



## Explanatory Statement

WATER LEGISLATION AMENDMENT BILL 2018

SERIAL NO. 60

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT AND NATURAL RESOURCES

### EXPLANATORY STATEMENT

#### GENERAL OUTLINE

This Bill amends the *Water Act*.

The purpose of the Bill is to: amend the *Water Act* to enable it to regulate water use by, and associated with, mining and petroleum activities in the same way as applies to all other water users; and to update its offences and penalties for compliance with Part IIAA of the Criminal Code and alignment with national water industry best practice; and to make consequential amendments in the *Water Act*, *Mineral Titles Act*, *Mining Management Act* and *Petroleum Act* to ensure consistent, unambiguous regulation of water use by mining and petroleum projects.

#### NOTES ON CLAUSES

##### Part 1 Preliminary matters

###### Clause 1. Short Title

Provides for the citation of the Bill, when passed, as the *Water Legislation Amendment Act 2018*.

###### Clause 2. Commencement

Establishes when the *Water Legislation Amendment Act 2018* will commence; being on the day fixed by the Administrator by notice in the *Gazette*.

##### Part 2 Amendment of Water Act

###### Clause 3. Act amended

Identifies the *Water Act* as the Act to which Part 2 of the *Water Legislation Amendment Act 2018* applies.

###### Clause 4. Section 4 amended (Interpretation)

Amends the definition of **bore** so as to clearly align the meaning of this term with the specific regulatory powers and functions of the *Water Act* and to avoid all ambiguity of interpretation between the *Water Act*, *Mineral Titles Act*, *Mining Management Act* and *Petroleum Act* and their associated Regulations.

## CABINET-IN-CONFIDENCE

Adds the definition of **bore work** as necessitated by the more efficient expression of section 48 (Doing bore work without a licence), section 56 (Doing bore work without authorisation), section 57 (Grant of a bore work permit) and section 58 (Breach of a permit to do bore work).

Replaces the definition of Chairman with **Chairperson** in line with contemporary practice.

Adds the definition of **drilling licence** for the purposes of section 49.

Adds the definition of **interfere with a waterway** for the purposes of amended section 40; created by the consolidation of sections 15 and 40 of the *Water Act*.

Replaces the definition of mining and petroleum activity with separate definitions of **mining activity** and **petroleum activity** to enable the *Water Act* to be applied to each of these activities in their own right.

Amends the definition of **occupier** to establish limits of liability in relation to offences and to delineate the liability of an occupier from that of an owner and an offender, for the purposes of amended section 102 and new section 102A.

Adds the definition of **remediation notice** for the purpose of the more general power to issue such notices under new section 33A(2).

Amends the definitions of **environment**, **material environmental harm**, **pollute** and **serious environmental harm** for alignment with other related legislation.

Amends the definition of **petroleum site** as necessitated by the replacement of the definition of mining and petroleum activity.

Amends the definition of **waterway** as necessitated by the consolidation of sections 15 and 40 in the creation of the new offence at section 40 for interfering with a waterway.

Removes references to mining and petroleum activities from the description of industry beneficial use at section 4(3)(f) because each activity is to be a beneficial use in its own right.

Adds the meanings of mining activity beneficial use and petroleum activity beneficial use to section 4(3) so as to allow for the inclusion of these beneficial uses where relevant in declaration of beneficial uses in water control districts under section 22A and to allow specific water allocations to these beneficial uses in water allocation plans declared under section 22B.

### **Clause 5. Section 7 amended (Application of Act to mining or petroleum activity)**

Repeals sections 7(1) and 7(3) in order for the *Water Act* to apply to interference with waterways, taking water from waterways, doing bore work, taking ground water from bores and recharging aquifers by mining activities and petroleum activities.

## CABINET-IN-CONFIDENCE

### **Clause 6. Section 8A inserted**

#### Application of Criminal Code

New section to explain that Part IIAA of the Criminal Code applies to offences against the *Water Act* as part of the updating of offences that have remained unchanged since 1992.

### **Clause 7. Section 15 replaced**

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

Replaces section by relocating previous section 40(2), with minor streamlining of wording, more appropriately in Part 2, Division 1, Rights to Natural Water. [Previous sections 15(1), (2) and (3) are consolidated in the new offence of interfering with a waterway at section 40, and previous sections 15(4) and (5) are replaced by new Division 5, Remediation notices section 33A in Part 3 of the *Water Act*.]

### **Clause 8. Section 24 amended (Establishment and constitution of Review Panel)**

Reformats section 24 only, without changing its content.

### **Clause 9. Section 27 replaced**

#### Unauthorised disclosure of confidential information

Replaces section 27 while retaining the intent of the previous section in regard to disclosure of confidential information by members of a statutory body; assigning strict liability and setting the maximum penalty at 200 penalty units or imprisonment for 2 years, consistent with similar provisions in other contemporary legislation. It places the evidentiary burden of proof on the defendant with limitations established by subsection 27(3) and the Criminal Code.

### **Clause 10. Section 31 replaced**

#### Powers of Review Panel

Replaces section 31 while retaining the intent of the previous section in regard to the powers of, and responsibilities towards, the Water Resources Review Panel in conducting its business; assigning strict liability and setting the maximum penalty at 200 penalty units or imprisonment for 2 years; consistent with similar provisions in other contemporary legislation.

### **Clause 11. Section 33 replaced**

#### Protection from liability

Replaces section 33 on protection against civil or criminal liability and expands its application to any person exercising powers under the *Water Act*; for consistency with other contemporary legislation.

### **Division 5 Remediation notices**

Adds new Division 5, Remediation notices to Part 3, Administration of the Act; replacing previous sections 15(4) and (5) and expanding the scope for issuing remediation notices to include all infringement notice offences.

## CABINET-IN-CONFIDENCE

### Power to give remediation notices

New section 33A allows for remediation notices to be issued in place of an infringement notice or prosecution, if the offence can be easily rectified and the person should be given the opportunity to do that.

### Requirements for remediation notice

New section 33B sets out the requirements for remediation notices.

### Failure to comply with remediation notice

New section 33C establishes the offence of failing to comply with a remediation notice, which is assigned strict liability. Maximum penalties are set at the same level as those which apply to the offence for which the remediation notice was issued. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

### Power to take action to recover costs

New section 33D gives the Controller of Water Resources powers to recover reasonable costs against a person who fails to comply with a remediation notice and establishes any debt as a debt to the Territory. The Controller must give the person notice regarding the amount of expenses incurred.

## **Clause 12. Section 37 replaced**

### Breach of water investigation permit

Updates the offence of contravening, or failing to comply with, a term or condition of a water investigation permit; assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

## **Clause 13. Section 39 amended (Access to confidential information)**

Updates subsection 39(4), expanding the scope of the offence for disclosure of confidential information by any person obtaining such information while performing functions for the administration of the *Water Act*; assigning strict liability and setting the maximum penalty at 200 penalty units or imprisonment for 2 years, consistent with similar provisions in other contemporary legislation. It places the evidentiary burden of proof on the defendant with limitations established by subsection 39(4B) and the Criminal Code.

**Clause 14. Section 40 replaced**

Interfering with waterway without authorisation

Establishes a new offence of interfering with a waterway, through consolidation and updating of previous sections 15(1), (2), (3) and (6) and previous sections 40(1), (2) and (3), including elements of strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring. The existence of a structure or obstruction capable of interfering with a waterway can be given as evidence that an offence was committed. The power of the Minister to exempt categories or classes of interference with a waterway from the application of the *Water Act* are retained at section 40(10) to allow practical regulation of this offence on the basis of risk assessment.

**Clause 15. Section 41 amended (Grant of construction permit)**

Changes the section heading to reflect the change in name of the permit.

Amends sections 41(1) and (2) to reflect contemporary writing style and the change in name of the permit.

Removes section 41(3) because there should not be any limitation on the term for which a permit is granted.

**Clause 16. Section 42 replaced**

Breach of permit to interfere with waterway

Replaces and updates the previous offence with the new offence of breaching a permit to interfere with a waterway, assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 17. Section 44 replaced**

Taking surface water without authorisation

Updates the offence of taking surface water without authorisation, assigning elements of strict liability and setting the maximum penalty at 500 penalty units for the primary offence and 1,000 penalty units or imprisonment for 2 years if the aggravated offence involves intentional conduct and the offender is reckless in regard to outcome. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring. The existence of a channel or other means of taking surface water can be given as evidence that an offence was committed. The power of the Administrator to exempt types of surface water take from the application of the *Water Act* are retained.

**Clause 18. Section 46 replaced**

Breach of licence to take surface water

Updates the offence of breaching a licence to take surface water, assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 19. Section 48 replaced**

Doing bore work without licence

Updates the offence of constructing or altering a bore without holding an appropriate drilling licence or under supervision of an appropriately licensed driller; assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 20. Section 50 replaced**

Breach of drilling licence

Updates the offence of breaching a drilling licence granted under the *Water Act*, assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable precautions and exercised due diligence to prevent the offence occurring.

**Clause 21. Section 53 replaced**

Power to require drilling information and samples

Updates the offence of failure by a licensed driller to provide information or a sample as required by notice from the Controller of Water Resources, assigning strict liability and setting the maximum penalty at 30 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 22. Part 6, Division 3 heading amended**

The heading of Part 6, Division 3 is amended to reflect the new name of the permit from the existing (Construction permits) to new (Bore work permits).

**Clause 23. Sections 55 and 56 replaced**

Power to require information about bore

Updates the offence at section 55 of a land owner or occupier failing to provide information on any bores on the land as required by *Gazette* notice published by the Controller of Water Resources, assigning strict liability and setting the maximum penalty at 30 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

Doing bore work without authorisation

Updates the offence at section 56 when bore construction or alteration is undertaken without a permit granted under the *Water Act*, assigning elements of strict liability and setting the maximum penalty at 500 penalty units for the primary offence and 1,000 penalty units or imprisonment for 2 years if the aggravated offence involves intentional conduct and the offender is reckless in regard to outcome. Legal burden of proof is placed on a defendant. A range of practicality-based defences to prosecution for an offence are provided in addition to reasonable steps having been taken and due diligence exercised by the defendant to prevent the offence occurring.

**Clause 24. Section 57 amended (Grant of bore construction permit)**

Changes the section heading to reflect the name of the new permit replacing the previous permit.

**Clause 25. Section 58 replaced**

Breach of permit to do bore work

Updates the offence at section 58 of breaching a permit to do bore work granted under the *Water Act* assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 26. Section 59 replaced**

Taking ground water without authorisation

Updates the offence at section 59 of taking ground water without authorisation, assigning elements of strict liability and setting the maximum penalty at 500 penalty units for the primary offence and 1,000 penalty units or imprisonment for 2 years if the aggravated offence involves intentional conduct and the offender is reckless in regard to outcome. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring. The existence of pumping equipment or other means for taking water from a bore can be given as evidence that an offence was committed.

**Clause 27. Section 61 replaced**

Breach of licence to take ground water

Updates the offence of breaching a licence to take ground water, assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 28. Section 66 replaced**

Recharging aquifer without authorisation

Updates the offence of recharging an aquifer without authorisation, assigning elements of strict liability and setting the maximum penalty at 500 penalty units for the primary offence and 1,000 penalty units or imprisonment for 2 years if the aggravated offence involves intentional conduct and the offender is reckless in regard to outcome. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring. The existence of aquifer recharging equipment can be given as evidence that an offence was committed.

**Clause 29. Section 68 replaced**

Breach of recharge licence

Updates the offence of breaching a licence to recharge an aquifer, assigning strict liability and setting the maximum penalty at 500 penalty units. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with he/she required to prove that the defendant took reasonable steps and exercised due diligence to prevent the offence occurring.

**Clause 30. Section 69 repealed (Prohibition of waste)**

Repeals section 69 because regulation of unused bores and uncontrolled flow from bores is adequately and most appropriately provided through the Controller of Water Resources' powers available in section 70; and it is not appropriate to allow any person other than a licensed driller to plug, seal or backfill a bore, as required by section 48.

**Clause 31. Section 71 replaced**

Contravention of notice

Updates the offence of failure by a land owner or occupier to take action in regard to a bore on the land as directed by the Controller of Water Resources in a notice served on the land owner or occupier, assigning strict liability and setting the maximum penalty at 50 penalty units. The contents of the notice retain primacy over any licence, permit or consent granted under the *Water Act* or any other Act. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.



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

Updates the offence of intentionally and recklessly constructing, maintaining, repairing, altering, operating or removing public works associated with water resource assessment, water conservation, irrigation, drainage, water based recreation, flood control or other works in connection with administration of the *Water Act*, unless the construction, maintenance, repair, alteration, operation or removal of those public works is in accordance with authorisation made by the Minister or under and in accordance with the *Water Act* or any other Act. Strict liability is assigned to this offence and a maximum penalty is set at 200 penalty units or imprisonment for 2 years.

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

Updates the offence of recklessly using a Northern Territory Government bore without authorisation, assigning strict liability and setting a maximum penalty of 50 penalty units.

**Clause 34. Sections 88 and 89 replaced**

Powers of Controller

Updates the offence at section 88 of a person failing to take such actions in relation to investigation, use, control, protection or administration of water or waste as are required by *Gazette* notice published by the Controller of Water Resources, or as required in a notice by the Controller served on the person; assigning strict liability and setting the maximum penalty of 50 penalty units.

Misleading information

Updates the offence at section 89 of providing misleading information to include knowingly providing misleading information or a document containing misleading information to a person acting in an official capacity associated with administration of the *Water Act*; setting a maximum penalty of 200 penalty units or imprisonment for 2 years. An offence is not committed if in giving such a document, that person points out any misleading aspect and, as far as reasonably possible, assists in remedying the misleading aspect or aspects.

**Clause 35. Section 96 replaced**

Emergency powers to limit rights to take water

Updates the powers of the Minister to issue a *Gazette* notice, notice in a newspaper, notice by radio or television or notice served on the owner or occupier of land to limit rights to take water in emergencies, including the offence of contravening or failing to comply with such a notice; assigning strict liability and setting the maximum penalty at 50 penalty units. The contents of the notice retain primacy over any licence, permit or consent granted under the *Water Act* or any other Act. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she contravened a notice for the reasonable protection of life or property or took reasonable steps and exercised due diligence to prevent the offence occurring.

## CABINET-IN-CONFIDENCE

### **Clause 36. Sections 98 to 102 replaced**

#### Destruction of works

Updates the offence at section 98 of interfering, damaging or destroying any works constructed or used under a licence granted or power conferred under the *Water Act*. The updated and clarified offence is intentionally damaging or destroying such works or intentionally diminishing the benefits required or derived from such works; and assigns strict liability and sets a maximum penalty of 100 penalty units.

#### Interference with rights

Updates the offence at section 99 of interrupting or interfering with the taking of water, discharge or disposal of water or waste or drainage of land under a licence granted or power conferred under this Act or interrupting or interfering with action authorised under section 97 in response to an emergency.

One element of the updated offence is intentionally, recklessly and materially diminishing the enjoyment of a land owner's or occupier's right to take water on and from their land under sections 10, 11 and 14, or through a licence granted under sections 45 or 60, or through another power conferred or arrangement made under the *Water Act*. The other element of the updated offence is intentionally and recklessly interfering with action authorised under section 97. A maximum penalty of 100 penalty units is set for both elements of this offence.

#### Wasting water

Updates the offence at section 100 of wasting water, retaining the elements and intent of previous section 100; assigning strict liability and setting a maximum penalty of 50 penalty units.

#### Obstruction of authorised officer

Updates the offence at section 101 of obstructing authorised officers acting in official capacity under the *Water Act* in line with other contemporary legislation; assigning strict liability and setting a maximum penalty of 200 penalty units or imprisonment for 2 years.

### **Division 4 Criminal liability for offences**

Creates a new Division of the *Water Act* to establish criminal liability for offences.

#### Liability of occupier

New section 102 explains that an occupier of land carries liability in regard to offences committed under the *Water Act* on the occupied land, whether they are committed by the land occupier or by another person. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she took reasonable steps and exercised due diligence to prevent the offence occurring.

#### Liability of owner

New section 102A explains when an owner of land is not taken to be an occupier of land at the time an offence was committed on the land. Legal burden of proof is placed on a defendant.

## CABINET-IN-CONFIDENCE

### Criminal liability of executive officer of body corporate

New section 102B explains, in line with other contemporary legislation, the circumstances in which the executive officer of a body corporate may be liable when the body corporate commits a relevant offence under the *Water Act*; assigning strict liability and setting the maximum penalty as the maximum that may be imposed on an individual for the relevant offence. This new section also sets out the matters to be considered by a court in deciding whether the executive officer took reasonable steps to prevent the relevant offence being committed.

### Criminal liability of executive officer of body corporate – legal burden of proof of evidence

New section 102C sets out the defence to prosecution available to an executive officer of a body corporate that commits a relevant offence under the *Water Act*; including not being able to influence the body corporate's conduct in committing the offence; or taking reasonable steps to prevent the offence being committed; or not knowing and not reasonably expected to know that the offence would be committed. This new section also sets out the matters to be considered by a court in deciding whether or not the executive officer took reasonable steps to prevent the relevant offence being committed.

### Liability of joint approval holder

New section 102D introduced to clarify that the liability of joint holders of a licence, permit or other authorisation given under the *Water Act* when the licence, permit or authorisation is contravened. Legal burden of proof is placed on a defendant. A defence to prosecution for an offence is provided, with the defendant required to prove that he/she contravened a notice for the reasonable protection of life or property or took reasonable steps and exercised due diligence to prevent the offence occurring.

## **Clause 37. Part 10, Division 5 heading and section 104A inserted**

### **Division 5 Legal proceedings**

New Division 5, Legal proceedings established in Part 10 General provisions for the Act.

### Continuing offence

New section 104A has been introduced to allow a court to impose continuing offences upon conviction for any of the offences that are being updated or introduced. A penalty of no more than one-tenth of the maximum prescribed for the offence may be imposed for each day the offence continues after the charge was brought. In addition, a penalty of no more than one-tenth of the maximum prescribed for the offence may be imposed for each day the offence continues after the day the offender was first found guilty.

## **Clause 38. Sections 105B and 105C inserted**

### Additional orders on finding of guilt

New section 105B introduced to allow a court to order convicted offender to cease continuation of the offence; or rectify, mitigate or cease exacerbating the consequences of the offence; or pay to the Territory an amount estimated to be the financial benefit gained or expected by the offender as a result of committing the offence.

Sentencing matters

New section 105C introduced to provide matters that must be taken into account by a court when imposing a penalty on a convicted offender. Other matters may be taken into account as the court considers relevant.

**Clause 39. Part 12 heading inserted**

Establishes a new Part 12 heading, 'Transitional matters for *Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010*' dealing with the specific transitional matters introduced in 1993, 2003 and 2010.

**Clause 40. Section 109 heading replaced**

Amends the heading of section 109 to 'Transitional matters for *Statute Law Revision Act (No. 2) 1993, Water Amendment Act 2003 and Mineral Titles (Consequential Amendments) Act 2010*', to reflect the specific transitional matters covered in the section.

**Clause 41. Part 13 heading inserted**

Establishes a new Part 13 heading, 'Transitional matters for *Water Amendment Act 2007*'.

**Clause 42. Section 110 heading replaced**

Amends the heading of section 110 to '110 Existing water extraction licence application' to reflect the changes to that section.

**Clause 43. Part 14 heading inserted**

Establishes new heading, 'Part 14, Transitional matters for *Water Amendment Act 2010*'.

**Clause 44. Part 15 inserted**

Establishes new Part 15, Transitional matters for *Water Legislation Amendment Act 2018*.

**Part 15, Transitional matters for Water Legislation Amendment Act 2018**

Definitions

New section 112 Definitions has been introduced to provide definitions for 'commencement', 'former Act' and 'transition period', relevant to the understanding of new sections 113, 114 and 115 in this Part.

Application to mining and petroleum activity

New section 113 explains the transitional arrangements for applying the *Water Act* to mining activities and petroleum activities following the repeal of sections 7(1) and 7(3). Under these arrangements, the amended Act will apply from commencement to petroleum activities related to onshore unconventional shale gas activities involving well stimulation. For all other petroleum activities and mining activities, the amended Act will apply upon as new, renewed or amended petroleum environment management plans and mining management plans are approved.

Licences, permits and other authorisations

New section 115 explains that licences, permits and other authorisations given before commencement of the *Water Legislation Amendment Act 2018* will continue until they expire or are surrendered or revoked; and that if these licences, permits and authorisations are contravened after commencement of that Act then the offence provisions as amended by that Act will apply.

Offence provisions – before and after commencement

New section 114 explains that offences committed after commencement of the *Water Legislation Amendment Act 2018* will be subject to the amended offences; and that offences, and any conduct constituting an offence, that were committed before that Act commences will be subject to the offences that were in force before that Act commenced.

**Clause 45. Act further amended**

Gives effect to the schedule and the range of typographical corrections for the *Water Act* as set out in the schedule titled 'Act further amended'.

**Part 3 Amendment of Water Regulations**

**Clause 46. Regulations amended**

Explains that Part 3 is concerned with amendments to the Water Regulations (only).

**Clause 47. Regulation 2A amended (Definitions)**

Adds definitions of new terms into the Water Regulations, relevant to amendments made to subsequent regulations (below).

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

Amends Regulation 4(1) to fix the heading to correct a typographical error.

Updates Regulation 4(1) to require applications for review of a decision to give a remediation notice to be made within 14 days after the notice is given; to distinguish from the 30-day time limit for applications for review of other decisions made under the *Water Act* and in recognition that a shorter time limit is appropriate for requesting review of notices to take remedial action following committal of an infringement notice offence.

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

Amends Regulation 6 heading to reflect the change in name from 'permit to construct or alter works' to 'permit to interfere with a waterway'.

Makes further updates to Regulation 6 similar to the above to reflect the same change throughout the regulation.

**Clause 50. Regulation 7 amended (Bore construction permit)**

Amends Regulation 7 heading to accommodate the change in name from 'bore construction permit' to 'permit to do bore work'.

Makes further updates to Regulation 7 similar to the above to reflect the same change throughout the regulation.

**Clause 51. Regulation 18 replaced**

Joint interests

Removes regulation 18(3)(c) having introduced it in amended form at section 102D in the *Water Act*; and reformats the remainder of regulation 18 to a more contemporary format.

**Part 4 Infringement notice offences**

Establishes new Part 4, Infringement notice offences.

Infringement notice offence and prescribed amount payable

Establishes new regulation 19 to define ***infringement notice offence*** and ***prescribed amount*** for the purposes of the infringement notice scheme subsequently provided through new regulations 20, 21, 22, 23 and 24 and the new Schedule that identifies each infringement notice offence and its associated prescribed amount.

When infringement notice may be given

Establishes new regulation 20 to explain that an authorised officer may give an infringement notice to a person the officer believes has committed an infringement notice offence.

Contents of infringement notice

Establishes new regulation 21 to specify the contents of an infringement notice, including an appropriate form to elect that the matter be dealt with by a court rather than through expiation by paying the prescribed fee to the defined enforcement agency set out in the *Fines and Penalties (Recovery) Act*.

Electronic payment and payment by cheque

Establishes new regulation 22 to enable the payment of the prescribed fee either electronically or by cheque.

Withdrawal of infringement notice

Establishes new regulation 23 to allow the Controller of Water Resources to withdraw an infringement notice that has been issued to a person by giving written notice to the person within 28 days of the infringement notice having been given to the person and before payment of the prescribed amount.

Application of Part

Establishes new regulation 24 which explains that proceedings for an infringement notice offence may begin or continue while ever the prescribed fee has not been paid (expiated). It also provides that an infringement notice does not have to be given. The fact that an infringement notice has not been given does not affect the liability to be prosecuted for an offence. If multiple infringement notices have given for the same offence, a person may expiate the offence by paying the prescribed fee as required in any of the notices.

**Schedule      Infringement notice offences and prescribed amounts**

Relates to regulation 19 in that it establishes a new Schedule which identifies which offences are infringement notice offences and assigns the respective prescribed fees for an individual and for a body corporate.

**Part 4            Consequential amendments**

**Division 1       Mineral Titles Act**

**Clause 52.       Act amended**

Explains that this Division is concerned with amendments to the *Mineral Titles Act* only.

**Clause 53.       Section 31 amended (Authorised activities under EL)**

Inserts a note at the end of section 31 of the *Mineral Titles Act* to clarify that the right of a mineral exploration licence holder to do bore work in the title area is subject to the *Water Act*; as necessary with the repeal of section 7(3) of that Act.

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

Inserts a note at the end of section 81 of the *Mineral Titles Act* to clarify that the rights of a mineral title holder to do bore work or take or use water in the title area are subject to the *Water Act*; as necessary with the repeal of section 7(3) of the *Water Act*.

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

Inserts a note at the end of section 82 of the *Mineral Titles Act* to clarify that the rights of a mineral title holder to take or use water in the title area of an exploration licence or an extractive mineral exploration licence are subject to the *Water Act*; as necessary with the repeal of section 7(3) of *Water Act*.

**Division 2       Mining Management Act**

**Clause 56.       Act amended**

Explains that this Division is concerned with amendments to the *Mining Management Act* only.

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

Adds the requirement in section 36(5)(a) of the *Mining Management Act* that, before approving a mining management plan, the Minister must be satisfied that water rights held under the *Water Act* in the vicinity of the mining site will be protected.

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

Ensures that the Minister, in approving an amended mining management plan under section 41 of the *Mining Management Act*, must be satisfied that water rights held under the *Water Act* in the vicinity of the mining site will be protected.

## CABINET-IN-CONFIDENCE

### **Division 3      Petroleum Act**

#### **Clause 59.      Act amended**

Explains that this Division is concerned with amendments to the *Petroleum Act* only.

#### **Clause 60.      Section 5 amended (Interpretation)**

Amends the definition of a well, in order to clarify that a well under the *Petroleum Act* does not include a water bore as defined in section 4(1) of the *Water Act* and which are regulated only under the *Water Act*.

#### **Clause 61.      Section 29 amended (Rights conferred by exploration permit)**

Clarifies that the use of water resources on a petroleum exploration permit area are subject to the *Water Act*; as necessary with the repeal of section 7(3) of that Act.

### **Division 4      Fines and Penalties (Recovery) Regulations**

#### **Clause 62.      Regulations amended**

Explains that this Division is concerned with amendments to the *Fines and Penalties (Recovery) Regulations* only.

#### **Clause 63.      Schedule 1 amended**

Establishes the *Water Act* as an Act to which the *Fines and Penalties (Recovery) Act* applies; by adding the *Water Act* to Schedule 1 of the latter Act, in order that the infringement notice scheme introduced into the *Water Act* can operate.

### **Part 5            Repeal of Act**

#### **Clause 64.      Repeal of Act**

Allows the amended *Water Act* to take effect by repealing the *Water Legislation Amendment Act 2018* on the day after it commences.