5) The Technical Regulator is not obliged to conduct a hearing or invite submissions in connection with the exercise of a power under this section if the Technical Regulator considers that urgent action is required.

(6) In this section—

component means a component for any infrastructure, equipment, product or material used in or in connection with the water industry or in connection with plumbing.

71—Public warning statements about unsuitable components, practices etc

(1) The Technical Regulator may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about any of the following:

(a) components for any relevant equipment that, in the opinion of the Technical Regulator, are or are likely to become unsuitable for use and persons who supply the components;

(b) uses of relevant equipment or components for relevant equipment, or installation practices, that, in the opinion of the Technical Regulator, are unsuitable;

(c) uses of products or materials that, in the opinion of the Technical Regulator, are unsuitable;

(d) any other practices or circumstances associated with relevant equipment or components for relevant equipment.

(2) A statement under subsection (1) may identify particular equipment, components, services, practices and persons.

(3) Neither the Technical Regulator nor the Crown incurs any liability for a statement made by the Technical Regulator in good faith in the exercise or purported exercise of powers under this section.

(4) No liability is incurred by a person for publishing in good faith—

(a) a statement referred to in subsection (3); or

(b) a fair report or summary of such a statement.

(5) The Technical Regulator is not obliged to conduct a hearing or invite submissions in connection with the exercise of a power under this section if the Technical Regulator considers that urgent action is required.

(6) In this section—

relevant equipment means any equipment that may be used in connection with any infrastructure used in or in connection with the water industry or in connection with plumbing (including on the customer's side of any connection point).

Part 8—Enforcement

Division 1—Appointment of authorised officers

72—Appointment of authorised officers

(1) The Minister may appoint a person to be an authorised officer.

(2) An authorised officer may (but need not be) a Public Service employee.

(3) An authorised officer may be assigned to assist 1 or more of—

(a) the Minister;

(b) the Commission;

(c) the Technical Regulator,

as the Minister considers appropriate.

(4) An authorised officer will, in the performance of functions and the exercise of powers, be subject to control and direction by an entity referred to in subsection (3) under a scheme established by the Minister after consultation with the Commission and the Technical Regulator.

73—Conditions of appointment

(1) An authorised officer may be appointed for a stated term or for an indefinite term that continues while the officer holds a stated office or position.

(2) An authorised officer holds office on the conditions stated in the instrument of appointment.

(3) An authorised officer may resign by written notice given to the Minister.

(4) An authorised officer may be removed from office by the Minister.

74—Identity cards

(1) An authorised officer must be issued with an identity card in a form approved by the Minister—

(a) containing a photograph of the person taken for the purpose; and

(b) stating that the person is an authorised officer for the purposes of this Act; and

(c) containing any other information determined by the Minister for the purposes of this section.

(2) The identity card must be issued as soon as is reasonably practicable after the appointment is made (but an authorised officer is not prevented from exercising powers under this Act just because an identity card is yet to be issued).

(3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card (unless the identity card is yet to be issued).

Division 2—General powers of authorised officers

75—Power of entry

(1) An authorised officer may, as reasonably required for the purposes of the administration or enforcement of this Act, enter and remain in any place.

(2) When an authorised officer enters a place under this section, the authorised officer—

(a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and

(b) may take any vehicles or equipment the authorised officer considers necessary or appropriate for the functions the authorised officer is to carry out in the place.

(3) An authorised officer may use reasonable force to enter a place under this Part if—

(a) the entry is authorised under a warrant under Part 10; or

(b) the entry is necessary in an emergency.

(4) An authorised officer must be accompanied by a police officer—

(a) when entering a place under a warrant; or

(b) if it is practicable to do so, when entering a place by force in an emergency.

76—Inspection powers

(1) An authorised officer who enters a place under this Part may—

(a) ask questions of any person found in the place; and

(b) inspect, examine or test any infrastructure, plumbing, equipment, product, materials or other thing, or any substance, located or found at the place; and

(c) require any person to state his or her full name and address and to produce evidence of his or her identity; and

(d) take and remove samples of any substance or other thing found or located at the place; and

(e) require any person to produce any plans, specifications, books, papers or documents; and

(f) examine, copy and take extracts from any plans, specifications, books, papers or documents; and

(g) take photographs, films or video recordings; and

(h) take measurements, make notes and carry out tests; and

(i) disconnect, close, turn off or remove any infrastructure or equipment; and

(j) open or reconnect any infrastructure or equipment; and

(k) remove any substance or object that may constitute evidence of the commission of an offence against this Act; and

(l) exercise any other power prescribed by the regulations.

(2) If an authorised officer takes possession of an object that may be evidence of an offence—

(a) the authorised officer must give the occupier of the place a receipt for the object; and

(b) the object must be returned to its owner—

(i) if proceedings for an offence are not commenced within 6 months after the authorised officer takes possession of the object—at the end of that period; or

(ii) if such proceedings are commenced within that period—on completion of the proceedings, unless the court, on application by the Minister, Commission or Technical Regulator, orders confiscation of the object.

(3) A court may order the confiscation of an object of which an authorised officer has taken possession under subsection (1) if of the opinion that the object has been used for the purpose of committing an offence or there is some other proper reason for ordering its confiscation.

(4) If the court orders the confiscation of an object, the Minister, the Commission or Technical Regulator may dispose of the object.

(5) A person who—

(a) having been asked a question under this section, does not answer the question to the best of his or her knowledge, information and belief; or

(b) being the person in charge of a place subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance,

is guilty of an offence.

Maximum penalty: $10 000.

Division 3—Specific powers in relation to infrastructure and equipment

77—Disconnection of supply

(1) If an authorised officer finds that water is being supplied or consumed contrary to this Act, the authorised officer may disconnect the water supply.

(2) If an authorised officer disconnects a water supply under this section, the officer must give written notice to the occupier of the relevant place—

(a) informing the occupier that the water supply has been disconnected under this section; and

(b) directing that the water supply must not be reconnected until arrangements have been made to the satisfaction of an authorised officer to ensure against future contravention of this Act.

(3) If a water supply has been disconnected under this section, a person must not reconnect the water supply, or have it reconnected, without the approval of an authorised officer.

Maximum penalty: $10 000.

78—Power to make infrastructure etc safe

(1) If an authorised officer finds any water/sewerage infrastructure or any equipment, product or materials unsafe, the authorised officer may—

(a) disconnect the supply of water to the place, or the collection of sewerage from the place, or give a direction requiring any such disconnection;

(b) restrict the provision of any service;

(c) give a direction requiring the carrying out of work necessary to make the infrastructure, equipment, product or materials safe before any reconnection is made.

(2) Subject to this section, a direction under this section must be given—

(a) in relation to water/sewerage infrastructure—to the water industry entity that operates the infrastructure;

(b) in relation to any equipment, product or materials—to the person in charge of the equipment, product or materials or the occupier of the place in which the equipment, product or materials are installed or located.

(3) A direction under this section may be given by written notice or, if the authorised officer is of the opinion that immediate action is required, orally (but if the direction is given orally it must be confirmed in writing).

(4) A person to whom a direction is given under this section—

(a) must comply with the direction; and

(b) if relevant, must not reconnect or permit the reconnection of the water supply or sewerage infrastructure (as the case may be) unless the work required by the direction under this section has been carried out, or an authorised officer approves the reconnection.

Maximum penalty: $10 000.

Division 4—Related matters

79—Power to require information or documents

(1) An authorised officer may require a person to provide information in the person's possession relevant to the administration or enforcement of this Act.

(2) An authorised officer may require a person to produce documents in the person's possession that may be relevant to the administration or enforcement of this Act for inspection by the authorised officer.

(3) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty: $10 000.

(4) This section does not limit the operation of any other provision of this Act.

80—Enforcement notices

(1) An authorised officer may issue a notice (an ***enforcement notice***) under this section for the purpose of securing compliance with a requirement imposed by or under this Act (including a standard issued under Part 7).

(2) A notice under this section—

(a) subject to subsection (3), must be in the form of a written notice served on the person to whom it is issued; and

(b) must specify the person to whom it is issued (whether by name or by a description sufficient to identify the person); and

(c) may direct 2 or more persons to do something specified in the notice jointly; and

(d) without limiting any other provision, in the case of a notice that relates to a situation existing on any premises, may be issued to any person who—

(i) is the owner or occupier of the premises; or

(ii) has the management or control of the premises; and

(e) without limiting any other provision, may be issued to any person who has performed, or is performing, any work (including work on any premises owned or occupied by another person); and

(f) must state the grounds on which the notice is issued; and

(g) may impose any requirement reasonably required for the purpose for which the notice is issued including 1 or more of the following:

(i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a relevant authority;

(ii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;

(iii) a requirement that the person comply with any specified standard or code published by the Technical Regulator or any other specified person or body referred to in the notice;

(iv) a requirement that the person undertake specified tests or monitoring;

(v) a requirement that the person furnish to a relevant authority specified results or reports;

(vi) a requirement prescribed by the regulations; and

(h) must state that the person may, within 14 days, apply for a review of the notice or institute an appeal against the notice under the provisions of this Act.

(3) An authorised officer may, if of the opinion that urgent action is required, issue an emergency notice imposing a requirement of a kind referred to in subsection (2)(g) as reasonably required in the circumstances.

(4) An emergency enforcement notice may be issued orally (and without compliance with a requirement to give preliminary notice) but, in that event, the person to whom the notice is issued must be advised forthwith of the person's right to appeal to the District Court against the order.

(5) If an emergency enforcement notice is issued by an authorised officer, the notice will cease to have effect on the expiration of 72 hours from the time of issuing unless confirmed by a written notice served on the relevant person.

(6) An authorised officer may, by written notice served on a person to whom a notice under this section has been issued, vary or revoke the notice.

(7) A relevant authority may, by written notice served on a person to whom a notice under this section has been issued by the relevant authority, vary or revoke the notice.

(8) A person to whom a notice is issued under this section must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty: $25 000.

(9) A person must not hinder or obstruct a person complying with a notice under this section.

Maximum penalty: $25 000.

(10) If the requirements of a notice under this section are not complied with, a relevant authority may take any action required by the notice.

(11) Action to be taken by a relevant authority under subsection (10) may be taken on the relevant authority's behalf by an authorised officer or another person authorised by the relevant authority for the purpose.

(12) A person taking action under subsection (10) or (11) may enter any premises at any reasonable time.

(13) The reasonable costs and expenses incurred by a relevant authority in taking action under subsections (10) and (11) may be recovered by the relevant authority as a debt from the person who failed to comply with the requirements of the notice.

(14) If an amount is recoverable from a person by a relevant authority under this section, the relevant authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid.

(15) In this section—

relevant authority means—

(a) the Minister; or

(b) the Commission; or

(c) the Technical Regulator.

81—Self-incrimination

A natural person is not required to give information or produce a document under this Part if the answer to the question or the contents of the document would tend to incriminate the person of an offence.

82—Warning notices and assurances

(1) If it appears to the Commission that a person has contravened a provision of Part 4, the Commission may issue a warning notice to the person—

(a) informing the person that the Commission considers that the contravention has occurred; and

(b) providing the person with the option—

(i) to the extent that the contravention is capable of being rectified—to take action specified in the notice to rectify the contravention within the period specified in the notice; and

(ii) to give the Commission an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.

(2) If it appears to the Technical Regulator that a person has contravened a provision of Part 7, the Technical Regulator may issue a warning notice to the person—

(a) informing the person that the Technical Regulator considers that the contravention has occurred; and

(b) providing the person with the option—

(i) to the extent that the contravention is capable of being rectified—to take action specified in the notice to rectify the contravention within the period specified in the notice; and

(ii) to give the Technical Regulator an assurance, in the terms specified in the notice, and within the period specified in the notice, that the person will avoid a future such contravention.

(3) A warning notice issued under this section, and an assurance given under this section, must be in writing.

(4) The action that may be specified in a warning notice to rectify a contravention may include action to remedy adverse consequences of the contravention, for example (without limitation)—

(a) the refunding of an amount wrongly paid to the person as a result of the contravention; or

(b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or

(c) the disclosure of information; or

(d) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.

(5) The Commission or the Technical Regulator may, by written notice to a person, vary a warning notice issued to the person.

(6) If—

(a) the Commission or the Technical Regulator issues a warning notice to a person; and

(b) the person—

(i) fails to take action specified in the notice to rectify the contravention within the period specified in the notice; or

(ii) fails to give the Commission or the Technical Regulator, as the case requires, an assurance in the terms specified in the notice within the period specified in the notice; or

(iii) contravenes an assurance given by the person in response to the notice,

then the Commission or the Technical Regulator may proceed against the person in respect of the contravention to which the notice relates (but if the person takes up the option provided by the notice, and does not fall within the ambit of paragraph (b), then the person is not liable to be prosecuted for the contravention).

(7) In connection, with the operation of the preceding subsections—

(a) the Commission must keep a register of warning notices issued by the Commission under this section, and a register of assurances given to the Commission under this section; and

(b) the Technical Regulator must keep a register of warning notices issued by the Technical Regulator under this section, and a register of assurances given to the Technical Regulator under this section.

(8) A person may, without payment of a fee, inspect a register kept under subsection (7).

83—Injunctions

(1) If the District Court is satisfied, on the application of the Minister, the Commission, the Technical Regulator or any other person, that a person has engaged or proposes to engage in conduct that constitutes or would constitute a contravention of this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) If the District Court is satisfied, on the application of the Minister, the Commission, or the Technical Regulator, that a person has engaged in conduct constituting a contravention of this Act, the Court may grant an injunction requiring that person to take specified action to remedy any adverse consequence of that conduct.

(3) The action that may be required by an injunction to remedy adverse consequences of conduct constituting a contravention may include (without limitation)—

(a) the refunding of an amount wrongly paid as a result of the contravention; or

(b) the payment of compensation to a person who has suffered loss, damage or injury as a result of the contravention; or

(c) the making good or restoration of any condition or situation; or

(d) the disclosure of information; or

(e) the publication of advertisements relating to the contravention or relating to action to rectify or remedy the contravention.

(4) An injunction may be granted by the District Court under this section—

(a) in proceedings in which the Court convicts a person of an offence to which the application relates; or

(b) in proceedings brought before the Court for the purpose of obtaining the injunction.

(5) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

(6) The power of the District Court to grant an injunction requiring a person to do an act or thing may be exercised—

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

(7) An interim injunction may be granted under this section pending final determination of the application.

(8) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.

(9) Where the Minister, the Commission or the Technical Regulator applies for an injunction under this section, no undertaking as to damages will be required.

(10) The Minister may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.

(11) An injunction under this section may be rescinded or varied at any time.

(12) A reference in this section to the District Court is a reference to the Court in any of its Divisions.

Part 9—Reviews and appeals

84—Review of decisions by Commission or Technical Regulator

(1) Subject to this section, an application may be made to—

(a) the Commission by an applicant for the issue or variation of the terms or conditions of a licence under Part 4, or for agreement to the transfer of such a licence, for review of a decision of the Commission to refuse the application; or

(b) the Commission by a water industry entity for review of a decision of the Commission under Part 4 to suspend or cancel the entity's licence or to vary the terms or conditions of the entity's licence; or

(c) the Technical Regulator by a person to whom a direction has been given under this Act by the Technical Regulator or an authorised officer for review of the decision to give the direction; or

(d) the Technical Regulator by a person affected by the decision for review of a decision of an authorised officer or a water industry officer to disconnect or restrict a supply of water to a place, or the collection of sewage from a place, or to restrict the provision of a service.

(2) An application may not be made under subsection (1) in relation to—

(a) the exercise of a power of an authorised officer under Part 8 Division 2; or

(b) a decision to issue an enforcement notice under Part 8 Division 4, or any matter associated with the requirements or enforcement of such a notice.

(3) An application for review under this section must—

(a) be in writing; and

(b) set out the decision to which the application relates; and

(c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and

(d) be accompanied by any information that the applicant considers should be taken into account by the Commission or the Technical Regulator on the review; and

(e) be lodged with the Commission or the Technical Regulator—

(i) in the case of a decision relating to a licence or application for a licence—within 10 working days after written notice of the decision is given to the water industry entity or applicant;

(ii) in the case of a decision to a direction—within 10 working days after the direction is given;

(iii) in the case of a decision to disconnect or restrict a service—within 10 working days after notice of the disconnection or restriction is given or, if notice is not given, within 10 working days after the service is disconnected or restricted.

(4) The Commission or the Technical Regulator, as the case requires, may stay the operation of the decision to which the application relates.

(5) A review must be decided within 4 weeks of the application being lodged.

(6) If a review is not decided within that period, the Commission or the Technical Regulator, as the case requires, is to be taken to have confirmed the decision.

(7) After considering the application, the Commission or the Technical Regulator, as the case requires, may confirm, amend or substitute the decision.

(8) The Commission or the Technical Regulator must give the applicant written notice of the decision, and the reasons for the decision, on the review.

85—Appeals

(1) The following rights of appeal lie to the District Court:

(a) an applicant for review under section 84 who is dissatisfied with a decision as confirmed, amended or substituted by the Commission or the Technical Regulator;

(b) a person to whom an enforcement notice has been issued under Part 8 Division 4.

(2) An appeal must be made—

(a) in the case of an appeal under subsection (1)(a)—within 14 days after receipt of the written notice of the decision appealed against or, if the Commission or the Technical Regulator failed to make a decision on the review within the allowed period, within 14 days after the end of that period; and

(b) in the case of an appeal under subsection (1)(b)—within 14 days after the notice is issued to the relevant person.

(3) In the case of an appeal under subsection (1)(a), the District Court must sit with experts selected in accordance with Schedule 1.

(4) The District Court may—

(a) on an appeal under subsection (1)(a)—

(i) affirm the decision appealed against; or

(ii) remit the matter to the original decision maker for consideration or further consideration in accordance with any directions of the Court; and

(b) on an appeal under subsection (1)(b)—

(i) confirm, vary or revoke the notice; or

(ii) remit the matter to any person or body under this Act for further consideration; and

(c) in any event—make any consequential or ancillary order or direction, or impose any condition, that the Court considers necessary or expedient on account of an appeal under this section.

(5) An appeal under the *District Court Act 1991* will lie against a decision of the District Court under this section on a question of law (but not on a question of fact).

86—Minister's power to intervene

The Minister may intervene, personally or by counsel or other representative, in a review or appeal under this Part for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.

Part 9A—Third party access regime

Division 1—Preliminary

86A—Interpretation

In this Part, unless the contrary intention appears—

access contract means a contract giving access to regulated infrastructure and infrastructure services or a contractual variation of an existing access contract affecting access to regulated infrastructure and infrastructure services in a significant way or to a significant extent;

access proposal—see section 86I;

infrastructure services means a service provided by means of water infrastructure or sewerage infrastructure and includes—

(a) the use of such infrastructure;

(b) the service of operating such infrastructure or any associated equipment;

(c) other related or ancillary services;

interested third party means an interested third party under section 86J;

regulated infrastructure means infrastructure to which this Part applies by virtue of the operation of section 86B;

regulated operator means an operator of infrastructure who is subject to the access regime that applies under this Part by virtue of the operation of section 86B;

regulator—see section 86C;

Supreme Court means the Supreme Court of South Australia;

water/sewerage service business means a business consisting of—

(a) the provision of water services or sewerage services; or

(b) the service of providing—

(i) access to regulated infrastructure to another person; and

(ii) infrastructure services associated with such access.

86B—Application

(1) This Part applies in relation to operators of water infrastructure or sewerage infrastructure, and infrastructure services, to the extent that it is declared by proclamation to apply.

(2) The Governor may, by proclamation—

(a) declare that operators of water infrastructure or sewerage infrastructure and infrastructure services, or a specified class of such infrastructure or services, are subject to the operation of this Part; and

(b) vary or revoke a declaration under this section.

(3) This Part does not (and cannot) apply in relation to infrastructure operated by an irrigation infrastructure operator that may be subject to water charge rules under Part 4 Division 1 of the *Water Act 2007* of the Commonwealth (whether or not such rules have been made in relation to the infrastructure (or in relation to any service that may be provided in connection with the infrastructure)).

(4) In subsection (3)—

irrigation infrastructure operator has the meaning given by section 7(4) of the *Water Act 2007* of the Commonwealth.

Division 2—Regulator

86C—Appointment of regulator

(1) The Commission is the regulator under this Part.

(2) The regulator has the function of monitoring and enforcing compliance with this Part (in addition to the other functions conferred under the other provisions of this Act or under the *Essential Services Commission Act 2002*).

86D—Report to Minister

(1) The regulator must, within 3 months after the end of each financial year, deliver to the Minister a report of the work carried out by the regulator under this Part during that financial year.

(2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

Division 3—Information to facilitate access proposals

86E—Segregation of accounts and records

(1) A regulated operator must keep accounts and records of its water/sewerage service business so as to give a true and fair view of that business as distinct from other businesses carried on by the regulated operator.

(2) A regulated operator whose water/sewerage service business includes providing (or providing and operating) regulated infrastructure for another person must keep accounts and records of that part of its water/sewerage service business so as to give a true and fair view of that part of the business as distinct from the remainder of its water/sewerage regulated infrastructure.

(3) The accounts and records must be kept in a way that gives—

(a) a comprehensive view of the regulated operator's legal and equitable rights and liabilities in relation to water/sewerage infrastructure; and

(b) a true and fair view of—

(i) income and expenditure derived from, or relating to, water/sewerage infrastructure; and

(ii) assets and liabilities of the regulated operator's business so far as they relate to water/sewerage infrastructure.

86F—Information brochure

(1) A regulated operator must, on the written application of any person, provide an information brochure containing (or accompanied by)—

(a) the terms and conditions on which the regulated operator is prepared to make the regulated operator's regulated infrastructure available for use by others; and

(b) the procedures that the regulated operator will apply in determining a proposal for access to any regulated infrastructure and infrastructure services; and

(c) information about relevant prices and costs associated with gaining access to (and using) regulated infrastructure and infrastructure services; and

(d) a copy of a standard access arrangement used by the regulated operator; and

(e) the contact details of the regulated operator's representative who is the initial point of contact for responding to questions about access to regulated infrastructure and infrastructure services prior to the making of an access proposal, and information about how to lodge an access proposal; and

(f) other information prescribed by the regulations.

(2) The information brochure must be provided within 30 days (or a longer period allowed by the regulator) after the regulated operator receives the application.

(3) The regulated operator must, within 14 days after providing a person with an information brochure under this section, give a copy of the information brochure, and details of the person to whom the information has been provided, to the regulator.

(4) If a regulated operator fails to comply with this section in any respect, the regulated operator is guilty of an offence.

Maximum penalty: $20 000.

86G—Specific information to assist proponent to formulate proposal

(1) A regulated operator must, on the application of a person with a proper interest in making an access proposal to the regulated operator, provide the applicant with information reasonably requested by the applicant about—

(a) the extent to which the regulated operator's regulated infrastructure is currently being utilised; and

(b) the extent to which it would be necessary, and technically and economically feasible, to alter or add to the regulated operator's infrastructure so that it could meet requirements stated in the application; and

(c) whether the regulated operator would be prepared to provide access to regulated infrastructure and infrastructure services of a specified description and—

(i) if so, the general terms and conditions (including an indication of the likely price) on which the regulated operator would be prepared to provide access; and

(ii) if not, the reasons why access cannot be provided.

(2) A regulated operator may make a reasonable charge (to be determined after taking into account any provision made by the regulations for the purposes of this subsection) for providing information under this section.

86H—Information to be provided on non-discriminatory basis

A regulated operator must provide information to persons interested in making access proposals to the regulated operator on a non-discriminatory basis.

Division 4—Negotiation of access

86I—Access proposal

(1) A person (the ***proponent***) who wants access to regulated infrastructure, or who wants to vary an access contract in a significant way or to a significant extent, may make a written proposal (the ***access proposal***) to the regulated operator of that infrastructure setting out—

(a) the nature and extent of the required access or variation; and

(b) terms and conditions for the provision of access, or for making the variation, that the proponent considers reasonable and commercially realistic and to which the proponent is prepared to agree.

(2) If the implementation of an access proposal would require an alteration of or addition to water infrastructure or sewerage infrastructure, the access proposal may include a proposal for that alteration or addition.

(3) If the regulated operator requires, a proponent must provide further information about the proponent's proposal that the regulated operator reasonably requires in order to assess and respond to the proposal.

(4) The regulated operator must, within 1 month after the relevant day—

(a) give written notice of the proposal to—

(i) the regulator; and

(ii) any person (an ***affected third party***) whose rights would be affected by the implementation of the proposal; and

(b) notify the proponent of the name and address of any affected third party and give the proponent a preliminary indication about—

(i) whether the regulated operator is prepared to provide access to the regulated infrastructure and infrastructure services and, if so, on what terms and conditions; and

(ii) if some alteration of, or addition to, existing infrastructure would be necessary to provide the access, whether the regulated operator would agree to the alteration or addition and, if so, on what terms.

(5) The ***relevant day*** is the day on which the written proposal is made to the regulated operator or, if the regulated operator requires further information under subsection (3), the day on which that information is provided.

(6) Notice of an access proposal may be given to affected third parties by publishing a notice in a newspaper circulating generally in the State stating—

(a) the name of the proponent and an address at which the proponent may be contacted; and

(b) the name of the operator and an address at which the regulated operator may be contacted; and

(c) the general nature of the access proposal.

(7) A regulated operator may recover the reasonable costs of giving notice under this section, as a debt, from the proponent.

86J—Duty to negotiate in good faith

(1) The regulated operator must negotiate in good faith with the proponent with a view to reaching agreement on whether the proponent's requirements as set out in the access proposal (or some agreed modification of the requirements) could reasonably be met, and, if so, the terms and conditions for the provision of access for the proponent.

(2) An interested third party must also negotiate in good faith with the proponent with a view to reaching agreement on the provision of access to the proponent and any consequent variation of the interested third party's rights (or prospective rights) of access.

(3) An ***interested third party*** is an affected third party who, by notice given to the proponent or the regulated operator, indicates its interest in the negotiations.

86K—Existence of dispute

(1) If, within 2 months after the proposal is made, the regulated operator, the proponent, and any interested third parties have not agreed on terms for the provision of access, a dispute exists.

(2) A party to the dispute may refer the dispute to the regulator.

Division 5—Conciliation

86L—Settlement of dispute by conciliation

(1) If a dispute is referred to the regulator, the regulator must, in the first instance, seek to resolve the dispute by conciliation.

(2) The regulator need not attempt to resolve a dispute by conciliation if, in the regulator's opinion—

(a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or

(b) the parties have not negotiated in good faith.

(3) In attempting to resolve a dispute by conciliation, the regulator must have regard to the same factors as would be relevant in an arbitration of the dispute.

86M—Voluntary and compulsory conferences

(1) The regulator may call voluntary or compulsory conferences of the parties to the dispute to explore the possibility of resolving the dispute by agreement.

(2) The regulator, or a nominee of the regulator, will preside at any such conference.

(3) A party to a dispute who is asked by the regulator to attend a conference under this section must attend the conference if the regulator indicates in the request that attendance is compulsory.

Maximum penalty: $20 000.

Division 6—Reference of dispute to arbitration

86N—Power to refer dispute to arbitration

(1) If a dispute is not resolved by conciliation after the regulator has made reasonable attempts to do so, or if it appears unlikely that a dispute can be resolved by conciliation, or, in any event, if the dispute is not resolved within 6 months after the referral of the dispute to the regulator under Division 5, the regulator may refer the dispute to arbitration.

(2) The regulator need not refer a dispute to arbitration if, in the regulator's opinion—

(a) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or

(b) the parties have not negotiated in good faith; or

(c) there are other good reasons why the dispute should not be referred to arbitration.

(3) The arbitrator is to be a person selected by the regulator after consultation with the parties to the dispute and must be a person who—

(a) is independent of the parties to the dispute; and

(b) is not subject to the control or direction of the South Australian Government in any capacity; and

(c) is properly qualified to act in the resolution of the dispute; and

(d) has no direct or indirect interest in the outcome of the dispute.

(4) If for some reason an arbitrator does not complete an arbitration, the regulator may, after consultation with the parties, make a fresh appointment.

86O—Application of *Commercial Arbitration Act 2011*

The *Commercial Arbitration Act 2011* applies to an arbitration under this Part to the extent that it may operate consistently with the provisions of this Act.

86P—Principles to be taken into account

(1) The arbitrator must take into account—

(a) the objects of this Act; and

(b) the regulated operator's legitimate business interests and investment in the regulated infrastructure; and

(c) the costs to the regulated operator of providing access as sought by the proponent (including the costs of any necessary alteration of, or addition to, existing infrastructure) but not costs associated with losses arising from increased competition in upstream or downstream markets; and

(d) the economic value to the regulated operator of any additional investment that the proponent or the regulated operator has agreed to undertake; and

(e) the interests of all persons holding contracts for use of any regulated infrastructure or infrastructure services; and

(f) firm and binding contractual obligations of the regulated operator or other persons (or both) already using any regulated infrastructure or infrastructure services; and

(g) the operational and technical requirements necessary for the safe and reliable operation of the regulated infrastructure; and

(h) the economically efficient operation of any regulated infrastructure; and

(i) the benefit to the public from having competitive markets; and

(j) any direction given to the regulated operator (in the case of a regulated operator that is a public corporation) by its Minister under the *Public Corporations Act 1993* that is relevant to the arbitration; and

(k) the pricing principles specified in subsection (2); and

(l) other matters the arbitrator considers appropriate.

(2) The pricing principles relating to the price of access are as follows:

(a) that access prices should be set so as to generate expected revenue that is at least sufficient to meet the efficient costs of providing access and include a return on investment commensurate with the regulatory and commercial risks involved;

(b) that access prices should allow multi-part pricing and price discrimination when it aids efficiency;

(c) that access prices should not allow a vertically integrated operator to set terms and conditions that would discriminate in favour of its downstream operations, except to the extent that the cost of providing access to others would be higher;

(d) that access prices should provide incentives to reduce costs or otherwise improve productivity.

(3) In addition—

(a) the arbitrator cannot make an award that would have the effect of requiring the regulated operator to bear any capital cost of an alteration of, or addition to, any infrastructure unless the regulated operator agrees; and

(b) the arbitrator cannot make an award that would prejudice the rights of a person who has the use of the regulated infrastructure or infrastructure services under an earlier contract or award unless that person agrees; and

(c) the arbitrator cannot make an award that is inconsistent with any requirement under—

(i) the *Natural Resources Management Act 2004*; or

(ii) the *Safe Drinking Water Act 2011*; or

(iii) the *South Australian Public Health Act 2011*; or

(iv) the *Environment Protection Act 1993*; or

(v) any other law or legislative requirement relating to health, safety or the environment.

(4) Without limiting subsection (3)(c), the arbitrator must accept any advice provided by a department of the Public Service or other public sector agency that is responsible for assisting a Minister in the administration of an Act referred to in that section about whether or not a particular decision or course of action would be inconsistent with the Act in question.

86Q—Parties to the arbitration

The parties to the arbitration are—

(a) the proponent, the regulated operator and any interested third parties; and

(b) any other person whose interests may be materially affected by the outcome of the arbitration and who is joined as a party to the arbitration by the arbitrator.

86R—Representation

A party to an arbitration may be represented by a legal practitioner or, by leave of the arbitrator, another representative.

86S—Participation by other parties

(1) The Minister and the regulator both have a right to participate in an arbitration.

(2) The Minister or the regulator may, in participating in an arbitration, call evidence and make representations on the questions subject to the arbitration.

86T—Arbitrator's duty to act expeditiously

An arbitrator must proceed with the arbitration as quickly as the proper investigation of the dispute, and the proper consideration of all matters relevant to the fair determination of the dispute, allow.

86U—Hearings to be in private

(1) Arbitration proceedings must be conducted in private unless all parties agree to have the proceedings conducted in public.

(2) An arbitrator may give directions about who may be present at arbitration proceedings conducted in private.

(3) In giving directions under subsection (2), the arbitrator must have regard to the wishes of the parties and the need for commercial confidentiality.

(4) A person must comply with a direction under subsection (2).

Maximum penalty: $20 000.

(5) If the arbitrator considers it in the public interest to do so, the arbitrator may give public notice of the outcome of an arbitration.

86V—Procedure on arbitration

(1) An arbitrator—

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) may obtain information on matters relevant to the dispute in any way the arbitrator thinks appropriate.

(2) An arbitrator may require the presentation of evidence or argument in writing and may decide matters on which the arbitrator will hear oral evidence or argument.

86W—Procedural powers of arbitrator

(1) An arbitrator may—

(a) give procedural directions;

(b) make orders requiring—

(i) the delivery of documents clarifying the issues between the parties;

(ii) the discovery and inspection of documents;

(c) sit at any time or place;

(d) adjourn the arbitration proceedings from time to time and from place to place;

(e) refer a matter to an expert for report, and accept the expert's report in evidence;

(f) do anything else necessary for the expeditious hearing and determination of the dispute.

(2) An arbitrator may hear 2 or more proceedings relating to the same general subject matter together.

(3) An arbitrator may proceed with arbitration proceedings in the absence of a party if the party has been given at least 14 days notice of the proceedings.

(4) An arbitrator may engage a legal practitioner to provide advice on the conduct of the arbitration and to assist the arbitrator in drafting the award.

86X—Giving of relevant documents to the arbitrator

A party to the arbitration may give the arbitrator a copy of all documents (including confidential documents) the party considers to be relevant to the dispute.

86Y—Power to obtain information and documents

(1) If an arbitrator has reason to believe that a person is in a position to give information or to produce documents, that may be relevant to the dispute, the arbitrator may, by written notice—

(a) require the person within a period stated in the notice—

(i) to give the arbitrator a written statement of specified information; or

(ii) to produce to the arbitrator specified documents or copies of specified documents; or

(b) require the person to appear before the arbitrator at a specified time and place to give evidence.

(2) A written statement must, if the arbitrator so requires, be verified by statutory declaration of the person providing the information or, if the person is a body corporate, an appropriate officer of the body corporate.

(3) If documents are produced to an arbitrator, the arbitrator may—

(a) take possession of, make copies of, and take extracts from, the documents; and

(b) keep the documents for as long as is necessary for the purposes of the arbitration.

(4) A person must—

(a) comply with a requirement of the arbitrator under subsection (1) or (2); and

(b) if the person is required to appear as a witness before the arbitrator—comply with further requirements to make an oath or affirmation, or to answer questions.

Maximum penalty: $20 000.

(5) However, a person need not give information or produce a document if—

(a) the information or the contents of the document are the subject of legal professional privilege, or would tend to incriminate the person of an offence; and

(b) the person objects to giving the information or producing the document by giving written notice of the ground of the objection to the arbitrator or, if the person is appearing as a witness before the arbitrator, by an oral statement of the ground of objection.

86Z—Confidentiality of information

(1) A person who gives the arbitrator information, or produces documents, may ask the arbitrator to keep the information or the contents of the documents confidential.

(2) The arbitrator may, after considering representations from the parties, impose conditions limiting access to, or disclosure of, the information or documentary material.

(3) A person must not contravene a condition imposed under subsection (2).

Maximum penalty: $75 000.

86ZA—Proponent's right to terminate arbitration before an award is made

(1) The proponent may terminate the arbitration before an award is made.

(2) The arbitration is terminated under this section by giving notice of termination to—

(a) the regulator; and

(b) the arbitrator; and

(c) the other parties to the arbitration.

86ZB—Arbitrator's power to terminate arbitration

(1) An arbitrator may at any time terminate an arbitration without making an award if the arbitrator is satisfied—

(a) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(b) the proponent has not engaged in negotiations in good faith; or

(c) the terms and conditions on which the access is to be provided should continue to be governed by an existing contract or award.

(2) Before terminating an arbitration under this section, the arbitrator must give the regulator an opportunity to make representations on the matter.

86ZC—Time limit for arbitration

(1) An award must be made within the period of 6 months from the date on which the dispute is referred to arbitration (the ***standard period***).

(2) However, if after the commencement of the standard period the arbitrator exercises a power under this Part in relation to the provision of information or documents, any period between the date of the exercise of the power and the date of compliance is not to be taken into account when determining the end date of the standard period.

86ZD—Formal requirements related to awards

(1) Before the arbitrator makes an award, the arbitrator must give each party, the Minister, the regulator and each designated agency a copy of the draft award and may take into account representations that any of them may make on the proposed award.

(2) An award must—

(a) be in writing; and

(b) set out the reasons on which it is based.

(3) If an award confers a right of access, it must—

(a) state the period for which the proponent is entitled to access; and

(b) state the terms and conditions on which the proponent is to have access; and

(c) resolve, or provide for the resolution of, all related and incidental matters.

(4) The arbitrator must, within 7 days after an award is made (including an award made by consent), give a copy of the award to—

(a) the Minister; and

(b) the regulator; and

(c) each party to the arbitration; and

(d) each designated agency.

(5) In this section—

designated agency means, in relation to an award (or draft award)—

(a) the Technical Regulator; and

(b) the Minister's Department; and

(c) the Health Department; and

(d) the Environment Protection Authority; and

(e) if any other department or agency has provided advice to the arbitrator under section 86P in connection with the arbitration—that department or agency.

86ZE—Consent awards

If—

(a) the parties to an arbitration consent to a proposed award; and

(b) the arbitrator is satisfied that the award is appropriate in the circumstances,

the arbitrator may make an award in the terms proposed.

86ZF—Proponent's option to withdraw from award

(1) A proponent may, within 7 days after the making of an award or such further time as the regulator may allow, elect not to be bound by the award by giving written notice of the election to the regulator.

(2) The regulator must, within 7 days after receiving a notice of election under subsection (1), notify the regulated operator and the other parties to the arbitration.

(3) If the proponent elects not to be bound by an award—

(a) the award is rescinded; and

(b) the proponent is precluded from making another proposal related to the same matter for 2 years from the date the notice of election was given unless the regulated operator agrees or the regulator authorises a further proposal within that period.

(4) An authorisation under subsection (3)(b) may be given on conditions the regulator considers appropriate.

86ZG—Termination or variation of award

(1) An award may be terminated or varied by agreement between all parties to the award.

(2) A variation may include an extension of the period for which the award remains in force.

(3) If a material change in circumstances occurs, a party to an award may propose termination or variation of the award.

(4) The provisions of this Part about an access proposal and the arbitration of a dispute arising from an access proposal apply with necessary modifications to a proposal made under this section or a dispute arising out of such a proposal.

86ZH—Costs

(1) The costs of an arbitration are to be borne by the parties in proportions decided by the arbitrator, and in the absence of a decision by the arbitrator, in equal proportions.

(2) However, if the proponent terminates an arbitration or elects not to be bound by an award, the proponent must bear the costs in their entirety.

(3) The regulator may recover the costs of an arbitration as a debt.

86ZI—Contractual remedies

An award is enforceable as if it were a contract between the parties to the award.

86ZJ—Appeal on question of law

(1) An appeal lies to the Supreme Court from an award, or a decision not to make an award, on a question of law.

(2) On an appeal, the Court may exercise 1 or more of the following powers:

(a) vary the award or decision;

(b) revoke the award or decision;

(c) make an award or decision that should have been made in the first instance;

(d) remit the matter to the arbitrator for further consideration or re-consideration;

(e) make incidental or ancillary orders (including orders for costs).

(3) An award or decision of an arbitrator cannot be challenged or called in question except by appeal under this section.

(4) Unless the Court specifically decides to suspend the operation of an award until the determination of the appeal, an appeal does not suspend the operation of an award.

86ZK—Injunctive remedies

(1) The Supreme Court may grant an injunction—

(a) restraining a person from contravening an award; or

(b) requiring a person to comply with an award.

(2) The power of the Court to grant an injunction restraining a contravention of an award may be exercised—

(a) whether or not the defendant has previously contravened the relevant provision of the award; and

(b) whether or not there is imminent danger of substantial damage to any person.

(3) The power of the Court to grant an injunction requiring compliance with an award may be exercised—

(a) whether or not the defendant has previously failed to comply with the relevant provision of the award; and

(b) whether or not there is imminent danger of substantial damage to any person.

(4) The Court may grant an interim injunction under this section.

(5) An application for an injunction under this section may be made by—

(a) the regulator; or

(b) a person with a proper interest in whether the relevant provision is complied with.

(6) The Court may grant an injunction by consent without inquiring into the merits of the application.

(7) If the regulator makes an application for an injunction, the Court cannot require the regulator or any other person to give an undertaking about damages as a condition of granting the injunction.

(8) The Court may, on application by the regulator or an interested party, discharge or vary an injunction.

86ZL—Compensation

(1) If a person contravenes an award, the Supreme Court may, on application by the regulator or an interested person, order compensation of persons who have suffered loss or damage as a result of the contravention.

(2) An order may be made under this section against the person who contravened the provision and others involved in the contravention.

(3) A person is ***involved in the contravention*** of an award if the person—

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention through threats or promises or in some other way; or

(c) was knowingly concerned in, or a party to, the contravention; or

(d) conspired with others to contravene the award.

Division 7—Related matters

86ZM—Confidential information

(1) Information obtained under Division 3, 4 or 5 that—

(a) could affect the competitive position of a regulated operator or a proponent; or

(b) is commercially valuable or sensitive for some other reason,

is to be regarded as ***confidential information***.

(2) A person who obtains confidential information must not disclose that information unless—

(a) the disclosure is reasonably required for the purposes of this Act; or

(b) the disclosure is made with the consent of the person who supplied the information; or

(c) the disclosure is required or authorised by law; or

(d) the disclosure is required by a court or tribunal constituted by law; or

(e) the disclosure is in prescribed circumstances.

Maximum penalty: $15 000.

(3) A person who obtains confidential information must not (unless authorised by the person who supplied the information) use the information for a purpose which is not authorised or contemplated by this Act.

Maximum penalty: $15 000.

(4) Subsections (1), (2) and (3) do not prevent or restrict the disclosure of information to the regulator.

(5) Despite subsections (1), (2) and (3), the regulator may, if the regulator considers it is in the public interest to do so, disclose confidential information to either or both of the following:

(a) the Minister;

(b) the public.

(6) A person who obtains confidential information must not use the information for the purpose of securing an advantage for himself or herself or for some other person in competition with the person who provided the information.

Maximum penalty: $100 000.

(7) A regulated operator must, in connection with the operation of this section, develop and maintain a policy to ensure that confidential information obtained by the regulated operator is not disclosed or used except as authorised by this section.

(8) The regulated operator must provide a copy of a policy developed under subsection (7) to the regulator and to any other person who requests a copy from the regulated operator.

86ZN—Access by agreement

Nothing in this Part prevents a regulated operator entering into an access contract with another person on terms and conditions agreed between the parties.

86ZO—Copies of access contracts to be supplied to regulator

A regulated operator must provide the regulator, on a confidential basis, with a copy of every access contract made with the regulated operator within 1 month after the making of the contract.

Maximum penalty: $60 000.

86ZP—Regulated operator's duty to supply information and documents

(1) The regulator may, by written notice, require a regulated operator to give the regulator, within a stated time or at stated intervals, specified information or copies of specified documents related to the regulated operator's water/sewerage service business.

(2) A regulated operator must not, without reasonable excuse, contravene, or fail to comply with, notice under this section.

Maximum penalty: $60 000.

86ZQ—Unfair discrimination

(1) A regulated operator must not unfairly discriminate between proponents in preferring one access proposal to another.

(2) A regulated operator must not unfairly discriminate between entities in the terms and conditions on which the regulated operator provides access to regulated infrastructure.

(3) A regulated operator must not unfairly discriminate between entities by—

(a) waiving rights under access contracts or awards on a non-uniform basis; or

(b) making a kick-back arrangement or arrangements (ie arrangements directly or indirectly returning a proportion of the consideration to which the regulated operator is entitled under the contract or award to another party or their associates) on a non-uniform basis.

(4) A person must not be a party to discrimination by a regulated operator that is contrary to this section.

(5) A person is a ***party*** to discrimination if the person—

(a) aids, abets, counsels or procures the discrimination; or

(b) induces the discrimination through threats or promises or in some other way; or

(c) is knowingly concerned in the discrimination; or

(d) conspires with the operator to discriminate.

86ZR—Review of Part

(1) The regulator must, within the last year of each prescribed period, conduct a review of water infrastructure and sewerage infrastructure subject to this Part to determine whether this Part should continue to apply.

(2) The regulator must give reasonable notice of the review in a newspaper circulating generally throughout the State inviting written submissions on the matters under review within a reasonable time specified in the notice.

(3) The regulator must consider submissions made in response to the notice and other submissions made in the course of other forms of public consultation undertaken by the regulator in connection with the review.

(4) On completing the review, the regulator must forward to the Minister a report on the review and the conclusions reached by the regulator as a result of the review and, in particular, must recommend either—

(a) that this Part should continue in operation for a further prescribed period; or

(b) that this Part should expire at the end of the existing prescribed period.

(5) The Minister must cause a copy of the report to be laid before both Houses of Parliament and must have the regulator's recommendation published in the Gazette.

(6) This Part expires at the end of a prescribed period unless—

(a) the regulator has, in the report of a review conducted during the prescribed period, recommended that it should continue in operation for a further prescribed period; and

(b) a regulation has been made extending the period of its operation accordingly.

(7) In this section—

prescribed period means—

(a) the period ending 30 June 2019; and

(b) each successive period of 5 years thereafter.

Part 10—Miscellaneous

87—Consumer Advocacy and Research Fund

(1) The *Consumer Advocacy and Research Fund* is established.

(2) The Fund must be kept as directed by the Treasurer.

(3) The Fund consists of—

(a) the amount of $250 000 (indexed) paid into the Fund on an annual basis (at a time determined by the Treasurer) from the total amount of annual licence fees payable under section 24 attributable to designated prescribed costs in any particular financial year; and

(b) any money provided by Parliament for the purposes of the Fund; and

(c) any income arising from investment of the Fund under subsection (4); and

(d) any additional money that is paid into the Fund under a determination of the Treasurer; and

(e) any other money that is required or authorised by another law to be paid into the Fund.

(4) The Fund may be invested as approved by the Treasurer.

(5) The Minister may apply the Fund—

(a) to support research or advocacy that promotes the interests of consumers with a disability, low-income consumers, or consumers who are located within a regional area of the State; or

(b) to support projects that advance the interests of consumers from an advocacy perspective; or

(c) in making any other payment required by another law to be made from the Fund; or

(d) in payment of the expenses of administering the Fund.

(6) The administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act must, on or before 30 September in each year, present a report to that Minister on the operation of the Fund during the previous financial year.

(7) A report under subsection (6) may be incorporated into the annual report of the relevant administrative unit.

(8) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after the report is received by that Minister.

(9) The amount of $250 000 (indexed) referred to in subsection (3)(a) is to be adjusted on 1 July of each year (commencing on 1 July 2013) by multiplying that amount by a proportion obtained by dividing the Consumer Price Index for the immediately preceding March quarter by the Consumer Price Index for the March quarter, 2011.

(10) In this section—

Consumer Price Index means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics.

88—Minister's power to require information

(1) The Minister may require the Commission, the Technical Regulator, a water industry entity or other person to give the Minister, within a time specified by the Minister (which must be reasonable), information in the person's possession that the Minister reasonably requires for the performance of the Minister's functions under this Act.

(2) A person required to give information under this section must provide the information within the time specified by the Minister.

Maximum penalty: $20 000.

89—Delegation by Minister

(1) The Minister may delegate a function or power conferred on the Minister under this Act—

(a) to a particular person or body; or

(b) to the person for the time being occupying a particular office or position.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be made subject to conditions or limitations specified in the instrument of delegation; and

(b) does not derogate from the power of the Minister to act in a matter; and

(c) is revocable at will by the Minister.

(4) In any legal proceedings an apparently genuine certificate, purportedly given by the Minister, containing particulars of a delegation under this will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

90—Consultation between agencies

(1) The following agencies must, insofar as they share common interests, consult with each other in connection with the operation and administration of this Act:

(a) the Commission;

(b) the Technical Regulator;

(c) the Minister's Department;

(d) the Health Department;

(e) the Environment Protection Authority;

(f) when an arbitrator has been appointed under Part 9A—the arbitrator.

(2) The consultation under subsection (1) must be consistent with any requirement prescribed by the regulations.

(3) This section does not derogate from the operation of sections 10 and 11 of the *Essential Services Commission Act 2002*.

91—Seizure and dismantling of infrastructure

(1) Water/sewerage infrastructure cannot be seized and dismantled in execution of a judgment.

(2) This section does not prevent the sale of infrastructure as a part of an ongoing concern in execution of a judgment.

92—Water conservation measures

(1) For the purposes of this section, water conservation measures may do 1 or more of the following:

(a) prohibit the use of water for a specified purpose or purposes, or restrict or regulate the purposes for which water can be used;

(b) prohibit the use of water in a specified manner or by specified means, or restrict or regulate the manner in which, or the means by which, water may be used;

(c) prohibit specified uses of water during specified periods, or restrict or regulate the times at which water may be used.

(2) The Governor may, by regulation, introduce 1 or more water conservation measures.

(3) Regulations under subsection (2) must be declared to be made—

(a) for the purposes of taking action to provide for the better conservation, use or management of water (***longer-term measures***); or

(b) for the purposes of taking action on account of a situation, or likely situation, that, in the opinion of the Governor, has resulted, or is likely to result, in a decrease of the amount of water available within a particular area of the State (***short-term measures***).

(4) A regulation under subsection (2) will, unless it has already been revoked, expire—

(a) in the case of a longer-term measure—at the expiration of 5 years from the day on which it comes into operation;

(b) in the case of a short-term measure—at the expiration of 1 year from the day on which it comes into operation.

(5) Before a regulation is made under subsection (2) the Minister should take reasonable steps to consult with persons who, in the opinion of the Minister, are appropriate representatives of groups who will be affected by the proposed regulation.

(6) A regulation under this section may provide that a specified activity involving the use of water cannot occur except under the authority of an approval or permit issued by the Minister or another specified person or body in accordance with the regulations.

(7) A regulation under this section may—

(a) apply in relation to any water—

(i) that forms part of the water resources of the State; or

(ii) that is available for use within the State (including through a water reticulation system);

(b) apply in relation to the whole or any part of the State;

(c) apply any measure in relation to specified classes of persons or bodies, or generally;

(d) specify conditions or provide for exemptions;

(e) otherwise make different provision according to circumstances specified in the regulation.

(8) The revocation or expiration of a regulation under this section does not prevent the making of another regulation that comes into operation on or after the revocation or expiry of the regulation.

(9) A person who contravenes or fails to comply with a regulation under this section is guilty of an offence.

Maximum penalty:

(a) where the offender is a body corporate—$10 000;

(b) where the offender is a natural person—$5 000.

95—Immunity

(1) No act or omission undertaken or made by a designated entity, or by another person acting under the authority of a designated entity, exercising or performing a power or function under this Act (including by discontinuing or disconnecting any service, taking action that may damage any land or property, or adversely affecting the use or enjoyment of any land or property) gives rise to any liability against the designated entity, person or the Crown.

(2) Nothing done by a person in furnishing information to a designated entity in accordance with a requirement under this Act—

(a) is to be regarded as placing the person in breach of contract or confidence or as otherwise making the person guilty of a civil wrong; or

(b) is to be regarded as placing the person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding; or

(c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

(d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument; or

(e) gives rise to any right or entitlement to damages or compensation.

(3) In this section—

designated entity means—

(a) the Minister; or

(b) the Commission; or

(c) the Technical Regulator; or

(d) an authorised officer.

96—Impersonation of officials etc

A person must not impersonate an authorised officer, a water industry officer or anyone else with powers under this Act.

Maximum penalty: $5 000.

97—Obstruction of officials etc

(1) A person must not, without reasonable excuse, obstruct an authorised officer, a water industry officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: $10 000.

(2) A person must not use abusive or intimidatory language to, or engage in offensive or intimidatory behaviour towards, an authorised officer, a water industry officer, or anyone else engaged in the administration of this Act or the exercise of powers under this Act.

Maximum penalty: $5 000.

98—Fire plugs

(1) A water industry entity must, at the direction of the Minister, provide and maintain fire plugs, maintain various standards, and comply with any other requirements relating to the provision of water for fire-fighting purposes, in accordance with any scheme determined by the Minister for the purposes of this section.

Maximum penalty: $25 000.

(2) A scheme under subsection (1) may also require another person or body to make a contribution towards the costs incurred by a water industry entity in complying with the scheme (and any such requirement must be complied with by that person or body).

99—Report on installation of separate meters on properties

(1) The Commission must undertake a cost benefit analysis of implementing a scheme designed to ensure, so far as is reasonably practicable, that—

(a) all land—

(i) that is owned by the South Australian Housing Trust or another agency or instrumentality of the Crown; and

(ii) that is used for residential purposes; and

(iii) that is supplied with water by a water industry entity as part of a reticulated water system; and

(b) any other land the Commission determines to include in the analysis,

will have a meter that records the amount of water supplied to that piece of land.

(2) The scheme for the purposes of the analysis must address—

(a) the fitting of meters to premises existing at the time of the publication of the report (insofar as meters are not fitted); and

(b) the fitting of meters to premises constructed after the publication of the report.

(3) The Commission must prepare and publish a report on the analysis by 30 June 2013.

100—Obstruction of works by occupiers

An occupier of land must not—

(a) refuse to allow an owner of the land to enter the land and take action to comply with any provision of this Act, or a requirement imposed under this Act; or

(b) without reasonable excuse, obstruct an owner of the land who is taking action to comply with any provision of this Act, or a requirement imposed under this Act.

Maximum penalty: $5 000.

101—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under this Act.

Maximum penalty:

(a) if the person made the statement knowing that it was false or misleading—$10 000 or imprisonment for 2 years;

(b) in any other case—$5 000.

102—Offences

(1) Proceedings for an offence against this Act must be commenced within 5 years of the date of the alleged offence.

(2) Proceedings for an offence against this Act may be commenced by—

(a) the Minister; or

(b) the Commission; or

(c) the Technical Regulator; or

(d) an authorised officer; or

(e) the Director of Public Prosecutions; or

(f) a water industry entity authorised by the Minister; or

(g) a water industry officer authorised by the Technical Regulator; or

(h) a person acting with the authorisation in writing of the Minister.

(3) An apparently genuine document purporting to be under the hand of the Minister or the Technical Regulator and to authorise the commencement of proceedings under this Act must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorisation.

(4) The following persons are authorised to give expiation notices for an alleged offence against this Act (in addition to any person authorised under the *Expiation of Offences Act 1996*):

(a) any authorised officer authorised in writing by the Technical Regulator;

(b) any water industry officer authorised in writing by the Technical Regulator.

(5) An authorisation under subsection (4) may be given subject to such conditions or limitations as the Technical Regulator thinks fit.

(6) An apparently genuine document purporting to be under the hand of the Technical Regulator and to give an authorisation under subsection (4) must be accepted, in the absence of proof to the contrary, as proof of the authorisation.

103—General defence

(1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

(2) It is a defence to a charge of an offence against this Act if the defendant proves that the act or omission constituting the offence was reasonably necessary in the circumstances in order to avert, eliminate or minimise danger to person or property.

(3) Subsection (1) does not apply in relation to a person who is charged with an offence under section 104.

104—Offences by bodies corporate

(1) If a body corporate is guilty of a prescribed offence, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person unless the director proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.

(2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence when committed by a natural person if the prosecution proves that—

(a) the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and

(b) the director was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and

(c) the director failed to exercise due diligence to prevent the commission of the offence.

(3) Subsection (2) does not apply if the principal offence is an offence against section 11, 36, 39, 45, 49, 50(5), 50(6), 51, 53, 54, 56(5), 57, 59, 60, 69, 70, 76, 77, 78, 79, 80, 88, 92, 97, 100, 101, 108 or Schedule 2 Part 8.

(4) The regulations may make provision in relation to the criminal liability of a director of a body corporate that is guilty of an offence against the regulations.

(5) In this section—

prescribed offence means an offence against section 18, 27, 67 or 68.

105—Continuing offences

(1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-fifth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

106—Order for payment of profit from contravention

The court convicting a person of an offence against this Act may order the convicted person to pay to the Crown an amount not exceeding the court's estimation of the amount of any monetary, financial or economic benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence.

107—Statutory declarations

If a person is required by or under this Act to furnish information to the Minister, Commission or Technical Regulator, the Minister, Commission or Technical Regulator may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister, Commission or Technical Regulator.

108—Power of exemption

(1) The Commission may, with the approval of the Minister, grant an exemption from Part 4, or specified provisions of that Part, on terms and conditions the Commission considers appropriate.

(2) Without limiting subsection (1), the power to exempt includes power to exempt a person from the application of a provision requiring the Commission to make a licence held by the person subject to a specified condition.

(3) A person exempted from a requirement to hold a licence under Part 4 is, if the Commission has so determined by writing, to be treated as a water industry entity for the purposes of specified provisions of this or another Act.

(4) Except as otherwise provided in the exemption, an exemption under subsection (1), or a determination under subsection (3), may be varied or revoked by the Commission by notice in writing.

(5) The Technical Regulator may grant an exemption from Part 7, or specified provisions of that Part, on terms and conditions the Technical Regulator considers appropriate.

(6) Except as otherwise provided in the exemption, an exemption under subsection (5) may be varied or revoked by the Technical Regulator by notice in writing.

(7) The Minister may grant an exemption from any provision of this Act, other than under Part 4, on terms and conditions the Minister considers appropriate.

(8) Except as otherwise provided in the exemption, an exemption under subsection (7) may be varied or revoked by the Minister.

(9) The Commission and the Technical Regulator must each keep a register of exemptions granted by the Commission or the Technical Regulator (as the case may be) under this Act.

(10) A register kept under subsection (9) must include the terms and conditions of each exemption recorded in it.

(11) A person may, without payment of a fee, inspect a register kept under subsection (9).

(12) A person in whose favour an exemption is given must comply with the conditions of the exemption.

Maximum penalty: $50 000.

109—Application and issue of warrant

(1) An authorised officer or a water industry officer may apply to a magistrate for a warrant to enter a place specified in the application.

(2) A magistrate may issue a warrant if satisfied that there are reasonable grounds for issuing the warrant.

(3) A warrant authorises the authorised officer or water industry officer, with any assistance and by any force reasonably necessary—

(a) to enter the place specified in the warrant; and

(b) to do anything authorised by this Act,

at any time, or within any period, specified in the warrant.

(4) A water industry officer must be accompanied by a member of the police force when entering a place under a warrant.

(5) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

(6) A water industry officer may make an application under this section on behalf of a water industry entity.

110—Urgent situations

(1) An authorised officer or a water industry officer may apply to a magistrate for a warrant by telephone, fax or other prescribed means if the officer considers the urgency of the situation requires it.

(2) The magistrate may complete and sign the warrant in the same terms as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.

(3) The magistrate must—

(a) tell the officer—

(i) the terms of the warrant; and

(ii) the date on which, and the time at which, the warrant was signed; and

(iii) the date on which, and the time at which, the warrant ceases to have effect; and

(b) record on the warrant the reasons for granting the warrant.

(4) The officer must—

(a) complete a form of warrant in the same terms as the warrant signed by the magistrate; and

(b) write on the form—

(i) the name of the magistrate; and

(ii) the date on which, and the time at which, the warrant was signed; and

(c) send the magistrate the completed form of warrant not later than the day after the warrant is executed or ceases to have effect.

(5) On receipt of the form of warrant, the magistrate must attach it to the warrant the magistrate signed.

(6) A form of warrant completed by an authorised officer or a water industry officer under subsection (4) has the same force as a warrant signed by the magistrate under subsection (2).

(7) A water industry officer may make an application under this section on behalf of a water industry entity.

111—Evidence

(1) If, in any legal proceedings, a person is alleged to have held a specified appointment under this Act at a specified time, the allegation is taken to have been proved in the absence of proof to the contrary.

(2) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Commission certifying—

(a) that a person was or was not the holder of a licence at a specified date or as to the particulars or conditions of a licence; or

(b) as to the giving, issuing, receipt or contents of an order, direction, delegation, exemption, approval, authorisation, notice or assurance by the Commission,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(3) An apparently genuine document purporting to be a certificate of the Commission certifying as to a person's status as a customer of a prescribed class, in relation to a specified time and place, constitutes proof of the matters so certified in the absence of proof to the contrary.

(4) In any legal proceedings, an apparently genuine document purporting to be a certificate of the Technical Regulator certifying as to the giving, issuing, receipt or contents of a direction, requirement, delegation, exemption, approval, authorisation, notice or assurance by the Technical Regulator, constitutes proof of the matters so certified in the absence of proof to the contrary.

(5) In any legal proceedings, an apparently genuine document purporting to be a certificate of an authorised officer certifying as to the giving and contents of a direction by the officer under this Act, constitutes proof of the matters so certified in the absence of proof to the contrary.

(6) If, in any legal proceedings, a person is alleged to have acted without proper authority or a specified approval required under this Act, the absence of such authority or approval will be presumed in the absence of proof that such authority or approval in fact existed or had been given.

(7) In any legal proceedings, a plan purporting to be certified by a water industry entity and to delineate the position of any equipment, plant or drain connected to any water/sewerage infrastructure constitutes proof of the matters so certified in the absence of proof to the contrary.

(8) In any legal proceedings, an apparently genuine document purporting to be a certificate of a water industry entity to the effect—

(a) that on and from a day specified in the certificate the water industry entity was prepared to supply water by means of a direct service to land specified in the certificate; or

(b) that on and from a day specified in the certificate land specified in the certificate could, in the opinion of the water industry entity, by means of drains or other infrastructure, be drained or serviced by a sewer,

constitutes proof of the matters so certified in the absence of proof to the contrary.

(9) In any legal proceedings, an apparently genuine document purporting to be a copy or extract of a register of readings of meters maintained by the water industry entity and to be certified to be true by the water industry entity constitutes proof of the quantity of water taken or consumed in the absence of proof to the contrary.

112—Service

(1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served—

(a) by delivering it personally to the person or an agent of the person; or

(b) by leaving it for the person at the person's place of residence or business with someone apparently over the age of 16 years; or

(c) by posting it to the person or agent of the person at the person's or agent's last known place of residence or business; or

(d) in some other manner authorised by the regulations.

(2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a body corporate, be given to or served on the person in accordance with the *Corporations Act 2001* of the Commonwealth.

(3) If a notice or other document is required or authorised to be given to or served on the holder of a licence under this Act and the licence is held by 2 or more persons, it is sufficient for the purposes of this Act if the notice or other document is given to or served on any one of those persons.

113—Ventilators

(1) A water industry entity may cause a ventilating shaft, pipe or tube for any sewerage infrastructure or drain to be attached to the exterior wall of a building.

(2) However, the mouth of a shaft, pipe or tube must be at least 1.8 metres higher than any window or door situated within a distance of 9 metres from its location.

114—Protection of tenants and lessees of residential premises

(1) This section applies in relation to a tenant or lessee occupying residential premises.

(2) A water industry entity must not, in relation to a tenant or lessee who is a consumer—

(a) take action to recover from the tenant or lessee any amount for which the landlord or lessor is legally liable; or

(b) take action to recover from a tenant or lessee any amount on account of any default on the part of the landlord or the lessor; or

(c) take other action against the tenant or lessee on account of any default on the part of the landlord or lessor unless such action is reasonably justified in the circumstances and is in accordance with any relevant provision prescribed by the regulations or contained in a code or set of rules published by the Commission for the purposes of this section.

115—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting subsection (1), the regulations may—

(a) require the keeping of records and other information by a water industry entity or any other person or body prescribed by the regulations;

(b) require the furnishing of reports (including technical or expert reports), returns, documents or other information to the Minister, the Commission, the Technical Regulator or any other person or body prescribed by the regulations;

(c) prescribe circumstances where a charge may be imposed by a water industry entity in respect of land despite the fact—

(i) that the land is not connected to the relevant service at the relevant time; or

(ii) the provision of a service to the land has been reduced or discontinued under this Act;

(d) make provision in relation to the appointment or operations of an operator under Part 4 Division 6;

(e) regulate the construction, installation and positioning of infrastructure or equipment or the use of any products or materials;

(f) without limiting any other paragraph, provide for any matters relating to plumbing;

(g) prescribe technical, operational and safety requirements and standards and provide for monitoring and enforcing compliance with prescribed requirements or standards;

(h) make provision in relation to the payment or recovery of the Save the River Murray levy;

(i) exempt (conditionally or unconditionally) any persons or operations from the application of this Act or specified provisions of this Act;

(j) prescribe fees or charges in connection with any matter arising under this Act, including fees or charges for or in connection with the exercise, performance or discharge of any power, function or duty of the Minister, the Commission, the Technical Regulator or an authorised officer under this Act, which may be of varying amounts according to factors prescribed by the regulations or specified by the Minister by notice in the Gazette, and provide for the waiver or refund of such fees or charges;

(k) provide that a breach of a specified provision of this Act or the regulations is expiable, or expiable in prescribed circumstances, and set an expiation fee not exceeding $750;

(l) prescribe penalties, not exceeding $10 000, for contravention of a regulation.

(3) If the regulations grant an exemption from the requirement to hold a licence under Part 4, the regulations may require a person exempted from the requirement to be treated as a water industry entity for the purposes of specified provisions of this Act.

(4) The regulations may—

(a) be of general application or limited in application according to the persons, areas, times or circumstances to which it is expressed to apply;

(b) provide that a matter or thing in respect of which regulations may be made is to be determined, regulated or prohibited according to the discretion of the Minister, Commission or the Technical Regulator;

(c) refer to or incorporate, wholly or partially and with or without modification, any standard or other document prepared or published by a body referred to in the regulation, as is in force from time to time or as in force at a particular time.

116—Review of Act

(1) The Minister must cause a review of the operation of this Act to be conducted as soon as practicable after the expiry of 5 years from its commencement.

(2) The results of the review must be embodied in a written report.

(3) The Minister must, within 6 sitting days after receiving the report under subsection (2), cause a copy of the report to be laid before both Houses of Parliament.

Schedule 1—Appointment and selection of experts for District Court

1 The Minister must establish a panel of experts who may sit as assessors with the District Court consisting of persons with knowledge of, or experience in, the water industry or in the fields of commerce or economics.

2 A member of a panel is to be appointed by the Minister for a term of office not exceeding 3 years and on conditions determined by the Minister and specified in the instrument of appointment.

3 A member of a panel is, on the expiration of a term of office, eligible for reappointment.

4 Subject to subclause 5 and except in the case of an appeal limited to a question of law, a judicial officer of the District Court must select 2 members from the panel to sit with the Court on an appeal that is to be heard by the Court sitting with experts.

5 A member of a panel who has a direct or indirect pecuniary or other interest in a matter before the District Court is disqualified from participating in the hearing of the matter.

6 Subclause 5 does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.

7 If a member of a panel sitting with the District Court dies or is for any reason unable to continue with any proceedings, the Court constituted of the judicial officer who is presiding at the proceedings and the other member of the panel sitting with the Court may, if the judicial officer so determines, continue and complete the proceedings.

8 If proceedings are reheard, the District Court may have regard to any record of proceedings made in the earlier proceedings (including a record of evidence taken in those proceedings).

Schedule 2—Transitional provisions

Part 10—Transitional provisions

Division 1—Preliminary

20—Preliminary

In this Part—

relevant day means a day appointed by proclamation as the relevant day for the purposes of the provision in which the term is used.

Division 2—Special provisions relating to repeal of *Sewerage Act 1929*

21—Interpretation

In this Division—

relevant Act means the *Sewerage Act 1929*;

sewerage rates include charges;

transitional financial year means the financial year in which the relevant day occurs;

undertaking has the same meaning as in the relevant Act.

22—Rates—transitional financial year

(1) This clause applies in connection with the provision of retail services during the transitional financial year with respect to any sewerage service.

(2) The scheme established by Part 6 of the relevant Act will apply with respect to the transitional financial year despite the repeal of that Act by this Act and despite the ability of the Commission otherwise to make a determination relating to prices under this Act.

(3) Accordingly—

(a) the Minister may, after consultation with SA Water—

(i) fix a scale or scale under section 73 of the relevant Act upon which sewerage rates will be levied in relation to the transitional financial year; and

(ii) fix a minimum sewerage rate under section 75 of the relevant Act in relation to the transitional financial year,

(and may act under this clause and those sections before, on or after the relevant day); and

(b) Part 6 of the relevant Act, together with any other provision of that Act that may be relevant to the operation of that Part or to sewerage rates under that Act (including in relation to the declaration of drainage areas), will apply with respect to the declaration, imposition, payment or recovery of sewerage rates in relation to the transitional financial year as if the relevant Act had not been repealed; and

(c) sewerage rates fixed under this clause will be taken to constitute the price for the provision of services to which this clause applies by SA Water during the transitional financial year; and

(d) the Commission will not make a determination under section 35 of this Act in relation to the transitional financial year.

(4) The Minister may, after consultation with SA Water, impose a requirement under section 78A of the relevant Act in relation to the transitional financial year (and may act under this clause and that section before, on or after the relevant day), and that section will continue to apply as if the relevant Act had not been repealed.

23—Rates—related provisions

(1) Without limiting any other provision, Part 6 of the relevant Act, and any other provision prescribed by the regulations for the purposes of this clause, will continue to apply in relation to any sewerage rates declared or imposed under that Act before the relevant day as if the relevant Act had not been repealed.

(2) Without limiting any other provision, sections 93 and 94 of the relevant Act will apply (and continue to apply)—

(a) to any charge arising under section 93 before the relevant day; and

(b) to any rates or charges in relation to the provision of sewerage services due to SA Water on account of the operation of this Division.

24—Notices and authorisations

(1) Any notice or authorisation under the relevant Act given or received before the relevant day for the purpose of entering or remaining on land will continue to have full force and effect and any work or other activity to be undertaken, or underway, under the relevant Act may commence or continue as if the relevant Act had not been repealed.

(2) Without limiting subclause (1), if—

(a) the Minister or SA Water has given or received a notice or authorisation under a provision of the relevant Act; and

(b) it is expedient for SA Water to proceed on the basis of the notice or authorisation for the purposes of a section of this Act that corresponds (wholly or substantially) to the provision under the relevant Act,

then SA Water may proceed under this Act on the basis of that notice or authorisation.

(3) Without limiting subclauses (1) and (2), the Minister or SA Water may, on or after the relevant day, occupy, or continue to occupy, any land on account of action taken under the relevant Act before the relevant day.

(4) Any other notice given before the relevant day under the relevant Act will have full force and effect and may be enforced, and any other action authorised in relation to the notice under the relevant Act may be taken, as if the relevant Act had not been repealed.

25—Vesting of undertaking in SA Water

(1) The whole of the undertaking, and all materials and things which form part of the undertaking, vested in SA Water by operation of section 14 of the relevant Act will continue to be vested in and held by SA Water (for as long as it thinks fit) and may be used by SA Water for the purposes of this or any other Act.

(2) Subclause (1) does not limit or affect the vesting of any property (or interest in property) in SA Water under any other Act or law.

26—Capital contribution where capacity of undertaking increased

Despite the repeal of section 47 of the relevant Act—

(a) the section will continue to apply in relation to any development authorisation that is given—

(i) before the relevant day; or

(ii) on or after the relevant day on account of any application made before the relevant day; and

(b) SA Water may, in relation to a development authorisation that is within the ambit of paragraph (a), act under that section as if the section were still in operation; and

(c) a liability to make a contribution under that section may arise on or after the relevant day (including in relation to any work undertaken on or after the relevant day).

27—Authorisation to discharge material into sewerage infrastructure

An authorisation under section 54 of the relevant Act will, on the relevant day, unless or until revoked by SA Water, be taken to be an authorisation under section 59 of this Act (and may be varied by SA Water as it thinks fit).

28—Requirement to carry out work

A requirement under section 56 of the relevant Act will, on the relevant day, unless or until revoked by SA Water, be taken to be a requirement under section 60 of this Act (and may be varied by SA Water as it thinks fit and may be enforced, including by taking action required by the relevant notice, by SA Water under the provisions of this Act).

29—Power to disconnect drains

The Minister may take action under section 61 of the relevant Act on or after the relevant day in respect of any action taken before the relevant day (and that section will continue to apply in relation to any such action as if the relevant Act had not been repealed).

30—Exemption

Until a day designated by the Minister by notice in the Gazette, section 65 of the repealed Act will apply in relation to the imposition of any charge for the provision of a sewerage service by SA Water (including a charge imposed under this Act after the relevant day).

Division 3—Special provisions relating to repeal of *Water Conservation Act 1936*

31—Interpretation

In this Division—

relevant Act means the *Water Conservation Act 1936*;

transitional financial year means the financial year in which the relevant day occurs;

water district means a water district constituted under the relevant Act on the commencement of this Division;

water rates include charges.

32—Rates and charges—transitional financial year

(1) This clause applies in connection with the provision of retail services during the transitional financial year with respect to the sale or supply of water (including a right to the supply of water) to land within a water district by SA Water.

(2) An agreement under section 19 of the relevant Act entered into for the purposes of the transitional financial year, or that would have effect in relation to the transitional financial year if this Act were not enacted, may have effect in relation to the transitional financial year as if the relevant Act had not been repealed.

(3) To the extent that may be relevant to the imposition and recovery of water rates for services supplied during the transitional financial year on account of when meters are read and the form or nature of the relevant rate or rates—

(a) water rates may be charged and recovered on a pro rata basis according to—

(i) readings that relate to water supplied during various periods or parts of periods; and

(ii) the application of the relevant rate or rates over the period of supply to which a water rate is to be applied; and

(b) water rates declared or imposed under this clause may, depending on when meters are read, be recovered after the end of the transitional financial year.

(4) In connection with the operation of this clause, any determination, calculation or adjustment of any amount (whether in the nature of a water rate or in relation to the supply of any water or other services) over or in respect of any period (whether or not falling within the transitional financial year) or on a pro rata basis may assume that water has been supplied at a uniform daily rate over any relevant period.

(5) This clause does not apply to or in relation to—

(a) the determination or imposition of a fee for laying, installing, providing or connecting any infrastructure in connection with a retail service; or

(b) any fee relevant to the use of a meter or other device; or

(c) any case prescribed by the regulations.

33—Water rates—related provisions

(1) Without limiting any other provision, the relevant Act will continue to apply in relation to any water rates imposed under that Act before the relevant day as if the relevant Act had not been repealed.

(2) Until the Minister otherwise determines, an agreement in place under section 19 of the relevant Act in relation to the transitional financial year may continue to have effect in relation to a subsequent financial year or years as if section 19 had not been repealed and despite any price for the provision of water set under this Act (and section 19 will continue to apply for the purposes of this subclause subject to such modifications as may be prescribed by the regulations).

(3) Without limiting any other provision, section 87 of the relevant Act will apply (and continue to apply)—

(a) to any charge arising under that section before the relevant day; or

(b) to any rates or charges in relation to the supply of water due to SA Water on account of the operation of this Division.

(4) Any water district will continue to apply in connection with the operation of this Division.

34—Notices and authorisations

(1) Any notice or authorisation under the relevant Act given or received before the relevant day for the purpose of entering or remaining on land will continue to have full force and effect and any work or other activity to be undertaken, or underway, under the relevant Act may commence or continue as if this Act had not been enacted.

(2) Without limiting subclause (1), if—

(a) the Minister or SA Water has given or received a notice or authorisation under a provision of the relevant Act; and

(b) it is expedient for SA Water to proceed on the basis of the notice or authorisation for the purposes of a section of this Act that corresponds (wholly or substantially) to the provision under the relevant Act,

then SA Water may proceed under this Act on the basis of that notice or authorisation.

(3) Without limiting subclauses (1) and (2), the Minister or SA Water may, on or after the relevant day, occupy, or continue to occupy, any land on account of action taken under the relevant Act before the relevant day.

(4) Any other notice given before the relevant day under the relevant Act will have full force and effect and may be enforced, and any action authorised in relation to the notice under the relevant Act may be taken, as if the relevant Act had not been repealed.

35—Land etc vested in Minister

(1) Any land or waterworks vested in the Minister under section 14 or 15 of the relevant Act may be held by the Minister for any purpose—

(a) relevant to this or any other Act; or

(b) authorised by the Governor by proclamation.

(2) Despite the repeal of the relevant Act, the Governor may at any time on or after the relevant day make a proclamation contemplated by section 13 or 14 of the relevant Act (and any such proclamation will have effect according to its terms).

36—Agreements to bind subsequent owners and occupiers

Unless or until otherwise determined by the Minister, section 20 of the relevant Act will continue to apply in relation to any agreement within the ambit of that section immediately before the relevant day.

37—Water conservation reserves

(1) Despite the repeal of the relevant Act, the Governor may at any time on or after the relevant day make a proclamation contemplated by section 53(2) of the relevant Act in relation to any water conservation reserve vested in a council before the relevant day (and any such proclamation will have effect according to its terms).

(2) A council may impose a separate rate under section 55 of the relevant Act in relation to the transitional financial year.

(3) Sections 56 to 62 (inclusive) of the relevant Act will continue to apply to and in relation to any water conservation reserve vested in a council before the relevant day.

Division 4—Special provisions relating to repeal of *Waterworks Act 1932*

38—Interpretation

In this Division—

relevant Act means the *Waterworks Act 1932*;

transitional financial year means the financial year in which the relevant day occurs;

water district means a water district constituted under the relevant Act on the commencement of this Division;

water rates include charges.

39—Rates and charges—transitional financial year

(1) This clause applies in connection with the provision of retail services during the transitional financial year with respect to—

(a) the sale or supply of water (including a right to a supply of water) to land within a water district by SA Water; and

(b) the Save the River Murray levy under the relevant Act.

(2) The scheme established by Part 5 of the relevant Act will apply with respect to the transitional financial year despite the repeal of that Act by this Act and despite the ability of the Commission otherwise to make a determination relating to prices under this Act.

(3) Accordingly—

(a) the Minister may, after consultation with SA Water, make a declaration under section 65C of the relevant Act before the commencement of the transitional financial year; and

(b) Part 5 of the relevant Act, together with any other provision of that Act that may be relevant to the operation of that Part or to water rates under that Act (including in relation to the declaration of water districts), will apply with respect to the declaration, imposition, payment or recovery of water rates in relation to the transitional financial year as if the relevant Act had not been repealed; and

(c) water rates declared under this clause will be taken to constitute the price for the provision of services to which this clause applies by SA Water during the transitional financial year; and

(d) the Commission will not make a determination under section 35 of this Act in relation to the transitional financial year.

(4) An agreement under section 37 of the relevant Act entered into for the purposes of the transitional financial year, or that would have effect in relation to the transitional financial year if this Act were not enacted, may have effect in relation to the transitional financial year as if the relevant Act had not been repealed.

(5) To the extent that may be relevant to the imposition and recovery of water rates for services supplied during the transitional financial year on account of when meters are read and the form or nature of the relevant rate or rates—

(a) water rates may be charged and recovered on a pro rata basis according to—

(i) readings that relate to water supplied during various periods or parts of periods; and

(ii) the application of the relevant rate or rates over the period of supply to which a water rate is to be applied; and

(b) water rates declared or imposed under this clause may, depending on when meters are read, be recovered after the end of the transitional financial year.

(6) In connection with the operation of this clause, any determination, calculation or adjustment of any amount (whether in the nature of a water rate or in relation to the supply of any water or other services) over or in respect of any period (whether or not falling within the transitional financial year) or on a pro rata basis may assume that water has been supplied at a uniform daily rate over any relevant period.

(7) This clause does not apply to or in relation to—

(a) the determination or imposition of a fee for laying, installing, providing or connecting any infrastructure in connection with a retail service; or

(b) any fee relevant to the use of a meter or other device; or

(c) any case prescribed by the regulations.

40—Rates and charges—related provisions

(1) Without limiting any other provision, the relevant Act will continue to apply in relation to any water rates imposed under that Act before the relevant day as if the relevant Act had not been repealed.

(2) Until SA Water otherwise determines, an agreement in place under section 37 of the relevant Act in relation to the transitional financial year may continue to have effect in relation to a subsequent financial year or years as if section 37 had not been repealed and despite any price for the provision of water set under this Act (and section 37 will continue to apply for the purposes of this subclause subject to such modifications as may be prescribed by the regulations).

(3) Without limiting any other provision, sections 93 and 98 of the relevant Act will apply (and continue to apply)—

(a) to any charge arising under section 93 before the relevant day; and

(b) to any rates or charges in relation to the supply of water due to SA Water on account of the operation of this Division.

(4) Without limiting any other provision, section 121 of the relevant Act will apply (and continue to apply) to any rates or charges in relation to the supply of water on account of the operation of this Division.

41—Notices and authorisations

(1) Any notice or authorisation under the relevant Act given or received before the relevant day for the purpose of entering or remaining on land will continue to have full force and effect and any work or other activity to be undertaken or underway, under the relevant Act may commence or continue as if this Act had not been enacted.

(2) Without limiting subclause (1), if—

(a) the Minister or SA Water has given or received a notice or authorisation under a provision of the relevant Act; and

(b) it is expedient for SA Water to proceed on the basis of the notice or authorisation for the purposes of a section of this Act that corresponds (wholly or substantially) to the provision under the relevant Act,

then SA Water may proceed under this Act on the basis of that notice or authorisation.

(3) Without limiting subclauses (1) and (2), the Minister or SA Water may, on or after the relevant day, occupy, or continue to occupy, any land on account of action taken under the relevant Act before the relevant day.

(4) Any other notice given before the relevant day under the relevant Act will have full force and effect and may be enforced, and any action authorised in relation to the notice under the relevant Act may be taken, as if the relevant Act had not been repealed.

42—Vesting of waterworks etc in SA Water

(1) Any waterworks, land, goods, materials and things vested in SA Water by operation of section 23 of the relevant Act will continue to be vested in and held by SA Water (for as long as it thinks fit) and may be used by SA Water for the purposes of this or any other Act.

(2) Subclause (1) does not limit or affect the vesting of any property (or interest in property) in SA Water under any other Act or law.

43—Fire plugs and pipes

Sections 28, 29 and 30 of the relevant Act will continue to operate and have effect until the Minister has established a scheme under section 98 of this Act.

44—Exemption

Until a day designated by the Minister by notice in the Gazette, section 88 of the repealed Act will apply in relation to the imposition of any charge for the provision of a water service by SA Water (including a charge imposed under this Act after the relevant day).

45—Capital contribution where capacity of waterworks increased

Despite the repeal of section 109B of the relevant Act—

(a) the section will continue to apply in relation to any development authorisation that is given—

(i) before the relevant day; or

(ii) on or after the relevant day on account of any application made before the relevant day; and

(b) the Minister may, in relation to a development authorisation that is within the ambit of paragraph (a), act under that section as if the section were still in operation; and

(c) a liability to make a contribution under that section may arise on or after the relevant day (including in relation to any work undertaken on or after the relevant day).

Division 5—Other matters

46—Approved schemes

(1) A scheme that falls within the ambit of a regulation under this clause will be taken to be an approved scheme under section 48.

(2) Section 48 will apply to a scheme under subclause (1) subject to such modifications as may be prescribed by the regulations.

47—References to rates

Unless the context otherwise requires, a reference in another Act to rates under the *Sewerage Act 1929* or the *Waterworks Act 1932* will be taken to include references to charges payable to a water industry entity under the *Water Industry Act 2012*.

48—Regulations

(1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

(3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

(4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule, apply to any amendment or repeal effected by this Act.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Water Industry Act 2012* repealed the following:

Sewerage Act 1929

Water Conservation Act 1936

Waterworks Act 1932

Legislation amended by principal Act

The *Water Industry Act 2012* amended the following:

Development Act 1993

Essential Services Commission Act 2002

Local Government Act 1999

Natural Resources Management Act 2004

Rates and Land Tax Remission Act 1986

Real Property Act 1886

South Australian Water Corporation Act 1994

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2012	9	*Water Industry Act 2012*	19.4.2012	1.7.2012 except ss 18, 20—23, 25—29, 31—34, 35(1)—(3), 36, 38, 39, Pts 5—9, ss 91, 92, 93(1)—(11) & (13), 94, 98, 100, 109, 110, 113, 114 & Sch 2 cll 1—19 & 21—48—1.1.2013 (*Gazette 21.6.2012 p2837*) and except s 93(12)—1.7.2013 (*Gazette 14.6.2013 p2571*)

2013	16	*Statutes Amendment (Directors' Liability) Act 2013*	23.5.2013	Pt 51 (ss 103 & 104)—17.6.2013 (*Gazette 6.6.2013 p2498*)
2013	65	*Community Housing Providers (National Law) (South Australia) Act 2013*	21.11.2013	Sch 3 (cl 13)—1.4.2014 (*Gazette 6.2.2014 p547*)
2015	**28**	***Water Industry (Third Party Access) Amendment Act 2015***	**22.10.2015**	**1.7.2016 (*Gazette 16.6.2016 p2108*)**
2015	**41**	***Statutes Amendment and Repeal (Budget 2015) Act 2015***	**26.11.2015**	**Pt 15 (ss 56 & 59(1), (2))—1.7.2015: s 2(10); ss 57 & 59(3)—1.7.2016: s 2(11); s 58—uncommenced**

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	1.4.2014
Pt 1		
s 3	**amended by 28/2015 s 4**	**1.7.2016**
s 5A	**inserted by 28/2015 s 5**	**1.7.2016**
Pt 4		
s 26	***deleted by 28/2015 s 6***	***1.7.2016***
Pt 9A	**inserted by 28/2015 s 7**	**1.7.2016**
Pt 10		
s 90		
s 90(1)	**amended by 28/2015 s 8**	**1.7.2016**
s 93 before deletion by 41/2015		
s 93(8)	*amended by 65/2013 Sch 3 cl 13*	*1.4.2014*
s 93	*deleted by 41/2015 s 56*	*1.7.2015*
s 94	***deleted by 41/2015 s 57***	***1.7.2016***
s 103		
s 103(3)	inserted by 16/2013 s 103	17.6.2013
s 104	substituted by 16/2013 s 104	17.6.2013
s 115		
s 115(2)	(h) deleted by 41/2015 s 58	uncommenced—not incorporated
Sch 2		
Pts 1—9	*omitted under Legislation Revision and Publication Act 2002*	*1.4.2014*

Transitional etc provisions associated with Act or amendments

Statutes Amendment and Repeal (Budget 2015) Act 2015

59—Transitional provisions

(1) In this section—

principal Act means the *Water Industry Act 2012*.

(2) The repeal of section 93 of the principal Act by this Act does not affect any liability to pay the Save the River Murray levy for the 2014/2015 financial year, or for any preceding financial year (and that section will be taken to continue to apply in relation to such a liability as if it has not been repealed).

(3) The Save the River Murray Fund is wound up on the commencement of this subsection by force of this subsection.

Historical versions

1.7.2013

1.4.2014

1.7.2015