

Serial 60
Water Legislation Amendment Bill 2018
Ms Lawler

A Bill for an Act to amend the *Water Act* and *Water Regulations* and related
legislation

NORTHERN TERRITORY OF AUSTRALIA

WATER LEGISLATION AMENDMENT ACT 2018

Act No. [] of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

An Act to amend the *Water Act* and *Water Regulations* and related legislation

[Assented to [] 2018]
[Introduced [] 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Water Legislation Amendment Act 2018*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Water Act

3 Act amended

This Part amends the *Water Act*.

4 Section 4 amended (Interpretation)

(1) Section 4(1), definitions *bore*, *Chairman*, *mining or petroleum activity*, *occupier* and *this Act*

omit

(2) Section 4(1)

insert (in alphabetical order)

bore means a natural or constructed hole in the ground that is used, or could reasonably be used, for any of the following purposes:

- (a) taking ground water;
- (b) investigating the behaviour, occurrence and availability of ground water;
- (c) monitoring the condition of ground water;
- (d) injecting water to recharge an aquifer;
- (e) disposing waste directly or indirectly into ground water.

bore work means any of the following:

- (a) drilling, decommissioning, constructing, altering, deepening, plugging, backfilling or sealing off a bore;
- (b) removing, replacing, altering, slotting or repairing the casing, lining or screen of a bore.

Chairperson, in relation to the Review Panel, includes a person appointed under section 26 to act in the office of the Chairperson, while the person is acting.

drilling licence means a drilling licence granted under section 49.

interfere with a waterway means any of the following:

- (a) cause a material change to the shape of a waterway;
- (b) cause a material change to the volume, speed or direction of the flow or likely flow of water in or into a waterway;
- (c) cause an alteration to the stability of the bed or banks of a waterway, including by the removal of vegetation.

mining activity means a mining activity as defined in section 4 of the *Mining Management Act*, including another activity for a purpose ancillary to that activity.

occupier, in relation to land, means:

- (a) a person occupying the land (under whatever title or permission, or without title or permission); or

- (b) a person entitled to occupy the land, whether or not the person is actually occupying the land.

petroleum activity means exploration, extraction or processing of petroleum under an Act or an Act of the Commonwealth, including another activity for a purpose ancillary to one of those activities.

remediation notice, see section 33A(2).

- (3) Section 4(1), definition **environment**

omit

man

insert

humans

- (4) Section 4(1), definition **material environmental harm**, paragraph (a), at the end

insert

or

- (5) Section 4(1), definitions **owner**, paragraphs (a) and (b) and **tidal water**, paragraph (a), at the end

insert

and

- (6) Section 4(1), definition **petroleum site**, paragraph (a)

omit

all words from "within" to "**activity**"

insert

as defined in the *Petroleum Act*, on which petroleum activity occurs

- (7) Section 4(1), definitions **pollute**, paragraph (a) and **serious environmental harm**, paragraphs (a) and (b), at the end

insert

or

- (8) Section 4(1), definition **serious environmental harm**, paragraph (c)
- omit*
- and
- insert*
- or
- (9) Section 4(1), definition **waterway**, after "means"
- insert*
- any of the following
- (10) Section 4(1), definition **waterway**, paragraph (g)
- omit*
- or
- (11) Section 4(1), definition **waterway**, after paragraph (g)
- insert*
- (ga) shallow ground water immediately underlying the bed or banks of a waterway;
- (12) Section 4(1), at the end
- insert*
- Note for subsection (1)*
- The Interpretation Act contains definitions and other provisions that may be relevant to this Act.*
- (13) Section 4(3)(f)
- omit*
- industry, including secondary industry and a mining or petroleum activity, and for other industry uses not referred to
- insert*
- other industry uses not mentioned

(14) Section 4(3)(g)

omit

14.

insert

14;

(15) After section 4(3)(g)

insert

(h) mining activity – to provide water for a mining activity;

(i) petroleum activity – to provide water for a petroleum activity.

5 Section 7 amended (Application of Act to mining or petroleum activity)

(1) Section 7, heading, after "**mining**"

insert

activity

(2) Section 7(1) and (3)

omit

(3) Section 7(2)(a), after "mining"

insert

activity

(4) Section 7(4), after "out a mining"

insert

activity

6 Section 8A inserted

After section 8, in Part 1

insert

8A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 8A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

7 Section 15 replaced

Section 15

repeal, insert

15 Rights of owner or occupier to drain land or retain water

Despite section 9(2), the owner or occupier of land may, if it does not materially diminish or increase the flow or likely flow of water in or into a waterway:

- (a) drain the land in accordance with this Act and the *Soil Conservation and Land Utilisation Act*, or
- (b) for the retention or conservation of water for use on the land – construct, operate, maintain, repair or alter a dam or other water storage or works (other than prescribed works) not in a waterway.

8 Section 24 amended (Establishment and constitution of Review Panel)

Section 24(1), (2), (3) and (4)

omit, insert

- (1) The Minister may, in writing, establish a Water Resources Review Panel to advise the Minister in reviewing the Minister's actions or those of the Controller.
- (2) The Review Panel consists of:
 - (a) a Chairperson; and

- (b) for a matter referred to the Review Panel under section 30(3)(b) – not less than 2 persons nominated by the Chairperson from a group appointed under subsection (3).
- (2A) The Chairperson:
- (a) is appointed by the Minister; and
 - (b) holds office, subject to this Division, for 3 years; and
 - (c) is eligible for reappointment.
- (2B) The persons mentioned in subsection (2)(b) hold office as members of the Review Panel for as long as the Chairperson considers necessary to deal with the matter for which the members were nominated.
- (3) The Minister must, in writing, appoint a group of 8 persons:
- (a) from whom the persons mentioned in subsection (2)(b) are nominated; and
 - (b) who must, in the Minister's opinion, have relevant qualifications or experience respectively in the following:
 - (i) bore drilling;
 - (ii) primary industry;
 - (iii) secondary industry;
 - (iv) Aboriginal affairs;
 - (v) public health;
 - (vi) environmental management;
 - (vii) fisheries;
 - (viii) mining.
- (4) When nominating persons under subsection (2)(b), the Chairperson must choose the members of the group who, in the Chairperson's opinion, are best qualified and available to constitute the Review Panel for the consideration of the matter.

9 Section 27 replaced

Section 27

repeal, insert

27 Offence to disclose certain information

- (1) A person commits an offence if:
- (a) the person is a member of the Review Panel (including the Chairperson); and
 - (b) the person obtains information in the course of performing a function as a member; and
 - (c) the information is confidential; and
 - (d) the person intentionally engages in conduct; and
 - (e) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (f) the person is reckless in relation to the result and circumstance mentioned in paragraph (e).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a), (b) and (c).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Example for subsection (3)

A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.

Note for section 27

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see

section 43BE of the Criminal Code).

10 Section 31 replaced

Section 31

repeal, insert

31 Powers of Review Panel

- (1) The Review Panel may do any of the following to enable it to advise the Minister on a matter referred to it under section 30(3)(b):
- (a) by notice signed by its Chairperson – require a person to appear before the Review Panel;
 - (b) by notice signed by its Chairperson – require a person to produce any relevant documents to the Review Panel;
 - (c) in relation to a document produced under paragraph (b):
 - (i) inspect and copy the document; and
 - (ii) keep the document for a reasonable period that the Review Panel considers appropriate;
 - (d) require a person to give evidence on oath;
 - (e) require a person appearing before the Review Panel to answer a relevant question put to the person by the Review Panel or by another person appearing before it;
 - (f) enter and inspect land, or authorise a person to enter and inspect land, for the purposes of a proceeding before the Review Panel.

Note for subsection (1)(c) and (f)

Refusing to allow a person to enter or inspect places or things as required by this subsection may amount to obstruction for section 101.

- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct contravenes a notice or requirement made under subsection (1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsection (2)(b).

11 Section 33 replaced

Section 33

repeal, insert

33 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function connected with the administration of this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Division 5 Remediation notices**33A Power to give remediation notice**

(1) This section applies if the Controller believes on reasonable grounds that:

(a) a person is contravening or has contravened section 37(1), 40(1), 42(1), 44(1), 46(1), 48(1), 50(1), 55(2), 56(1), 58(1), 59(1), 61(1), 66(1), 68(1), 71(1), 79(3), 81(1) or 96(3) in circumstances that make it likely the contravention will continue or be repeated; and

(b) a matter relating to the contravention is reasonably capable of being rectified; and

(c) it is appropriate to give the person an opportunity to rectify the matter.

(2) The Controller may give the person a notice (a **remediation notice**) requiring the person to take reasonable steps to rectify the matter and, if relevant, requiring the person to refrain from doing an act.

33B Requirements for remediation notice

A remediation notice must specify the following:

- (a) that the Controller believes the person is contravening or has contravened a provision mentioned in section 33A(1)(a) in circumstances that make it likely the contravention will continue or be repeated;
- (b) the provision the Controller believes is being, or has been contravened;
- (c) briefly, how it is believed the provision is being, or has been contravened;
- (d) the matter relating to the contravention that the Controller believes is reasonably capable of being rectified;
- (e) the reasonable steps the person must take to rectify the matter;
- (f) that the person must take the steps within a specified reasonable period;
- (g) that the person may apply under section 30 for review of the decision to give the notice within 14 days after the day the notice is given;
- (h) how the person may apply for review;
- (i) if the notice requires the person to do an act involving the carrying out of work – details of the work involved;
- (j) if the notice requires the person to refrain from doing an act:
 - (i) a period for which the requirement applies; or
 - (ii) that the requirement applies until further notice.

33C Failure to comply with remediation notice

- (1) A person commits an offence if the person:
 - (a) is given a remediation notice; and
 - (b) fails to comply with the notice.

Maximum penalty: The maximum penalty that may be imposed for the offence provision specified in the notice.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

33D Power to take action and recover costs

- (1) If a person is given a remediation notice and fails to comply with the notice, the Controller may take the action required by the notice and any reasonable expenses incurred are payable by the person as a debt to the Territory.
- (2) The Controller must give the person a notice stating the amount of any reasonable expenses incurred.

12 Section 37 replaced

Section 37

repeal, insert

37 Breach of water investigation permit

- (1) A person commits an offence if the person:
 - (a) holds a permit granted under section 36; and
 - (b) contravenes a term or condition of the permit.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

13 Section 39 amended (Access to confidential information)

Section 39(4)

omit, insert

- (4) A person commits an offence if:
- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (b) the information is confidential and the person is reckless in relation to that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(4A) Strict liability applies to subsection (4)(a).

(4B) If the information mentioned in subsection (4) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person has consented to the disclosure of the information.

Example for subsection (4B)

A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.

Note for subsections (4) to (4B)

In addition to the circumstances mentioned in these subsections, a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

14 Section 40 replaced

Section 40

repeal, insert

40 Interfering with waterway without authorisation

- (1) A person commits an offence if the person:
- (a) engages in conduct that interferes with a waterway; and
 - (b) is not authorised under this Act to interfere with the waterway.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct interferes with a waterway and the person is reckless in relation to the result; and
- (c) the person is not authorised under this Act to interfere with the waterway.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

- (4) Strict liability applies to subsection (3)(c).
- (5) It is a defence to a prosecution for an offence against subsection (1) or (3) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (6) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (5).
- (7) For subsections (1)(b) and (3)(c), a right, permit or licence under section 10, 11, 14, 41, 45, 60 or 67 authorises a person to interfere with a waterway to the extent that the person's conduct is in accordance with the right, permit or licence.
- (8) In a proceeding for an offence against this section, proof of the existence of a structure or obstruction on land, or on, in or below a waterway, is evidence that the waterway was interfered with if the structure or obstruction was capable of interfering with the waterway.

- (9) Subsections (1) and (3) do not apply if the Minister exempts the interference with a waterway under subsection (10).
- (10) The Minister may, by *Gazette* notice, exempt a class of interference with a waterway from the application of subsections (1) and (3) and those subsections cease to apply to, or in relation to, interferences of that class on and from the day the notice is published in the *Gazette*.

15 Section 41 amended (Grant of construction permit)

- (1) Section 41, heading
- omit*
- construction permit**
- insert*
- permit to interfere with waterway**
- (2) Section 41(1)
- omit*
- of his or her own motion
- insert*
- on the Controller's own initiative
- (3) Section 41(1)
- omit*
- construct or alter a dam, water storage or water control structure referred to in section 40(1)
- insert*
- interfere with a waterway
- (4) Section 41(2)
- omit*
- such terms and conditions, if any, as are
- insert*
- any terms and conditions

(5) Section 41(3)

omit

16 Section 42 replaced

Section 42

repeal, insert

42 Breach of permit to interfere with waterway

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

- (a) holds a permit granted under section 41; and
- (b) contravenes a term or condition of the permit.

Maximum penalty: 500 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

17 Section 44 replaced

Section 44

repeal, insert

44 Taking surface water without authorisation

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

- (a) takes water; and
- (b) is not authorised under this Act to take the water.

Maximum penalty: 500 penalty units.

Note for subsection (1)

Take, in relation to water, is defined in section 4(1).

(2) A person commits an offence if the person:

- (a) intentionally takes water; and

(b) is not authorised under this Act to take the water.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

Note for subsection (2)

Take, in relation to water, is defined in section 4(1).

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of a channel or other means (including mechanical means) by which water may be taken is evidence that water was taken while the channel or other means existed.
- (7) Subsections (1) and (2) do not apply if the Administrator declares under subsection (8) that they do not apply.
- (8) The Administrator may, on the recommendation of the Minister, declare by *Gazette* notice that subsections (1) and (2) do not apply to taking water:
- (a) of a specified class, kind, description or volume; or
 - (b) at a specified rate or for a specified purpose.

18 Section 46 replaced

Section 46

repeal, insert

46 Breach of licence to take surface water

- (1) A person commits an offence if the person:
- (a) holds a licence granted under section 45; and
 - (b) contravenes a term or condition of the licence.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

19 Section 48 replaced

Section 48

repeal, insert

48 Doing bore work without licence

- (1) A person commits an offence if the person:
 - (a) does bore work; and
 - (b) does not hold a drilling licence that authorises the bore work.

Maximum penalty: 500 penalty units.

Note for subsection (1)

General rights to take water or do bore work under section 57 do not authorise unlicensed bore work, but this offence does not apply if the bore is subject to an exemption declared under section 47.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) Subsection (1) does not apply if, at all times, the defendant does the bore work in the presence of a person who holds a drilling licence that authorises the bore work.

20 Section 50 replaced

Section 50

repeal, insert

50 Breach of drilling licence

- (1) A person commits an offence if the person:
 - (a) holds a drilling licence; and
 - (b) contravenes a term or condition of the licence.

Maximum penalty: 500 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

21 Section 53 replaced

Section 53

repeal, insert

53 Power to require drilling information and samples

- (1) The Controller may, by written notice, require a holder of a drilling licence to provide the information and samples prescribed by regulation in the form and within the period specified in the notice.
- (2) A person commits an offence if the person:
 - (a) is given a notice under subsection (1); and
 - (b) fails to comply with a requirement of the notice.

Maximum penalty: 30 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).

22 Part 6, Division 3 heading amended

Part 6, Division 3, heading

omit

Construction

insert

Bore work

23 Sections 55 and 56 replaced

Sections 55 and 56

repeal, insert

55 Power to require information about bore

- (1) The Controller may, by *Gazette* notice, require an owner or occupier of land or land of a specified class, either generally or within a specified area:
- (a) to provide information in relation to any bores situated on the land; and
 - (b) to provide the information within a specified time or as soon as practicable after the completion of bore work.
- (2) A person commits an offence if the person:
- (a) is required by a notice under subsection (1) to provide information; and
 - (b) fails to comply with the requirement.

Maximum penalty: 30 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).

56 Doing bore work without authorisation

- (1) A person commits an offence if:
- (a) the person does bore work; and
 - (b) the bore work is not authorised by a permit granted under section 57.

Maximum penalty: 500 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally does bore work; and
 - (b) the bore work is not authorised by a permit granted under section 57.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if:
- (a) the bore work was done:
 - (i) to prevent pollution or deterioration of the water in a bore; or
 - (ii) to provide urgent water supply for the benefit of public health, animal welfare or the environment; and
 - (b) it was not reasonably practicable to apply for a permit under section 57; and
 - (c) the defendant took reasonable steps to inform the Controller of the bore work; and
 - (d) the defendant complied with any regulations that apply to the bore work done for a purpose mentioned in paragraph (a).
- (5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (6) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4) or (5).

24 Section 57 amended (Grant of bore construction permit)

- (1) Section 57, heading

omit

construction

insert

work

- (2) Section 57(1)

omit

all words from "of his" to "section 56(1)"

insert

on the Controller's own initiative or on application in the prescribed manner and form, grant to a person a permit in the prescribed form to carry out bore work

- (3) Section 57(2)

omit

such terms and conditions, if any, as are

insert

any terms and conditions

25 Section 58 replaced

Section 58

repeal, insert

58 Breach of permit to do bore work

- (1) A person commits an offence if the person:

(a) holds a permit granted under section 57; and

(b) contravenes a term or condition of the permit.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

26 Section 59 replaced

Section 59

repeal, insert

59 Taking ground water without authorisation

- (1) A person commits an offence if the person:
 - (a) takes water from a bore; and
 - (b) is not authorised under this Act to take the water.

Maximum penalty: 500 penalty units.

Note for subsection (1)

Take, in relation to water, is defined in section 4(1).

- (2) A person commits an offence if the person:
 - (a) intentionally takes water from a bore; and
 - (b) is not authorised under this Act to take the water.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

Note for subsection (2)

Take, in relation to water, is defined in section 4(1).

- (3) Strict liability applies to subsections (1) and (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of pumping equipment or other prescribed means by which water may be taken from a bore is evidence that water was taken in contravention of this section at the time the equipment

or those means are proved to have existed.

27 Section 61 replaced

Section 61

repeal, insert

61 Breach of licence to take ground water

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

- (a) holds a licence granted under section 60; and
- (b) contravenes a term or condition of the licence.

Maximum penalty: 500 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

28 Section 66 replaced

Section 66

repeal, insert

66 Recharging aquifer without authorisation

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

- (a) engages in conduct that results in the increase of the volume of water in an aquifer; and
- (b) is not authorised under this Act to increase the volume of water in the aquifer.

Maximum penalty: 500 penalty units.

(2) A person commits an offence if:

- (a) the person intentionally engages in conduct; and

- (b) the conduct results in the increase of the volume of water in an aquifer and the person is reckless in relation to the result; and
- (c) the person is not authorised under this Act to increase the volume of water in the aquifer.

Maximum penalty: 1 000 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to subsections (1) and (2)(c).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (5) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (4).
- (6) In a proceeding for an offence against this section, proof of the existence on land of a means by which the volume of water contained in an aquifer is capable of being increased is evidence that the volume of water contained in an aquifer was increased in contravention of this section at the time those means are proved to have existed.

29 Section 68 replaced

Section 68

repeal, insert

68 Breach of recharge licence

- (1) A person commits an offence if the person:
 - (a) holds a licence granted under section 67; and
 - (b) contravenes a term or condition of the licence.

Maximum penalty: 500 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

30 Section 69 repealed (Prohibition of waste)

Section 69

repeal

31 Section 71 replaced

Section 71

repeal, insert

71 Contravention of notice

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

- (a) is served with a notice under section 70; and
- (b) contravenes a direction of the notice.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

(4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

(5) For subsection (1), it is immaterial if the contents of the notice are inconsistent with or contrary to a term or condition of a licence, permit or other authorisation granted under this Act or another Act.

32 Section 79 amended (Power to construct works, &c)

(1) Section 79, heading

omit

, &c.

(2) Section 79(3)

omit, insert

(3) A person commits an offence if:

- (a) the person intentionally engages in conduct; and

(b) the conduct results in the construction, maintenance, repair, alteration, operation or removal of works for a purpose mentioned in subsection (1) and the person is reckless in relation to the result; and

(c) the person is not authorised to engage in the conduct.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3A) Strict liability applies to subsection (3)(c).

33 Section 81 amended (Use of bore where costs borne by Territory)

Section 81(1)

omit, insert

(1) A person commits an offence if:

(a) the person uses a bore; and

(b) the costs of the bore have been borne by the Territory, whether before or after the commencement of this Act, and the person is reckless in relation to that circumstance; and

(c) the person is not authorised under this Act to use the bore.

Maximum penalty: 50 penalty units.

(1A) Strict liability applies to subsection (1)(a) and (c).

34 Sections 88 and 89 replaced

Sections 88 and 89

repeal, insert

88 Powers of Controller

(1) The Controller may, by *Gazette* notice or notice served on a person, require persons of a class specified in the notice, or the person on whom the notice is served, to do the following things as specified in the notice:

(a) in relation to the investigation, use, control, protection, management or administration of water or in relation to waste:

(i) keep and maintain records; and

- (ii) install, operate and maintain equipment; and
 - (iii) provide information to a person;
 - (b) take or dispose of samples of water or waste;
 - (c) submit samples of water or waste to a person or member of a class of persons for analysis.
- (2) Anything required to be done under subsection (1) is done at the expense of the person to whom the notice applies unless the Controller otherwise directs.
- (3) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct contravenes a requirement of a notice under subsection (1).
- Maximum penalty: 50 penalty units.
- (4) Strict liability applies to subsection (3)(b).

89 Misleading information

- (1) A person commits an offence if:
- (a) the person intentionally gives information to another person (the **recipient**); and
 - (b) the information is misleading and the person has knowledge of that circumstance; and
 - (c) the recipient is acting in an official capacity and the person has knowledge of that circumstance.
- Maximum penalty: 200 penalty units or imprisonment for 2 years.
- (2) A person commits an offence if:
- (a) the person intentionally gives a document to the recipient; and
 - (b) the document contains misleading information and the person has knowledge of that circumstance; and

- (c) the recipient is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the person, when giving the document:
- (a) draws the misleading aspect of the document to the recipient's attention; and
 - (b) to the extent to which the person can reasonably do so – gives the recipient the information necessary to remedy the misleading aspect of the document.
- (4) In this section:

acting in an official capacity, in relation to a recipient, means the recipient is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

35 Section 96 replaced

Section 96

repeal, insert

96 Emergency powers to limit rights to take water

- (1) If water is taken or available to be taken under section 10, 11 or 14, the Minister may, by notice, do any of the following as the Minister considers appropriate:
- (a) specify the places from which, the manner in which and the times at which water may or may not be taken;
 - (b) in times of actual or likely shortage of water – fix the amount of water which may be taken and the purposes for which water may be taken;
 - (c) temporarily or permanently prohibit taking water from a source when, in the opinion of the Controller, taking water would be dangerous to health.

- (2) Despite anything in this Act or any other law of the Territory, the Minister may, by notice, do any of the following as the Minister considers appropriate:
- (a) in times of actual or likely shortage of water – regulate, restrict or prohibit the doing of an act under a licence;
 - (b) temporarily or permanently prohibit the doing of an act under a licence if, in the opinion of the Controller, the doing of the act would be dangerous to health.

- (3) A person commits an offence if the person contravenes a notice made under subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) For subsection (3), it is immaterial if the contents of the notice are inconsistent with or contrary to a term or condition of a licence, permit or other authorisation granted under this or another Act.
- (6) It is a defence to a prosecution for an offence against subsection (3) if the defendant contravened a notice for the reasonable protection of life or property.
- (7) It is also a defence to a prosecution for an offence against subsection (3) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (8) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (6) or (7).
- (9) In this section:

by notice means any of the following:

- (a) by *Gazette* notice;
- (b) by notice in a newspaper circulating in the area to which the notice relates;
- (c) by notice by radio or television;
- (d) by notice served on the owner or occupier of land to which the notice relates.

36 Sections 98 to 102 replaced

Sections 98 to 102

repeal, insert

98 Destruction of works

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in:
 - (i) works constructed or used, under a licence granted or power given under this Act, being damaged or destroyed; or
 - (ii) benefits required or derived from those works being diminished.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(b).

99 Interference with rights

- (1) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in materially diminishing another person's enjoyment of:
 - (i) a right mentioned in section 10, 11 or 14; or
 - (ii) a licence granted, power given or arrangement made under this Act; and
 - (c) the person is reckless in relation to the result mentioned in paragraph (b).

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in interference with the performance of an act authorised under section 97; and

- (c) the person is reckless in relation to the result mentioned in paragraph (b).

Maximum penalty: 100 penalty units.

100 Wasting water

- (1) A person commits an offence if:

- (a) the person intentionally engages in conduct; and
- (b) the conduct results in:
- (i) more water being used than is reasonably necessary for the immediate purpose for which the water is taken; or
 - (ii) an unnecessary or excessive flow or flood of water; or
 - (iii) water being taken without adequate control or supervision of its taking.

Maximum penalty: 50 penalty units.

- (2) Strict liability applies to subsection (1)(b).

101 Obstruction of authorised officer

- (1) A person commits an offence if:

- (a) the person intentionally obstructs another person; and
- (b) the other person is an authorised officer; and
- (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).

- (3) In this section:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

obstruct includes hinder, resist, delay and threaten.

Division 4 Criminal liability for offences

102 Liability of occupier

- (1) An occupier of land must take reasonable steps and exercise due diligence, having regard to the nature and extent of the occupation, to prevent an offence under this Act occurring on the land.
- (2) An occupier of land is taken to have committed a relevant offence if:
 - (a) a person (the **offender**) commits a relevant offence; and
 - (b) the offence occurs wholly or partly:
 - (i) on or below the surface of the land or part of the land; or
 - (ii) on or in a waterway that is immediately adjacent to the land; or
 - (iii) on or in the bed or banks of a waterway that is immediately adjacent to the land.
- (3) It is a defence to a prosecution for an offence taken to have been committed under subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).
- (5) This section does not affect the liability of the offender.
- (6) This section applies whether or not the offender is prosecuted for, or found guilty of, the relevant offence.
- (7) In this section:

relevant offence means an offence against section 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) or 68(1).

102A Liability of owner

- (1) For section 102, an owner of land is taken to be an occupier of the land unless the owner proves that at the time the offence was committed:
 - (a) the owner was not an occupier of the land; and
 - (b) the occupier was not an associated person of the owner.

(2) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (1).

(3) In this section:

associated person means an employee, agent, licensee, contractor or subcontractor.

102B Criminal liability of executive officer of body corporate

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a declared provision (a **relevant offence**) and the officer was reckless about whether the contravention would happen; and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

(2) Strict liability applies to subsection (1)(b).

(3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.
- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (7) In this section:

declared provision means:

- (a) section 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) or 68(1); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

102C Criminal liability of executive officer of body corporate – legal burden of proof on defence

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence by contravening a declared provision (a **relevant offence**).

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant:
 - (a) was not in a position to influence the conduct of the body corporate in relation to the contravention; or
 - (b) took reasonable steps to prevent the contravention; or
 - (c) did not know, and could not reasonably have been expected to know, that the contravention would happen.
- (4) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (3).

- (5) In deciding whether the defendant took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:
- (a) any action the defendant took directed towards ensuring the following (to the extent the action is relevant to the contravention):
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the defendant took when the defendant became aware that the contravention was, or could be, about to happen.
- (6) Subsection (5) does not limit the matters the court may consider.
- (7) This section does not affect the liability of the body corporate.
- (8) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the relevant offence.
- (9) In this section:

declared provision means:

- (a) section 40(3), 44(2), 56(2), 59(2) or 66(2); or
- (b) a provision of the Regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

102D Liability of joint approval holder

- (1) If a joint holder of an approval commits an offence against this Act involving contravention of the approval, each other joint holder of the approval is taken to have committed the offence.

- (2) It is a defence to a prosecution for an offence taken to have been committed under subsection (1) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.
- (3) The defendant has a legal burden of proof in relation to a matter mentioned in subsection (2).

- (4) In this section:

approval means a licence, permit or other authorisation granted under this Act.

37 Part 10, Division 5 heading and section 104A inserted

After section 104

insert

Division 5 Legal proceedings

104A Continuing offence

- (1) This section applies if a court has found a person guilty of an offence against this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the offence is charged.
- (3) If the offence continues after the person is found guilty, the court may:
 - (a) find the person guilty of a further offence; and
 - (b) in addition to any penalty imposed for the further offence – impose a penalty not more than one-tenth of the maximum penalty prescribed for that offence for each day during which the offence continues after the day the person was first found guilty.
- (4) 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.

38 Sections 105B and 105C inserted

After section 105A, in Part 10

insert

105B Additional orders on finding of guilt

If a person is found guilty of an offence against this Act, the court may, in addition to any penalty that it may impose, and to any other order that it may make under this or another Act, make any of the following orders:

- (a) an order requiring the person to take an action to rectify or mitigate the consequences of the offence;
- (b) an order requiring the person to take an action or to cease taking action that is continuing the offence or exacerbating the consequences of the offence;
- (c) an order that the person pay to the Territory an amount determined by the court to be equal to a fair assessment or estimate of the financial benefit that the person, or an associate of the person, has gained, or can reasonably be expected to gain, as a result of the commission of an offence against this Act.

105C Sentencing matters

- (1) When imposing a penalty on a person for an offence against this Act, the court must have regard to the following to the extent that they are relevant:
 - (a) the impact of the offence on other persons' rights under this Act;
 - (b) the market value of any water that has been lost, misused or unlawfully taken because of the commission of the offence;
 - (c) the extent of the harm caused or likely to be caused to the environment by the commission of the offence;
 - (d) the practical measures that may be taken to prevent, control, abate or mitigate that harm;
 - (e) the extent to which the person could reasonably have foreseen the harm caused or likely to be caused to the environment by the commission of the offence;

- (f) the extent to which the person had control over the causes of the offence;
 - (g) the person's intentions in committing the offence;
 - (h) whether, in committing the offence, the person was complying with orders from an employer or supervising employee.
- (2) Subsection (1) does not limit the matters the court may consider.

39 Part 12 heading inserted

After section 108

insert

Part 12 Transitional matters for Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010

40 Section 109 heading replaced

Section 109, heading

omit, insert

109 Transitional matters for *Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010*

41 Part 13 heading inserted

After section 109

insert

Part 13 Transitional matters for Water Amendment Act 2007

42 Section 110 heading replaced

Section 110, heading

omit, insert

110 Existing water extraction licence application

43 Part 14 heading inserted

After section 110

insert

Part 14 Transitional matters for Water Amendment Act 2010**44 Part 15 inserted**

After section 111

insert

Part 15 Transitional matters for Water Legislation Amendment Act 2018**112 Definitions**

In this Part:

commencement means the commencement of the *Water Legislation Amendment Act 2018*.

former Act means this Act as in force immediately before the commencement.

hydraulic fracturing means the process of injecting fluid at high pressure into a hole in the ground to extract shale gas from subterranean rock.

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

transition period means the period of 6 months on and from the commencement.

113 Application to mining and petroleum activity

The former Act continues to apply in relation to a mining activity or petroleum activity if:

- (a) the activity is not related to hydraulic fracturing; and
- (b) the activity involves interfering with a waterway, taking surface water, taking ground water, bore work or recharging an aquifer; and

- (c) the activity is conducted in accordance with:
 - (i) a mining management plan approved under the *Mining Management Act*, or
 - (ii) an environment management plan approved under the *Petroleum Act*, and
- (d) the activity started:
 - (i) before the end of the transition period; or
 - (ii) after the transition period, but the application for the management plan was made before the end of the transition period and was approved without change.

114 Licences, permits and other authorisations

- (1) A licence, permit or other authorisation granted before the commencement continues in force until it expires or is surrendered or revoked.
- (2) A construction permit granted under section 41 of the former Act continues in force and is taken to be a permit to interfere with a waterway mentioned in section 41.
- (3) A bore construction permit granted under section 57 of the former Act continues in force and is taken to be a permit to carry out bore work mentioned in section 57.

Note for section 114

No licences, permits or authorisations were granted for petroleum activity under the former Act.

115 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the *Water Legislation Amendment Act 2018*, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before commencement, the offence is taken to have been committed before commencement.

45 Act further amended

The Schedule has effect.

Part 3 Amendment of Water Regulations

46 Regulations amended

This Part amends the *Water Regulations*.

47 Regulation 2A amended (Definitions)

Regulation 2A

insert (in alphabetical order)

infringement notice, see regulation 20.

infringement notice offence, see regulation 19(1).

prescribed amount, see regulation 19(2).

48 Regulation 4 amended (Review of action or decision of controller)

(1) Regulation 4, heading

omit

controller

insert

Controller

(2) Regulation 4(1)

omit, insert

(1) An application under section 30 of the Act:

(a) must be in accordance with the approved form; and

(b) for review of a decision to give a remediation notice – must be made within 14 days after the day the notice is given; and

(c) for review of another decision or action – must be made within 30 days after the day the applicant is notified of the decision or action.

49 Regulation 6 amended (Permit to construct or alter works)

- (1) Regulation 6, heading

omit

construct or alter works

insert

interfere with waterway

- (2) Regulation 6(1)

omit

construct or alter a dam, water storage or water control structure (a ***permit to construct or alter works***)

insert

interfere with a waterway

- (3) Regulation 6(2)

omit, insert

- (2) The Controller may publish notice of the application in a newspaper circulating in the locality where the interference with the waterway is proposed to occur.

- (4) Regulation 6(3)(c), (4), (5) and (6)

omit

to construct or alter works

- (5) Regulation 6(7)

omit

construct or alter works

insert

interfere with a waterway

50 Regulation 7 amended (Bore construction permit)

- (1) Regulation 7, heading

omit

construction

insert

work

- (2) Regulation 7(1)

omit

construction

insert

work

- (3) Regulation 7(2)

omit

construction

insert

work

51 Regulation 18 replaced

Regulation 18

omit, insert

18 Joint interests

- (1) A joint application for an approval:
- (a) must be in accordance with the approved form for the application; and
 - (b) must be made in the name of each joint applicant; and
 - (c) must include the address of each joint applicant; and
 - (d) must be signed by each joint applicant unless the applicants are using an agent in accordance with paragraph (e); and

- (e) may be made by an agent on the applicants' behalf if the agent has written authorisation to do so and lodges the authorisation with the application.
- (2) After considering the application, any objections to the application and the applicants' replies to those objections, the Controller:
 - (a) must determine whether or not to grant an approval to the applicants jointly and to which applicants to grant the approval; and
 - (b) may include special conditions on the approval that the Controller considers appropriate.
 - (3) It is a condition of every joint approval that each joint holder is jointly and severally:
 - (a) bound by the terms and conditions; and
 - (b) liable for any fee or other amount payable; and
 - (c) bound to comply with all notices and directions given or served under the Act unless the notice or direction relates to any thing, measure or work on the land of one or more but not all of the joint holders.
 - (4) If, under section 93(1) of the Act, the Controller, by notice, amends the terms and conditions of a joint approval, the Controller may specify in the notice the manner in which the respective entitlements of each of the joint holders are amended by the notice.
 - (5) If, under section 93(2) of the Act, the Controller, by notice, revokes or suspends a joint approval, the Controller may specify in the notice the manner in which the respective entitlements of each of the holders are revoked or suspended.
 - (6) If an application, notice or other document is permitted or required to be served on the joint holders of an approval, service on one joint holder is taken to be service on every joint holder.
 - (7) In this regulation:

approval means a licence, permit or other authorisation granted under the Act.

Part 4 Infringement notice offences

19 Infringement notice offence and prescribed amount payable

- (1) An ***infringement notice offence*** is an offence against a provision specified in the Schedule.
- (2) The ***prescribed amount*** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in the Schedule.

20 When infringement notice may be given

If an authorised officer believes on reasonable grounds that a person has committed an infringement notice offence, the officer may give a notice (an ***infringement notice***) to the person.

21 Contents of infringement notice

- (1) The infringement notice must specify the following:
 - (a) the name and address of the person, if known;
 - (b) the date the infringement notice is given to the person;
 - (c) the date, time and place of the infringement notice offence;
 - (d) a description of the offence;
 - (e) the prescribed amount payable for the offence;
 - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to which the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
 - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
 - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;

- (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:
 - (i) suspending the person's licence to drive;
 - (ii) seizing personal property of the person;
 - (iii) deducting an amount from the person's wages or salary;
 - (iv) registering a statutory charge on land owned by the person;
 - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

22 Electronic payment and payment by cheque

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the Fines Recovery Unit's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

23 Withdrawal of infringement notice

- (1) The Controller may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
 - (a) within 28 days after the infringement notice is given to the person; and
 - (b) before payment of the prescribed amount.

24 Application of Part

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.

- (2) Also, this Part does not:
- (a) require an infringement notice to be given; or
 - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
 - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Schedule Infringement notice offences and prescribed amounts

regulation 19

Provision	Prescribed amount in penalty units	
	for individual	for body corporate
Water Act		
section 81(1)	1	3
sections 55(2), 71(1), 79(3) and 96(3)	2	5
sections 37(1), 48(1) and 50(1)	5	
sections 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) and 68(1)	5	10

Part 4 Consequential amendments

Division 1 Mineral Titles Act

52 Act amended

This Division amends the *Mineral Titles Act*.

53 Section 31 amended (Authorised activities under EL)

Section 31(1), at the end

insert

Note for subsection (1)(a)

The right to do bore work is subject to the Water Act.

54 Section 81 amended (Right to use water in title area)

Section 81, at the end

insert

Note for section 81

The rights to do bore work and take or use water are subject to the Water Act.

55 Section 82 amended (Right to use water in title area of EL or EMEL)

Section 82, at the end

insert

Note for section 82

The right to take or use water is subject to the Water Act.

Division 2 Mining Management Act

56 Act amended

This Division amends the *Mining Management Act*.

57 Section 36 amended (Approval of mining management plan and grant of Authorisation)

After section 36(5)(a)(ii)

insert

- (iii) will, as far as practicable, protect any water rights under sections 9, 10, 11, 13, 14, 41, 45, 57, 60, 63 and 67 of the *Water Act* that are held in the vicinity of the mining site; and

58 Section 41 amended (Review and amendment of mining management plan)

Section 41(5), after "Minister"

insert

in accordance with section 36(5)

Division 3 Petroleum Act

59 Act amended

This Division amends the *Petroleum Act*.

60 Section 5 amended (Interpretation)

Section 5(1), definition **well**, after "seismic shot hole"

insert

or a bore as defined in section 4(1) of the *Water Act*

61 Section 29 amended (Rights conferred by exploration permit)

(1) Section 29(2)(d), after "subject to"

insert

the *Water Act*,

(2) Section 29(2)(d)

omit (all references)

his

insert

the permittee's

Division 4 Fines and Penalties (Recovery) Regulations

62 Regulations amended

This Division amends the *Fines and Penalties (Recovery) Regulations*.

63 Schedule 1 amended

Schedule 1

insert (in alphabetical order)

Water Act

Part 5 Repeal of Act

64 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Act further amended

section 45

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 25(1)	Chairman him or her	Chairperson the person
section 26, heading	chairman	Chairperson
section 26	Where Chairman (<i>all references</i>) his or her	If Chairperson the
section 26(b)	his or her duties	the duties of the office
section 28(1)	Chairman he or she shall his or her	Chairperson the Chairperson or member must the Chairperson or member's
section 28(2)	shall (<i>all references</i>) Chairman he or she	must Chairperson the Chairperson or member
section 29(1)	Chairman shall	Chairperson must
section 34(a)	groundwater	ground water
section 36(1)	of his or her own motion	on the Controller's own initiative
section 45, heading	or use	

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 45(1)	of his or her own motion or use	on the Controller's own initiative
section 45(2)	such terms and conditions, if any, as are	any terms and conditions
section 45(3)	shall be such as is	is the
section 45(4)	where so such as is	if the
section 49(1)(a)	of his or her own motion	on the Controller's own initiative
section 51	granted under section 49 shall	must
section 52	shall	must
section 52(a)	granted under section 49	
section 52(b)	he or she	the person
section 54(1)	shall be	is
section 54(2)	shall as are prescribed.	
section 54(2)(a)	be constituted by a chairman and such	is constituted by a chairperson and the prescribed

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 54(2)(b)	whole paragraph	(b) has powers and functions as prescribed.
section 54(3)	chairman shall	chairperson must
sections 60(1) and 67(1)	of his or her own motion	on the Controller's own initiative