



AUSTRALIAN CAPITAL TERRITORY

# Water Resources Act 1998

No. 63 of 1998

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AUSTRALIAN CAPITAL TERRITORY

## Water Resources Act 1998

No. 63 of 1998

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### **An Act to provide for the management of the water resources of the Territory and for related purposes**

*[Notified in ACT Gazette S209: 11 December 1998]*

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

#### **PART I—PRELIMINARY**

**1. Short title**

This Act may be cited as the *Water Resources Act 1998*.

**2. Commencement**

(1) Sections 1, 2, 3, 4, 13, 81 and 83 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 12 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

**3. Objects**

The objects of this Act are—

- (a) to ensure that the use and management of the water resources of the Territory sustain the physical, economic and social well being of the people of the Territory while protecting the ecosystems that depend on those resources;
- (b) to protect waterways and aquifers from damage and, where practicable, to reverse damage that has already occurred; and
- (c) to ensure that the water resources are able to meet the reasonably foreseeable needs of future generations;

and this Act shall be construed and administered accordingly.

#### **4. Interpretation**

In this Act, unless the contrary intention appears—

“allocation”, in relation to water, means an allocation granted under Part VI;

“authorised officer” means an authorised officer under subsection 14 (3) of the Environment Protection Act;

“Authority” means the Environment Management Authority established under section 11 of the Environment Protection Act;

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

- (a) from which ground water is, or is capable of being, obtained or used; or
- (b) that is used, or is capable of being used, for the disposal of water or waste below the surface of the ground but does not include a subsoil drain;

“bore construction permit” means a permit granted under section 44;

“determined fee” means a fee determined under section 78 for the purposes of the provision in which the expression occurs;

“drill”, in relation to a bore, means to drill the bore or to excavate a bore in any other manner and includes to deepen or widen an existing bore;

“driller’s licence” means a driller’s licence granted under section 39;

“environmental flow”, in relation to a waterway or aquifer, means the environmental flow for that waterway or aquifer ascertained in accordance with guidelines under section 5;

- “environmental flow guidelines” means guidelines approved under section 9;
- “Environment Protection Act” means the *Environment Protection Act 1997*;
- “flow”, in relation to surface water and ground water, includes the discharge, release, escape or passage of the water;
- “interstate water allocation” means an allocation of water made under a corresponding law of a State or another Territory that regulates the allocation of water;
- “land” includes a building or structure on land;
- “licence to take water” means a licence granted under section 35;
- “management plan” means a management plan prepared under Part V as varied and in effect from time to time;
- “newspaper” means a newspaper published and circulating in the Territory;
- “Register” means the register established and maintained under section 64;
- “recharge licence” means a licence granted under section 47;
- “re-use”, in relation to water, includes to use wastewater, whether or not it has been treated;
- “stormwater” means water run-off from an urban area that is normally collected by a stormwater system;
- “stormwater system” means a system of pipes, gutters, drains and channels, being public works constructed to collect or transport stormwater in or through an urban area;
- “subsoil drain” means an underground pipe or construction the purpose of which is to drain underground water—
- (a) to protect a building, retaining wall, excavation, roadway or other construction from seepage or water pressure; or
  - (b) to facilitate the use of an area of ground by eliminating or reducing wet ground conditions in that area;
- “surface water” means—
- (a) water flowing over land (including in a waterway)—
    - (i) after having fallen as rain or hail or having precipitated in any other manner; or

(ii) after rising to the surface naturally from underground;  
or

(b) water of a kind referred to in paragraph (a) that has been collected in a dam or reservoir;

“take”, in relation to water, includes—

(a) in the case of bore water—to allow water to flow or be pumped from the bore; and

(b) in any other case—

(i) to withdraw, pump, extract, use or re-use, and to divert for the purpose of using or re-using, the water;  
or

(ii) to do any other thing that results in a reduction of flow in a waterway;

“wastewater” means water that is the by-product of an activity, being water that—

(a) contains other matter (whether in a solid, liquid or gaseous state); or

(b) if added to receiving waters—has the potential to pollute those waters;

“water” includes water that contains impurities;

“waterway” means—

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

(b) a channel formed (whether in whole or in part) by altering or relocating a waterway described in paragraph (a), and includes the stormwater system; or

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

and includes—

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

(e) the banks that the water in the waterway normally flows between or is contained by;

but does not include land normally not part of the waterway that may be covered from time to time by floodwaters from the waterway;

“works permit” means a permit granted under section 69.

**5. Preparation and variation of environment flow guidelines**

- (1) The Authority shall prepare draft guidelines for ascertaining the flow necessary to maintain aquatic ecosystems.
- (2) The Authority may prepare a draft variation of the guidelines.
- (3) In preparing draft guidelines or a draft variation of the guidelines, the Authority shall take into account the environmental, economic and social impact of the guidelines.
- (4) Sections 6 to 11, inclusive, apply to a draft variation of guidelines as if they were draft guidelines.

**6. Guidelines—consultation**

- (1) After preparing draft guidelines under section 5, the Authority shall publish in the *Gazette*, and in a daily newspaper printed and circulating in the Territory, a notice—
  - (a) containing a brief description of the guidelines;
  - (b) indicating the place from which copies of the draft guidelines may be obtained; and
  - (c) inviting any person who wishes to do so to lodge any suggestions or comments about the draft guidelines in writing with the Authority within 60 days after publication of the notice.
- (2) The Authority shall consider the suggestions and comments lodged in accordance with an invitation under paragraph (1) (c) and, if the Authority considers it appropriate to do so, may revise the draft guidelines in accordance with any of those suggestions or comments.

**7. Guidelines—formal changes**

Section 6 does not apply in relation to a variation of draft guidelines that is for the sole purpose of making changes of a formal nature.

**8. Guidelines—submission to Minister**

The Authority shall submit draft guidelines (as revised under subsection 6 (2)) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments submitted to the Authority in relation to the draft; and

- (b) a written report about the Authority's consultation with the public and with any other person or authority about the draft.

**9. Guidelines—Minister's powers**

On receipt of draft guidelines submitted under section 8 or 10 for approval, the Minister may—

- (a) by notice in the *Gazette*, approve guidelines in the form in which the draft is submitted; or
- (b) refer the draft to the Authority together with any of the following written directions:
  - (i) to conduct further specified consultation;
  - (ii) to consider any revision suggested by the Minister;
  - (iii) to revise the draft in a specified manner.

**10. Guidelines—referral back to Authority**

If the Minister refers draft guidelines to the Authority under paragraph 9 (b), the Authority shall—

- (a) comply with the Minister's directions;
- (b) if the Minister gives a direction under subparagraph 9 (b) (i) or (ii)—revise the draft guidelines;
- (c) revise the draft guidelines to correct any formal error; and
- (d) re-submit the draft guidelines (as revised) to the Minister for approval together with a written report about the Authority's compliance with the Minister's directions and about any revision of the draft guidelines under paragraph (c).

**11. Guidelines disallowable**

(1) A notice under section 9 approving environmental flow guidelines is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(2) Section 6 of the *Subordinate Laws Act 1989* applies to environmental flow guidelines as if paragraph 6 (1) (b) were omitted and the following paragraph substituted:

- “(b) takes effect on the first day on which the environmental flow guidelines are no longer liable to be disallowed under this section; and”.

**12. Civil remedies and common law not affected**

- (1) Except as expressly provided by this Act, nothing in this Act shall be taken to affect any civil right or remedy available to a person in respect of conduct to which this Act applies.
- (2) Compliance with this Act is not, of itself, evidence that a common law duty of care has been satisfied.

**PART II—CROWN RIGHTS TO WATER**

**13. Crown rights to water**

Subject to this Act, the right to the use, flow and control of all water of the Territory (other than ground water under land the subject of a lease of Territory Land granted before the commencement of this section) is vested in the Territory and, subject to any other Act, those rights are exercisable by the Minister in the name of and on behalf of the Territory.

**PART III—ADMINISTRATION**

**14. Functions of Authority**

- (1) The Authority has the following functions under this Act:
  - (a) to keep the state and condition of the water resources of the Territory under review;
  - (b) to coordinate policies in relation to water resource management;
  - (c) to regulate the allocation of water from waterways;
  - (d) to compile and maintain up-to-date information relating to the water resources of the Territory;
  - (e) to promote the importance, and encourage the efficient use, of water resources;
  - (f) to foster public education about the management of water resources;
  - (g) to implement national water resource measures made under national scheme laws or inter-governmental agreements relating to water resource management;
  - (h) confer, and exchange information, with any person or body having functions corresponding to those of the Authority under a law of the Commonwealth, a State or another Territory relating to water resource management;
  - (i) such other functions as are conferred by this Act.

(2) In the performance of his or her functions, the Authority shall have regard to the objects set out in section 3.

**15. Delegation**

The Authority may, by instrument, delegate any of the Authority's powers under this Act to a public employee, other than this power of delegation.

**16. Inspection of documents**

(1) A person may inspect, at any reasonable time, any of the following documents kept by or on behalf of the Authority:

- (a) the Register;
- (b) a document setting out the results of monitoring, testing or recording carried out by the Authority or required to be carried out by a person pursuant to a licence or permit under this Act;
- (c) the list of authorised officers;
- (d) any prescribed document.

(2) Where a person wishes to inspect a document or obtain a copy of a document specified in subsection (1) that is not in the Authority's possession, the Authority shall make arrangements for the person to inspect or obtain the document or copy.

(3) A person may, on payment of the reasonable copying costs, obtain a copy of a document specified in subsection (1).

**PART IV—WATER RESOURCES INVESTIGATION**

**17. Water resources investigation**

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

(2) For the purposes of this Part, the Authority may—

- (a) construct, repair, alter or remove gauging, recording and monitoring stations or drill bores;
- (b) systematically gauge stream flow, record climatic data and monitor ground water levels;
- (c) operate or maintain gauging, recording and monitoring stations;
- (d) investigate and monitor bores;
- (e) sample and analyse water; and

- (f) enter land to take such measures and carry out such work as is reasonably required for the purposes of carrying out an activity of a kind referred to in paragraphs (a) to (e) and with such persons and equipment as is reasonably so required.
- (3) Where the Authority intends to enter land for the purposes of carrying out an activity of a kind referred to in paragraph (2) (a), it shall give notice in writing to the lessee or occupier of the land of its intention to enter.
- (4) A notice under subsection (3) shall—
  - (a) be served on the lessee or occupier not later than 14 days before the exercise of the Authority's power;
  - (b) specify the land on which entry is to be made; and
  - (c) specify the work proposed to be carried out and any vehicles, plant or machinery proposed to be used for the purposes of carrying out that work.
- (5) An authorised officer may, at all reasonable times, enter on any land on which an activity of a kind referred to in a notice is being, or has been, carried out for the purposes of carrying out an activity of a kind referred to in paragraph (2) (b), (c), (d) or (e).
- (6) A person who enters land under subsection (5) is not authorised to remain on the land if, on request by the occupier of the land, he or she does not produce—
  - (a) in the case of an authorised officer—his or her identity card; or
  - (b) in any other case—a certificate in writing signed by the Authority for the purposes of this section certifying that the person is authorised to carry out an activity of a kind specified in the certificate;

as the case may be.

- (7) A person shall not, without reasonable excuse, obstruct an authorised officer in the exercise of his or her powers under this section.

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

- (8) For the purposes of this Part, the Authority may liaise and work in cooperation with the Commonwealth or a State in the investigation of water resources in which there is a shared interest.

**18. Monitoring equipment etc.**

Where, in the performance of a function, the Authority attaches anything to land, it shall be taken not to be—

- (a) a fixture to the land for the purposes of giving the lessee or occupier of the land a proprietary interest in it; or
- (b) an improvement.

**PART V—WATER RESOURCE MANAGEMENT PLAN**

**19. Content of Plan**

A management plan shall include—

- (a) a description of the water resources of the Territory including the flows required to meet the environmental needs of individual waterways or aquifers or parts of individual waterways or aquifers;
- (b) the proposed water allocations for the next succeeding 10 years;
- (c) water allocations to be created for urban water supply, industry and other uses; and
- (d) action to be taken by the Authority to manage the water resources of the Territory.

**20. Preparation and variation of management plan**

- (1) The Authority shall prepare a draft management plan for the water resources of the Territory.
- (2) The Authority may prepare a draft variation of the management plan.
- (3) This Part applies to a draft variation of a management plan as if it were a draft management plan.

**21. Consultation**

- (1) After preparing a draft management plan, the Authority shall publish in the *Gazette* and in a daily newspaper printed and circulating in the Territory a notice—
  - (a) containing a brief description of the draft plan;
  - (b) indicating the place from which copies of the draft plan may be obtained; and
  - (c) inviting any person who wishes to do so to lodge any suggestions or comments about the draft plan in writing with the Authority within 60 days after publication of the notice.

(2) The Authority shall consider the suggestions and comments lodged in accordance with an invitation under paragraph (1) (c) and, if the Authority considers it appropriate to do so, may revise the draft plan in accordance with any of those suggestions or comments.

**22. Formal changes**

(1) Section 21 does not apply in relation to a variation of a management plan that is for the sole purpose of making changes of a formal nature.

(2) Where the Authority makes a change of a formal nature to a management plan, the Authority shall notify the making of the change in the *Gazette* and in a newspaper.

**23. Submission to Minister**

The Authority shall submit a draft management plan (as revised under subsection 21 (2)) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments submitted to the Authority in relation to the draft; and
- (b) a written report about the Authority's consultation with the public and with any other person or authority about the draft.

**24. Minister's powers**

On receipt of a draft management plan submitted under section 23 for approval, the Minister may—

- (a) by notice in the *Gazette*, approve a management plan in the form in which the draft is submitted; or
- (b) refer the draft to the Authority together with any of the following written directions:
  - (i) to conduct further specified consultation;
  - (ii) to consider any revision suggested by the Minister;
  - (iii) to revise the draft in a specified manner.

**25. Referral back to Authority**

If the Minister refers a draft management plan to the Authority under paragraph 24 (b), the Authority shall—

- (a) comply with the Minister's directions;
- (b) if the Minister gives a direction under subparagraph 24 (b) (i) or (ii)—revise the draft plan;
- (c) revise the draft to correct any formal error; and

- (d) re-submit the draft management plan (as revised) to the Minister for approval together with a written report about the Authority's compliance with the Minister's directions and about any revision of the draft plan under paragraph (c).

**26. Management plan disallowable**

(1) A management plan, as approved by the Minister under section 24, is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(2) Section 6 of the *Subordinate Laws Act 1989* applies to a management plan as if paragraph 6 (1) (b) were omitted and the following paragraph substituted:

“(b) takes effect on the first day on which the management plan is no longer liable to be disallowed under this section; and”.

**PART VI—ALLOCATION OF WATER**

**27. Application**

This Part applies to—

- (a) ground water under land the subject of a lease of Territory Land granted after the commencement of section 13;
- (b) ground water under unleased Territory Land; and
- (c) surface water.

**28. Allocation of water**

(1) A person may obtain a water allocation from—

- (a) the Authority; or
- (b) another person who holds a water allocation.

(2) Subject to section 29, the Authority may, grant a water allocation—

- (a) by specifying the volume or rate of flow of water that may be taken under the allocation; or
- (b) in any other manner.

(3) Without limiting the generality of subsection (2), the Authority may fix a different measure of water allocation for different days of a year.

(4) Subject to section 81, after the commencement of this section, the power of the Authority to allocate water shall be exercised by public auction or public tender or, if either method is unsuccessful, by private contract.

(5) The Authority may grant a water allocation subject to conditions.

(6) Notwithstanding subsection (4) and subject to section 29, the Minister may, in writing, on payment of the determined fee, grant a water allocation to a person specified in the instrument, subject to such conditions (if any) as are specified in the instrument.

(7) Subject to section 81, the Minister or the Authority, as the case requires, shall not grant an allocation under this section unless provision is made for the allocation in the management plan.

(8) The Minister shall, not later than 14 days after making a grant under subsection (6), publish notice of the making of the grant in the *Gazette*.

(9) An allocation made under subsection (6) shall for the purposes of this Act, other than section 77, be taken to have been granted by the Authority.

(10) Where a water allocation on which a licence to take water is based is granted subject to conditions, those conditions shall, for the purposes of this Act, be taken to be conditions of the licence.

## **29. Matters taken into account—allocation of water**

In deciding whether or not to grant an allocation of water under section 28, the Minister or the Authority, as the case requires, shall take into account—

- (a) the availability of water in the area in question;
- (b) the existing and likely future demand for water in the area in question;
- (c) the environmental flow guidelines for the waterway or aquifer in question;
- (d) any agreement entered into by or on behalf of the Territory with the Commonwealth, a State or another Territory concerning the sharing of water; and
- (e) any other matters the Minister or the Authority, as the case may be, considers relevant.

## **30. Reduction of allocation**

(1) The Authority may, by notice in writing served on a person who is the holder of a water allocation, reduce the allocation granted to the person, either wholly or in part, if satisfied that it is necessary or desirable to do so—

- (a) because a reduction in the flow of the waterway makes it necessary;
- (b) to prevent a reduction, or further reduction, in the quality of water in a waterway; or

- (c) to prevent damage, or further damage, to an ecosystem that depends on that water from a waterway.
- (2) A notice under subsection (1) takes effect at the expiration of 90 days after the date on which the notice was served.
- (3) Where the Authority reduces a water allocation—
  - (a) the amount of water authorised to be taken under a licence to take water to which the allocation relates shall be taken to have been reduced; and
  - (b) if the reduction is of the whole of the allocation to which the licence relates—the licence to take water shall be taken to have been cancelled.

**31. Transfer of allocation**

- (1) The holder of a water allocation may, with the approval of the Authority, transfer the whole or part of the water allocation to another person or the Authority.
- (2) The transfer of a water allocation may be absolute or for a limited period.
- (3) The Authority shall not approve the transfer of a water allocation unless the Authority has been notified of the name and address of the person to whom the allocation is to be transferred.

**32. Transfer of allocation—effect on licences to take water**

- (1) Where, under section 31, a person transfers part of a water allocation, including an interstate water allocation, to which a licence to take water relates—
  - (a) absolutely—the amount of water which the person is authorised to take shall be taken to have been reduced by the amount of that transfer; or
  - (b) for a limited period—the amount of water which the person is authorised to take shall be taken to be reduced by the amount of that transfer for that period.
- (2) Where, under section 31, a person transfers the whole of a water allocation, including an interstate water allocation, to which a licence to take water relates—
  - (a) absolutely—the licence to take water shall be taken to have been cancelled; or

- (b) for a limited period—the licence to take water shall be taken to have been suspended for that period.
- (3) Where a person makes a transfer under section 31 of an interstate water allocation to which the licence to take water relates, whether in whole or in part, the person shall, within 7 days after the date of the transfer, give written notice to the Authority of—
  - (a) the name and address of the person to whom the allocation was transferred; and
  - (b) the prescribed particulars.
- (4) A person shall not, without reasonable excuse, contravene subsection (3).

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

## **PART VII—LICENCES ETC. TO TAKE WATER**

### *Division 1—Licences to take water*

#### **33. Unlicensed taking of water**

- (1) Subject to this section, a person shall not take water without a licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
  - (b) if the offender is a body corporate—250 penalty units.
- (2) The lessee or occupier of land on or immediately adjacent to which there is a waterway may, without a licence, take water from the waterway or surface water from the land for—
    - (a) the use of the lessee or occupier or the lessee's or occupier's family or employees, for domestic purposes;
    - (b) drinking water for stock; or
    - (c) irrigating a garden, not exceeding 2 hectares, being a garden cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden.
  - (3) A person may, without a licence, take water for camping purposes or for watering travelling stock from a waterway.
  - (4) Nothing in subsection (3) shall be construed as authorising a person to enter or remain on land to which the person does not otherwise have

lawful access or to do anything on that land that the person does not have lawful authority to do.

(5) Subsection (1) does not apply in relation to the exercise or purported exercise, in good faith—

- (a) by the Chief Fire Control Officer or a person under his or her control—of a power or authority under subsection 5N (1) of the *Bushfire Act 1936* for the purpose of extinguishing or preventing the spread of a fire; or
- (b) by the Fire Commissioner, a person under his or her control, a member of a fire brigade or a police officer—of a power or function under section 7 of the *Fire Brigade Act 1957* for the purpose of protecting life or property or controlling or extinguishing a fire.

(6) In proceedings for an offence against subsection (1), a certificate purporting to be signed by the Authority stating that, on a specified date, there was on the land to which the proceedings relate, a channel or other means (including mechanical means by which water is capable of being taken) is evidence of the matters so stated.

(7) It is a defence to a prosecution under subsection (1) if it is proved that the water was taken in case of an emergency for the protection of life and property.

(8) In this section—

“stock” means stock of a number not exceeding the number depastured ordinarily on the land having regard to seasonal fluctuations in the carrying capacity of the land and not held in close concentration for a purpose other than grazing.

#### **34. Limitation of right to take water**

(1) Where the Minister is satisfied that the rate at which water is taken from a waterway or ground water—

- (a) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand;
- (b) is affecting, or is likely to affect, the quality of the water in the waterway or ground water;
- (c) is having a serious effect on the level of ground water that depends on surface water for replenishment;
- (d) is having a serious effect on the environmental flow of a waterway or aquifer; or

- (e) is adversely affecting the environment;
- the Minister may, by notice in the *Gazette*—
- (f) prohibit or restrict the taking of water either generally or in a particular case; or
  - (g) direct that specified dams, reservoirs, embankments, walls or other structures be modified or removed to allow water to pass over, under or through them.
- (2) A notice under subsection (1)—
- (a) has effect from the date of publication of the notice in a newspaper or, if a later date is so specified, that later date; and
  - (b) remains in force for such period, not exceeding 12 months, as is specified in the notice, unless the notice is sooner revoked.
- (3) Except in cases of emergency for the protection of life and property, a person shall not, without reasonable excuse, contravene a notice under subsection (1).

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
  - (b) if the offender is a body corporate—500 penalty units.
- (4) Where the Minister publishes a notice in the *Gazette* under subsection (1), the Authority shall—
- (a) publish a copy of the notice in a newspaper; and
  - (b) give notice in writing to each licence holder who is affected by the notice.
- (5) If the Authority has reasonable grounds for believing that a person has contravened a notice under subsection (1), the Authority may enter the land and take the action specified in the notice and such other action as it considers appropriate to give effect to the notice.
- (6) The reasonable expenses of the Authority in taking action under subsection (5) are a debt due by the person to the Territory.

### **35. Licence to take water**

- (1) Subject to this section, the Authority may, on application, grant to a person a licence to take water from a specified waterway or location.
- (2) An application for a licence to take water shall—
- (a) be in a form approved by the Authority; and

- (b) be accompanied by the determined fee.
  - (3) A licence to take water may be granted subject to such conditions as are specified in the licence.
  - (4) For the purposes of subsection (3), the Authority may fix a different rate for different days of the year.
  - (5) Without limiting the generality of subsection (3), the conditions to which a licence to take water may be subject may include a condition—
    - (a) to keep and maintain records;
    - (b) to install, operate and maintain equipment, including a water meter;
    - (c) to provide information in relation to compliance with the licence or the conditions (if any) to which it is subject;
    - (d) to conduct specified monitoring and testing consequent on the taking of the water;
    - (e) to mark, in a specified manner, places from which water is taken under the licence; or
    - (f) specifying the rate at which, or the maximum amount of, water that may be taken, or both.
  - (6) A person shall not, without reasonable excuse, contravene a condition of a licence to take water.
- Penalty:
- (a) if the offender is a natural person—50 penalty units;
  - (b) if the offender is a body corporate—250 penalty units.
- (7) A licence to take water shall be in a form approved by the Authority.
  - (8) A licence to take water remains in force for such period as is specified in the licence unless it is sooner surrendered or cancelled.
  - (9) In deciding whether or not to grant a licence to take water, the Authority shall take into account—
    - (a) the applicant's environmental record both in the Territory and elsewhere so far as it relates to water;
    - (b) whether to grant the licence—
      - (i) would have an adverse effect on the environment; or
      - (ii) would adversely affect environmental flows of a particular waterway or aquifer or the rights of other water users;

- (c) whether the applicant has been convicted of an offence against this Act or a corresponding law of a State or another Territory; and
  - (d) in the case of an application for a licence to take ground water—
    - (i) whether the quantity of water available can meet the demand or there is a risk that the available water will not be sufficient to meet future demand; and
    - (ii) whether the taking of the water will or is likely to affect the quality of the water in the place to which the application relates.
- (10)** The Authority shall not grant a licence to take water—
- (a) subject to subsection (11), if a water allocation or interstate water allocation on which to base the taking of water from the place to which the application relates does not exist;
  - (b) unless satisfied that the applicant has lawful authority to obtain access to the place from which the water is to be taken under the licence or to divert the water from that place to where it is to be used, or both, as the case requires; or
  - (c) in respect of a development before an application to conduct the development has been approved under Part VI of the Land Act.
- (11)** Paragraph (10) (a) applies to—
- (a) ground water under land the subject of a lease of Territory Land granted after the commencement of section 13;
  - (b) ground water under unleased Territory Land; and
  - (c) surface water.
- (12)** In this section—
- “development” has the same meaning as in Part VI of the Land Act;
  - “Land Act” means the *Land (Planning and Environment) Act 1991*.

### **36. Surrender**

- (1)** The holder of a licence to take water may surrender his or her licence at any time.
- (2)** If the Register includes a notation that a person other than the holder of the licence has an interest in a licence to take water, the licence can not be surrendered without the consent in writing of that person.

**37. Transfer**

- (1) The holder of a licence to take water may, with the approval of the Authority, transfer the licence to another person.
- (2) The transfer of a licence to take water may be absolute or for a limited period.
- (3) The Authority shall not approve the transfer of a licence unless—
  - (a) the allocation or part allocation, as the case may be, including an interstate allocation, to which the licence relates is transferred to the transferee; or
  - (b) the Authority is satisfied that the water taken under the licence will be used by the transferee for the same purpose as the transferor and at the same place.
- (4) In deciding whether to approve a transfer of a licence to take water, the Authority shall take into account—
  - (a) the applicant's environmental record both in the Territory and elsewhere, including any action taken by the person for the purposes of this Act; and
  - (b) whether the person to whom the licence is to be transferred has been convicted of an offence against this Act or a corresponding law of a State or another Territory.

**38. Cancellation**

The Authority may cancel a licence to take water if a ground exists on which the Authority may refuse to grant a licence.

*Division 2—Drillers' licences*

**39. Unlicensed drilling**

- (1) A person shall not—
  - (a) drill or construct a bore;
  - (b) deepen or enlarge a bore;
  - (c) remove, replace, alter or repair the casing, lining or screen of a bore; or

- (d) plug, backfill or seal off a bore;

without a driller's licence.

Penalty:

- (e) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (f) if the offender is a body corporate—250 penalty units.

(2) The Authority may, on application, grant to a person a driller's licence to carry out an operation referred to in subsection (1).

(3) An application for a driller's licence shall—

- (a) be in a form approved by the Authority; and
- (b) be accompanied by the determined fee.

(4) A driller's licence may be granted subject to such conditions as are specified in the licence.

(5) A person shall not, without reasonable excuse, contravene a condition of a driller's licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(6) A driller's licence shall be granted for such period, not exceeding 3 years, as is specified in the licence.

(7) The Authority shall not grant a driller's licence unless satisfied that the applicant has the prescribed qualifications to hold a driller's licence.

#### **40. Production of licence**

The holder of a driller's licence shall, if required by the Authority, produce his or her licence to the Authority.

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

#### **41. Cancellation**

The Authority may cancel a driller's licence if—

- (a) the person to whom it was granted has ceased to hold the prescribed qualifications; or

- (b) the person has been convicted of an offence against this Act or a corresponding law of a State or another Territory.

**42. Provision of information**

(1) The Authority may, by notice in writing, require the holder of a driller's licence to give to the Authority, within such period as is specified in the notice, such information and samples relating to action taken under the licence as are specified in the notice.

(2) The holder of a driller's licence shall not, without reasonable excuse, contravene a requirement made under subsection (1).

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

***Division 3—Bores***

**43. Bores**

(1) A person who is the holder of a driller's licence shall not—

- (a) drill, construct, alter, plug, backfill or seal off a bore;
- (b) remove, replace, alter, slot or repair the casing, lining or screen of a bore; or
- (c) deepen a bore (whether in the course of construction or not);

unless the lessee or occupier of the land on which the bore is or will be situated is the holder of a bore construction permit.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) It is a defence to a prosecution under subsection (1) if it is proved that—

- (a) the work by which it is alleged the offence was committed was urgently required—
  - (i) to prevent pollution or deterioration of the water in the bore;
  - (ii) to prevent waste of water; or
  - (iii) to protect life or property;

- (b) in the circumstances, it was not practicable to apply for a bore construction permit or obtain the services of a person with a driller's licence; and
  - (c) as soon as practicable after the work was commenced, the Authority was informed of the nature of the work that had commenced.
- (3) Subsection (1) does not apply to the following if they are not used for the taking of water:
- (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
  - (b) a drain that is under the control of the Territory or the Commonwealth;
  - (c) an excavation for or in relation to a building or swimming pool;
  - (d) a mine within the meaning of the Territory Plan;
  - (e) an excavation for engineering or survey purposes if the excavation is less than 15 metres in depth;
  - (f) an excavation for the purposes of a toilet;
  - (g) an excavation, not exceeding 15 metres in depth, for the installation of cathodic protection anodes or the measurement of water pressure;
  - (h) a bore drilled to a depth not exceeding the depth of the water table nearest the surface for the purpose of obtaining samples of water or other material for scientific research;
  - (i) a bore comprising an excavation, not exceeding 3 metres in depth, for the purpose of conducting an underground test or extracting material for testing.

**44. Bore construction permit**

- (1) The Authority may, on application by a lessee or occupier of land on which it is proposed to carry out an operation referred to in paragraph 43 (1) (a), (b) or (c) grant to the lessee or occupier a bore construction permit.
- (2) An application for a bore construction permit shall—
- (a) be in writing in a form approved by the Authority;
  - (b) be executed by the applicant; and
  - (c) be accompanied by the determined fee.

(3) A bore construction permit may be granted subject to such conditions as are specified in the permit.

(4) A person shall not contravene, without reasonable excuse, a condition of a bore construction permit.

Penalty:

(a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

(5) The Authority may cancel a bore construction permit if the Authority has reasonable grounds for believing that the holder of the permit has contravened a condition of the permit.

(6) A bore construction permit shall be granted for such period, not exceeding 12 months, as is specified in the permit.

#### **45. Wasting bore water**

A person shall not, without reasonable excuse, waste, or cause or permit the waste of, water from a bore whether or not the bore is in use.

Penalty:

(a) if the offender is a natural person—5 penalty units;

(b) if the offender is a body corporate—25 penalty units.

#### **46. Power to give directions**

(1) Notwithstanding anything in this Act, but subject to section 55, if the Authority is satisfied that an act or omission by a person in relation to a bore may result, directly or indirectly, in the pollution or deterioration, inequitable distribution, loss, wastage or undue depletion of water, the Authority may, by notice served on the lessee or occupier of the land on which the bore is situated, direct the person, within the period specified in the notice—

(a) to shut off the supply of ground water from the bore in the manner specified in the notice;

(b) to restrict or limit the amount of water taken from the bore to the extent specified in the notice;

(c) to install and maintain a suitable meter to record the amount of water taken or discharged from the bore;

(d) to discontinue the use of the bore;

(e) to close, or partly or entirely plug, seal off or backfill the bore in the manner specified in the notice; or

- (f) to use the water taken from the bore for such purposes as are specified in the notice;

or to do a combination of those things.

(2) The Authority may give a direction under subsection (1) that is inconsistent with a condition of a licence or permit granted under this Act.

(3) A person shall not, without reasonable excuse, contravene a direction given under subsection (1).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

#### ***Division 4—Recharge licences***

#### **47. Unlicensed recharge**

(1) A person shall not construct, operate or alter works for the purpose of increasing the quantity of ground water without a recharge licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(2) The Authority may, on application, grant a recharge licence.

(3) An application for a recharge licence shall—

- (a) be in writing in a form approved by the Authority;
- (b) be executed by the applicant; and
- (c) be accompanied by the determined fee.

(4) A recharge licence may be granted subject to such conditions as are specified in the licence.

(5) A person shall not, without reasonable excuse, contravene a condition of a recharge licence.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(6) A recharge licence remains in force for such period, not exceeding 10 years, as is specified in the licence.

(7) In deciding whether or not to grant a recharge licence, the Authority shall take into account—

- (a) whether a water allocation is required;
  - (b) the risk of the rising level of ground water damaging soil or rock or structures;
  - (c) the risk of damaging ecosystems or of affecting the natural drainage of surface water;
  - (d) whether the applicant has been convicted of an offence against this Act or a corresponding law of a State or another Territory; and
  - (e) the applicant's environmental record both in the Territory and elsewhere, including any action taken by the person for the purposes of this Act.
- (8) In proceedings for an offence against subsection (1) a certificate purporting to be signed by the Authority stating that on a particular day or during a specified period a means existed on works to increase ground water is evidence of the matters so stated.

**48. Cancellation of recharge licence**

The Authority may cancel a recharge licence if the Authority has reasonable grounds for believing the rising level of ground water is—

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

*Division 5—General*

**49. Variation of conditions on licences or permits**

- (1) Where the Authority is satisfied that—
- (a) a condition specified in a licence or permit granted under this Part should be varied or revoked; or
  - (b) the licence or permit should be made subject to a condition;
- the Authority shall give notice in writing to the holder of the licence or permit—
- (c) specifying the ground on which the Authority intends to vary the licence or permit;
  - (d) stating the facts and circumstances that in the Authority's opinion, constitute that ground; and

- (e) informing the holder of the licence or permit that he or she may, within a specified period, give a written response to the Authority in relation to the matters stated in the notice.
- (2) After—
- (a) the expiration of the period specified in a notice under paragraph (1) (e); and
  - (b) taking into consideration any response given by the holder of the licence or permit;

the Authority may, if satisfied on reasonable grounds that it is desirable to do so, vary the licence or permit, by notice in writing given to the licensee or permit holder, by—

- (c) varying a condition to which it is subject;
  - (d) revoking such a condition; or
  - (e) imposing a condition on it.
- (3) The variation of a licence takes effect on—
- (a) the date on which notice of the variation is given to the holder of the licence or permit; or
  - (b) if a later date is specified in the notice, on that later date.

#### **50. Notification of grants etc.**

- (1) Where the Authority grants or varies a licence or permit, the Authority shall notify the making of the grant or variation in the *Gazette* and in a newspaper.
- (2) A notice under subsection (1) shall include a statement of places at which particulars of the licences or permits may be inspected.

#### **51. Self-incrimination**

- (1) A person is not excused from answering a question, furnishing information or producing a document if required under this Act on the ground that to do so would tend to incriminate the person.
- (2) Where a person (whether a natural person or body corporate) answers a question, furnishes information or produces a document in compliance with a requirement under this Act—
- (a) the answer to the question;
  - (b) the information furnished; or
  - (c) the document produced;

is not admissible in evidence against the person in any proceedings (whether civil or criminal), other than proceedings for an offence against section 52 or 53.

**52. False or misleading information**

A person shall not, in purported compliance with a requirement under this Act or for any other reason, provide to the Minister, the Authority or an authorised officer information that is, to the person's knowledge, false or misleading in a material particular.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

**53. Obstructing etc. authorised officers**

(1) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her powers under this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made, or direction given, by an authorised officer under this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**PART VIII—ENFORCEMENT**

*Division 1—Preliminary*

**54. Interpretation**

(1) In this Part—

“premises” includes vacant land.

(2) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) the offence has been committed with respect to it;

- (b) it will afford evidence of the commission of the offence; or
  - (c) was used, is being used, or is intended to be used, for the purpose of committing the offence.
- (3) A reference in this Part to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been, is being, or will be committed.

***Division 2—Entry and inspection generally***

**55. Entry of premises—routine inspections**

For the purposes of ascertaining whether this Act is being complied with, an authorised officer may enter premises with the consent, obtained pursuant to section 59, of the occupier or a person apparently in charge of the premises.

**56. Entry of premises—search warrants**

- (1) Where an authorised officer has reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act, the authorised officer may enter premises pursuant to a search warrant under section 60.
- (2) An authorised officer may enter premises under subsection (1) with such assistance and by such force as is necessary and reasonable.
- (3) A police officer may, if called on by an authorised officer to do so, assist the authorised officer in the execution of a search warrant.

**57. Identity cards must be produced**

An authorised officer who enters premises under section 55 or subsection 60 (1) is not authorised to remain on the premises if, on request by the occupier or a person apparently in charge of the premises, the officer does not produce his or her identity card.

**58. Inspection of premises**

- (1) An authorised officer who enters premises under section 55 or subsection 60 (1) may do any of the following in respect of the premises or anything on the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take photographs, films, or audio, video or other recordings;
  - (d) in the case of a thing—subject to section 61, seize the thing;

(e) if the thing is a document—take copies of, or extracts from, the document.

(2) An authorised officer who enters premises under section 55 or subsection 60 (1) may require the occupier or a person on the premises concerned with the conduct of the activity in respect of which the entry is made to do any of the following:

- (a) answer questions or furnish information;
- (b) make available any record or other document kept on the premises;
- (c) provide reasonable assistance to the officer in relation to the exercise of his or her powers under subsection (1).

**59. Consent to entry**

(1) Before obtaining the consent of a person for the purposes of section 55, an authorised officer shall—

- (a) produce his or her identity card; and
- (b) inform the person that he or she may refuse to give consent.

(2) Where an authorised officer obtains the consent of a person for the purposes of section 55, the officer shall ask the person to sign a written acknowledgment of—

- (a) the fact that the person has been informed that he or she may refuse to give consent;
- (b) the fact that the person has voluntarily given consent; and
- (c) the day on which, and the time at which, the consent was given.

(3) An entry by an authorised officer by virtue of a person's consent is not lawful unless the consent was voluntary.

(4) Where—

- (a) it is material, in any proceedings, for a court to be satisfied that the consent of a person for the purposes of section 55 was voluntary; and
- (b) an acknowledgment, in accordance with subsection (2), signed by the person is not produced in evidence;

the court shall assume, unless the contrary is proved, that the consent was not voluntary.

**60. Search warrants**

**(1) Where—**

- (a) an information is laid before a Magistrate alleging that an authorised officer has reasonable grounds for suspecting that there may be on any premises a thing of a particular kind connected with a particular offence against this Act; and
- (b) the information sets out those grounds;

the Magistrate may issue a search warrant authorising the authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (c) to enter the premises described in the warrant;
- (d) to search the premises for things of the kind mentioned in paragraph (a); and
- (e) to exercise any of the powers listed in section 58 in relation to those things.

**(2) A Magistrate shall not issue a warrant unless—**

- (a) the informant or another person has given the Magistrate, either orally on oath or by affidavit, any further information that the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant.

**(3) A warrant shall—**

- (a) state the purpose for which it is issued, including a reference to the nature of the offence in connection with which the entry and search are authorised;
- (b) state that the entry is authorised at any time of the day or night, or specify particular hours during which the entry is authorised;
- (c) include a description of the kind of things in relation to which the powers listed in section 58 may be exercised; and
- (d) specify a date, not later than 1 month after the date on which the warrant is issued, on which the warrant ceases to have effect.

**(4) If in the course of searching pursuant to a warrant for things of a particular kind connected with a particular offence, an authorised officer—**

- (a) finds a thing that the officer has reasonable grounds for believing is—

- (i) connected with the offence, although not a thing of the kind specified in the warrant; or
  - (ii) connected with another offence against this Act; and
- (b) is satisfied that it is necessary to exercise any of the powers listed in section 58 in relation to the thing to prevent the committing, continuing or repeating of the offence or the other offence;

the warrant shall be taken to authorise the officer to exercise those powers in relation to that thing.

### *Division 3—Seizure, retention and disposal of things*

#### **61. Seizure**

(1) An authorised officer may seize anything pursuant to a power of seizure under this Part if he or she has reasonable grounds for believing that it is connected with an offence against this Act and the seizure is necessary—

- (a) to prevent the thing being—
  - (i) concealed, lost, damaged or destroyed; or
  - (ii) used to commit the offence; or
- (b) to conduct tests for the purpose of adducing evidence in a prosecution for the offence.

(2) A person shall not, without the consent in writing of the Authority—

- (a) interfere with or dispose of a thing seized under this Part; or
- (b) remove the thing from the premises on which it was seized or to which it was taken by the authorised officer who seized it.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) Where an authorised officer has seized a thing under this Part, he or she shall give a receipt for the thing to—

- (a) the occupier of the premises on which it was seized; or
- (b) the person who had possession, custody or control of the thing immediately before it was seized.

#### **62. Retention to adduce evidence**

(1) The following provisions apply in relation to anything seized under this Part:

- (a) the thing shall be held by the authorised officer for the purpose of adducing evidence in a prosecution for an offence against this Act, unless the Authority authorises the release of the thing to its owner or the person who had possession, custody or control of the thing immediately before it was seized;
- (b) if a prosecution for an offence against this Act is instituted within the prescribed period and the defendant is found guilty, the court may order that—
  - (i) the thing be forfeited to the Authority; or
  - (ii) the defendant pay to the Authority an amount equal to the market value of the thing at the time of the seizure, being the value determined by the court;
- (c) if—
  - (i) a prosecution for an offence against this Act is not instituted within the prescribed period; or
  - (ii) on such a prosecution being instituted within that period, the defendant is found not guilty or the court does not make an order under paragraph (b);

the Authority shall release the thing to its owner or the person who had possession, custody or control of the thing immediately before it was seized.

- (2) In subparagraph (1) (c) (i)—  
“prescribed period” means the period of 6 months commencing on the day after the seizure.

#### ***Division 4—Other powers***

### **63. Power to require name and address**

- (1) Where an authorised officer—
  - (a) finds a person committing an offence against this Act; or
  - (b) has reasonable grounds for believing that a person has committed an offence against this Act;the officer—
  - (c) may require the person to state the person’s name and address; and
  - (d) in doing so, shall—
    - (i) inform the person of the reasons for the requirement; and
    - (ii) as soon as practicable thereafter, record those reasons.

(2) Subject to subsection (3), a person shall not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Penalty: 5 penalty units.

(3) A person is not required to comply with a requirement under subsection (1) if, on request by the person, the authorised officer does not produce his or her identity card.

## **PART IX—MISCELLANEOUS**

### **64. Register**

The Authority shall establish and maintain a register of licences, water allocations, and permits granted, or transfers made, under this Act.

### **65. Duty not to damage waterways**

(1) It is the duty of the lessee or occupier of land on which a waterway is situated or that adjoins a waterway to take reasonable steps to prevent damage to the bed and banks of the waterway.

(2) Where the Authority is of the opinion that the lessee or occupier of land has failed to carry out his or her duty under subsection (1), the Authority may, by notice in writing served on the lessee or occupier require the lessee or occupier to take such action as is specified in the notice—

- (a) to prevent damage of the kind referred to in subsection (1);
- (b) to rectify damage that has already occurred; and
- (c) as the Authority considers necessary or desirable in the circumstances.

(3) A lessee or occupier shall not, without reasonable excuse, contravene a notice under subsection (2).

Penalty:

- (a) if the offender is a natural person—100 penalty units;
- (b) if the offender is a body corporate—500 penalty units.

(4) If a lessee or occupier fails to comply with a notice under subsection (2), the Authority may enter the land and take the action specified in the notice and such other action as it considers appropriate to give effect to the notice.

(5) The reasonable expenses of the Authority in taking action under subsection (4) are a debt due by the lessee or occupier, as the case may be, to the Authority.

- (6) In subsection (1)—  
“damage” does not include—
- (a) damage caused in the normal course of an activity authorised by or under this Act; or
  - (b) damage of a minor nature.

**66. Destruction of works**

A person shall not interfere with, damage or destroy any works constructed or equipment used pursuant to a licence granted, or a power conferred, under this Act.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

**67. Interference with supply and drainage**

A person shall not interrupt or interfere with—

- (a) the taking of water; or
- (b) the drainage of land;

under a licence granted or a power conferred under this Act.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

**68. Unauthorised works**

(1) A person shall not, without a permit, construct or alter a dam, water storage or other water control structure in such a way as to adversely affect the flow or likely flow of water in a waterway.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

(2) Subsection (1) does not apply to the construction or alteration of—

- (a) a dam not in a waterway, the capacity of which is less than 2 megalitres; or

(b) a prescribed water control structure.

(3) In proceedings for an offence against subsection (1), a certificate purporting to be signed by the Authority stating that, on a particular date, there was, on land to which the proceedings relate, a dam, water storage or other water control structure, is evidence of the matters so stated.

**69. Water control structures—permit to construct etc.**

(1) The Authority may, on application, grant to a person a permit to construct or alter a dam, water storage or other water control structure in a waterway.

(2) In deciding whether or not to grant a permit under subsection (1) the Authority shall have regard to whether—

- (a) the structure is in the interests of the public;
- (b) the environment would be adversely affected;
- (c) environmental flows will be maintained;
- (d) the rights of other water users will be adversely affected;
- (e) the applicant is the holder of a licence under section 35 in respect of water to be taken from the structure; and
- (f) the structure is designed to permit water to pass over, under or through it.

(3) An application shall—

- (a) be in writing in a form approved by the Authority;
- (b) be executed by the applicant; and
- (c) be accompanied by the determined fee.

(4) The Authority may grant a permit under subsection (1) subject to such conditions as are specified in the permit.

(5) A person shall not, without reasonable excuse, contravene a condition of a permit granted under this section.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(6) A permit shall be granted for such period, not exceeding 12 months, as is specified in the permit.

(7) Section 49 applies to the variation of the conditions of a permit granted under this section.

(8) Nothing in this section affects the operation of the *Land (Planning and Environment) Act 1991*.

**70. Rectification of unauthorised activity**

(1) Where a person has—

- (a) undertaken an activity of a kind referred to in section 43 or 68; or
- (b) contravened a condition of a licence or permit granted under this Act;

the Authority may, by notice in writing served on the lessee or occupier of land on which the activity was undertaken, require the lessee or occupier to take—

- (c) such action as is specified in the notice to rectify the effects of the activity; and
- (d) such other action as the Authority considers necessary or desirable in the circumstances.

(2) A lessee or occupier of land shall not, without reasonable excuse, contravene a notice under subsection (1).

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

(3) If a person contravenes a notice under subsection (1), the Authority may enter the land and take the action specified in the notice and such other action as it considers appropriate to give effect to the notice.

(4) The reasonable expenses of the Authority in taking action under subsection (3) are a debt due by the person to the Territory.

**71. Annual fees**

A person who holds or has held—

- (a) a water allocation granted under section 28;
- (b) a licence to take water granted under section 35;
- (c) a driller's licence granted under section 39; or
- (d) a recharge licence granted under section 47;

during a financial year, or any part of a financial year, shall, within 28 days after the end of the year, pay to the Authority the determined fee in respect of the licence or allocation.

**72. Recovery of unpaid moneys**

Where a fee or charge imposed under this Act remains unpaid for 30 days after the date on which it is due and payable, the Authority may—

- (a) suspend or cancel the licence or allocation to which the fee or charge relates; or
- (b) cease to provide a service to which the unpaid fees or charges relate;

until such time as the fee or charge is paid or recovered.

**73. Conduct of directors, servants and agents**

(1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated

for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

**74. Criminal liability of officers of body corporate**

(1) Where a body corporate commits an offence against this Act, a prescribed officer of the body corporate—

- (a) is guilty of the offence; and
- (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for a contravention of the offence when committed by a natural person.

(2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant exercised due diligence to prevent the body corporate from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the body corporate;
- (b) an officer or employee of the body corporate occupying the defendant's position could not reasonably have been expected to be aware of the contravention; or
- (c) the body corporate would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act.

(3) A prescribed officer may be prosecuted and convicted of an offence under subsection (1) whether or not the body corporate has been prosecuted for or convicted of the offence.

(4) In this section—

“prescribed officer”, in relation to an offence committed by a body corporate, means—

- (a) an officer of the body corporate who is involved in the direction, management or control of the body corporate; or
- (b) an employee of the body corporate whose duties include advising or making decisions concerning matters to which the offence relates.

**75. Evidentiary—general**

A certificate purporting to be signed by the Authority stating that—

- (a) a person was or was not, on a specified day, the holder of a licence or permit under this Act;
- (b) a person was or was not, on a specified day, the lessee of specified land; or
- (c) a particular location is a waterway or bore;

is evidence of the matters so stated.

**76. Compensation**

(1) The Territory is liable to pay compensation to the lessee or occupier of land for—

- (a) the value of any modification directed to be carried out under section 34; and
- (b) the expenses of removal incurred by the lessee or occupier under that section.

(2) For the purposes of subsection (1), the value of a dam, embankment, wall or other structure to be modified or removed will be taken to be—

- (a) the amount by which it increased the value of the land; or
- (b) the cost, at the time of removal, of replacing it;

whichever is the lesser.

(3) The Territory is liable to pay compensation to the lessee or occupier of land entered under section 17 for damage by the Authority in excess of that which could reasonably be expected to occur as a consequence of the exercise of his or her powers under that section.

**77. Review of decisions**

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Authority—

- (a) under section 30 reducing a water allocation;
- (b) under subsection 31 (1) refusing to grant approval to transfer the whole or part of a water allocation;
- (c) under subsection 35 (1) refusing to grant a licence to take water;
- (d) under subsection 35 (3) granting a licence to take water subject to a specified condition;

- (d) under subsection 35 (8) granting a licence to take water for a specified period;
- (e) under subsection 37 (1) refusing to approve a transfer of a licence to take water;
- (f) under subsection 37 (2) approving the transfer of a licence to take water for a specified period;
- (g) under section 38 cancelling a licence;
- (h) under subsection 39 (2) refusing to grant a driller's licence;
- (g) under subsection 39 (4) granting a driller's licence subject to a specified condition;
- (h) under subsection 39 (6) granting a driller's licence for a specified period;
- (i) under section 41 cancelling a driller's licence;
- (j) under subsection 44 (1) refusing to grant a bore construction permit;
- (k) under subsection 44 (3) granting a bore construction permit subject to a specified condition;
- (l) under subsection 44 (5) cancelling a bore construction permit;
- (m) under subsection 44 (7) granting a bore construction permit for a specified period;
- (n) under subsection 46 (1) giving a direction;
- (o) under subsection 47 (2) refusing to grant a recharge licence;
- (p) under subsection 47 (4) granting a recharge licence subject to a specified condition;
- (q) under subsection 47 (6) granting a recharge licence for a specified period;
- (r) under section 48 cancelling a recharge licence;
- (s) under subsection 49 (2) varying or revoking a condition or imposing a condition on a licence or permit;
- (t) under subsection 65 (2) requiring action to be taken;
- (u) under subsection 69 (1) refusing to grant a permit;
- (v) under subsection 69 (4) granting a permit subject to a specified condition; and
- (w) under subsection 69 (6) granting a permit for a specified period.

(2) Where a decision of a kind referred to in subsection (1) is made, the Authority shall give notice in writing of the decision to the applicant or holder of the licence or permit, as the case requires.

(3) If the Authority fails to make a decision of the kind referred to in paragraph (1) (b), (c), (e), (f), (h), (j), (o) or (u) within a reasonable time the Authority shall be taken to have made a decision refusing to grant the licence or permit or to approve a transfer of a licence, as the case requires.

(4) A notice under subsection (2) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

#### **78. Determination of fees**

(1) The Minister may, by notice in the *Gazette*, determine—

- (a) the amount of a fee payable under this Act; or
- (b) a rate at which, or a formula or other method by which, the amount of a fee payable under this Act is to be calculated.

(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

#### **79. Regulations**

(1) The Executive may make regulations for the purposes of this Act, and, in particular, may make regulations—

- (a) applying, adopting or incorporating, with or without modification, any matter contained in an instrument as in effect at a particular time or as in effect for the time being;
- (b) prescribing penalties for offences against the regulations—
  - (i) if the offender is a natural person—not exceeding 10 penalty units; or
  - (ii) if the offender is a body corporate—not exceeding 50 penalty units; and
- (c) providing for—
  - (i) the transfer of licences;
  - (ii) the manner of assessment of the quantity of water that may be taken by a person under the Act;
  - (iii) the keeping of records and the provision of information to the Authority; and
  - (iv) the regulation or prohibition of the taking of water.

**80. Review of Act**

- (1) The Minister shall review the operation of this Act as soon as possible after the period of 2 years after the date of commencement of section 3.
- (2) A report on the outcome of the review shall be tabled in the Legislative Assembly within 6 months after the end of the period of 2 years.

**PART X—TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

**81. Rights to take water existing before commencement**

- (1) Section 33 does not apply to a person who, immediately before 1 May 1998, was taking water from a waterway or bore until—
  - (a) the expiration of 12 months after the commencement of this section; or
  - (b) subject to subsection (3), the person taking the water is granted or refused the grant of a licence under Part VII;

whichever occurs first.

- (2) If the Authority—
  - (a) refuses to grant a licence under section 35; or
  - (b) grants a licence subject to conditions;

section 77 does not apply to the person referred to in paragraph (1) (b) until the expiration of the day on which the applicant is notified of the decision in accordance with that section.

- (3) Where a person is granted a licence pursuant to subsection (2), then, except in the case of ground water under land the subject of a lease of Territory Land granted before the commencement of this section, it is to be taken to be a condition of the allocation to which the licence relates that the allocation of water is for use for the purpose for which, and at the location in relation to which, the licence was granted.

- (4) Subsections 28 (4) and (7) do not apply to an allocation referred to in subsection (3).

- (5) In the case of a dispute in relation to a water allocation referred to in subsection (3), a party to the dispute may refer the dispute to arbitration.

- (6) For the purposes of paragraph (1) (b), in deciding whether or not to grant a licence under Part VII, the Authority may, by notice in the *Gazette*, require each lessee or occupier of land on which a bore or water control structure is situated from which water is or is capable of being taken, to give to the Authority, within such period as is specified in the notice—

- (a) in the case of a bore—
    - (i) the location of each bore and its depth; and
    - (ii) the volume of water taken from each bore and the volume of water each bore produces;
  - (b) in the case of a waterway—
    - (i) the volume of water taken from the waterway; and
    - (ii) the manner in which the water is taken; and
  - (c) such other information as is specified in the notice.
- (7) A person shall not, without reasonable excuse, contravene a requirement made under subsection (6).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

**82. Amendments of *Lakes Act 1976***

- (1) Sections 11 and 12 of the *Lakes Act 1976* are repealed.
- (2) Section 13 of the *Lakes Act 1976* is amended by adding at the end the following subsection:
  - “(3) The Minister shall not authorise the doing of an act under subsection (1) without first consulting with the Environment Management Authority.”.

**83. Amendment of *Land (Planning and Environment) Act 1991***

After section 172A of the *Land (Planning and Environment) Act 1991* the following section is inserted:

**“172B. No right to use, flow and control of water**

A lease or further lease of Territory Land granted under this Division after the commencement of this section shall not be taken to confer a right to the use, flow and control of water (including water containing impurities) under the land the subject of the lease.”.

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**NOTE**

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.

*[Presentation speech made in Assembly on 21 May 1998]*

*Water Resources Act 1998 No. 63, 1998*

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