

# **WATER BOARD ACT 1987 No. 141**

## **NEW SOUTH WALES**



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**WATER BOARD ACT 1987 No. 141**

**NEW SOUTH WALES**



**Act No. 141, 1987**

An Act to constitute the Water Board; to confer and impose on it functions relating to the supply of water and the provision of sewerage and drainage services; and for other purposes. [Assented to 16 June 1987]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1  
PRELIMINARY

**Short title**

1. This Act may be cited as the "Water Board Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.  
(2) Except as provided by subsection (1), this Act shall commence on the commencement of the Water Supply Authorities Act 1987.

**Interpretation**

3. (1) In this Act—

"area", in relation to the Board, means the area of operations of the Board;

"authorised person" means an employee or other person acting on behalf of the Board;

"Board" means the Water Board;

"charging year", in relation to the Board, means—

- (a) the period of 12 months declared by an order in force under section 28 to be the charging year for the Board; or
- (b) if the charging year is changed under that section by a further order—the period between the end of one charging year and the beginning of the next;

"council" means the council of a city, municipality or shire;

"development", in relation to land, means—

- (a) the erection of a building on the land;
- (b) the carrying out of work in, on, over or under the land;
- (c) the use of the land or of a building or work on the land; or

(d) the subdivision of the land;

“development area” means an area of land declared by an order in force under section 28 to be a development area;

“drainage area” means an area of land declared by an order in force under section 28 to be a drainage area;

“employee” means a person employed under section 9;

“flood plain” means an area of land declared by an order in force under section 28 to be a flood plain;

“land” includes an easement or right over, through or above any land;

“lease” includes a licence or permit;

“member” means a member of the Board;

“meter” includes any measuring device;

“Ministerial Corporation” means the Water Administration Ministerial Corporation constituted by the Water Administration Act 1986;

“owner”, in relation to land, includes every person who jointly or severally at law or in equity—

(a) is entitled to the land for an estate of freehold in possession;

(b) is a person to whom the Crown has contracted to sell the land under the Crown Lands Consolidation Act 1913 or any other Act relating to alienation of land of the Crown; or

(c) is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,

and, in relation to land of the Crown, means the Crown;

“public road” means a road the public are entitled to use, whether or not it is—

(a) dedicated as a highway by the Crown or any person; or

(b) notified, proclaimed or dedicated as a road or highway under an Act;

“regulations” means regulations under this Act;

“river management area” means an area of land declared by an order in force under section 28 to be a river management area;

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“service charge” means—

- (a) a water service charge;
- (b) a sewerage service charge;
- (c) a drainage service charge;
- (d) a loan service charge;
- (e) a developmental works service charge;
- (f) a flood mitigation service charge;
- (g) a river management service charge; or
- (h) a special industry service charge,

that may be levied under Part 4;

“special area” means an area of land declared under section 21 to be a special area;

“special industry” means an industry declared by an order in force under section 28 to be a special industry;

“statutory body” means a corporation that—

- (a) is not a company within the meaning of the Companies (New South Wales) Code; and
- (b) is not a society within the meaning of the Co-operation Act 1923, and is incorporated by or under an Act other than this Act;

“Water Supply Authority” means a Water Supply Authority constituted under the Water Supply Authorities Act 1987.

(2) A reference in this Act to—

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land;
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of a work;
- (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be work for the purposes of this Act;

(d) the subdivision of land is a reference to—

- (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act 1919;
- (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
- (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,

and includes a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act 1973 or Division 1 of Part 2 of the Strata Titles (Leasehold) Act 1986; and

- (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.
- (3) In this Act—
- (a) a reference to a function includes a reference to a power, authority and duty; and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

### **Objects**

4. (1) The objects of this Act are—

- (a) to ensure that the water and related resources within the area of the Board are allocated and used in ways which are consistent with environmental requirements and provide the maximum long-term benefit for the area and the State; and
- (b) to provide water and related services to meet the needs of users in a commercial manner consistent with the overall policies of the Government.

(2) In exercising its functions, the Board may have regard to such matters as it considers would be appropriate for the attainment of its objects including, but without limiting the generality of the foregoing—

- (a) promotion of efficient use of water resources;



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- (b) the necessity for integrated catchment management and planning of land use and the use of water resources;
  - (c) public interest and community needs;
  - (d) conservation of natural resources;
  - (e) pollution control and prevention; and
  - (f) efficient use of human, material and financial resources.
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**PART 2****THE WATER BOARD****The Board**

5. (1) There is constituted by this Act a corporation under the corporate name of the "Water Board".

(2) The Board shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

**Membership of the Board**

6. (1) The Board shall consist of 7 members, of whom—

- (a) 1 shall be the Managing Director; and
- (b) 6 shall be appointed by the Governor.

(2) The appointed members shall, in and by the instruments by which they are appointed, be appointed as part-time members.

(3) One of the part-time members shall be a person elected in the manner prescribed by the regulations.

(4) Schedule 1 has effect with respect to the members.

**Managing Director**

7. (1) The Governor may appoint a Managing Director of the Board.

(2) The Managing Director—

- (a) is responsible, as the chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any directions of the Board; and

(b) shall have and may exercise such other functions as are conferred or imposed on the Managing Director by or under this or any other Act.

(3) Schedule 2 has effect with respect to the Managing Director.

#### **Deputy Managing Director**

8. (1) The Governor may appoint a Deputy Managing Director of the Board.

(2) The Deputy Managing Director shall have and may exercise such functions (excluding those of the Managing Director as a member of the Board) as the Managing Director determines.

(3) During the illness or absence of the Managing Director, or during a vacancy in the office of Managing Director, the Deputy Managing Director shall have and may exercise the functions of the Managing Director including—

(a) functions as a member of the Board; and

(b) functions delegated to the Managing Director.

(4) A function exercised by the Deputy Managing Director under this section shall be deemed to have been exercised by the Managing Director.

(5) Schedule 2 has effect with respect to the Deputy Managing Director.

#### **Employees**

9. The Board may employ such persons as are necessary to enable it to exercise its functions.

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### **PART 3**

#### **FUNCTIONS OF THE BOARD**

##### **DIVISION 1—*General***

#### **Exercise of functions by the Board**

10. (1) The Board—

(a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act; and

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- (b) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it) be subject to the control and direction of the Minister.

(2) If a function conferred or imposed on the Board by this Act is inconsistent with a function conferred or imposed on the Board by or under another Act, this Act prevails.

**Exercise of right of Ministerial Corporation**

11. If, for the purpose of exercising its functions it would be necessary for the Board to exercise the right conferred on the Ministerial Corporation by section 12 of the Water Administration Act 1986, the Board may exercise the right on behalf of the Ministerial Corporation.

**General functions of the Board**

12. (1) The Board may, for the purposes for which it is constituted—
- (a) on behalf of the Ministerial Corporation, manage water resources and related resources;
  - (b) provide, construct, operate, manage and maintain buildings and works, and systems and services for impounding, conserving and supplying water, for sewerage and drainage services and for the disposal of trade waste and waste water;
  - (c) purchase, exchange, take on hire or lease, hold, dispose of, manage, use or otherwise deal with real or personal property;
  - (d) enter into contracts;
  - (e) generate revenue by levying and recovering charges, fees and capital contributions;
  - (f) donate money, and otherwise provide, for community, recreation, welfare or education purposes;
  - (g) provide assistance to mitigate the effects of flood, drought, fire or other emergency or hardship, including assistance with funds, personnel or equipment or by the operation of works;
  - (h) effect and maintain insurances; and
  - (i) do anything incidental to the achievement of its objects.

(2) To an extent not inconsistent with its other functions, the Board may provide and manage for the purpose of public recreation and ancillary purposes any of its land or buildings.

(3) No action or proceeding may be brought—

- (a) to compel the Board to supply water; or
- (b) to recover any penalty or damages from the Board in respect of a failure to supply water.

**Area of operations**

13. (1) The area of operations of the Board is such as may be prescribed for the Board.

(2) If a regulation so provides, the Board has, and may exercise, in its area or a specified part of its area—

- (a) only such of the functions of the Board as are specified in the regulation; or
- (b) all functions of the Board other than functions specified in the regulation.

(3) A regulation made for the purposes of subsection (2) may make provision for or with respect to—

- (a) matters affecting revenue, assets, rights, liabilities and employees of the Board; and
- (b) procedures to be adopted for the purposes of paragraph (a).

(4) Within the area of the Board, a function under this Act may be exercised only by the Board unless—

- (a) the function is exercisable by the Ministerial Corporation;
- (b) the function is exercised by a Water Supply Authority with the consent of the Minister; or
- (c) this Act provides otherwise.

(5) With the consent of the Minister, the Board may exercise a function outside its area.

(6) Until a regulation is made for the purposes of subsection (1), the area of the Board is the same as it was immediately before the commencement of this Act.

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**Assistance to Water Supply Authority**

**14.** The Board may, at the request of a Water Supply Authority and with the consent of the Minister, exercise any of the Board's functions in a part of its area in respect of which the Authority may exercise different functions, even if, but for the request, the Board would not have exercised the function.

**Entry on land to carry out works**

**15. (1)** The Board may, by its employees and authorised persons—

- (a) enter and occupy land and there exercise any of its functions, including the carrying out of any work on, below or above the surface of the land;
- (b) divert water from, or alter the course of, a stream; and
- (c) impound or take water on, in or under the surface of any land.

**(2)** The Board may, in accordance with the regulations, attach a ventilating shaft, pipe or tube for a sewer to the wall of a building.

**(3)** The Board may remove or use anything dug up or obtained in the exercise of its powers under this section.

**(4)** The Board—

- (a) shall do as little damage as practicable in exercising its powers under this section; and
- (b) shall compensate all persons who suffer damage by the exercise of the powers,

in relation to the land entered.

**(5)** Compensation may be made by reinstatement or repair, by construction of works or by payment.

**(6)** If the Board provides a sewer, compensation is required only if—

- (a) the sewer causes injury to, or interference with, a building or other structure; or
- (b) a manhole or main ventilator is constructed on the land.

**(7)** A claim for compensation—

- (a) is ineffective unless made in writing not later than 6 months after the damage was suffered; and

- (b) in the absence of agreement on the compensation, shall be dealt with as if it were a claim for compensation for the acquisition of land for public purposes under the Public Works Act 1912.

**Entry on land for inspections**

**16. (1)** The Board may, by its employees or by authorised persons—

- (a) enter land or a building other than a dwelling-house; or
- (b) enter a dwelling-house at any reasonable time during daylight.

**(2)** The Board shall not exercise the powers conferred by subsection (1) except for the purpose of finding out—

- (a) the character and condition of the land or building;
- (b) the condition or location of any pipe, sewer, drain, channel, fitting or other work used in connection with the land or building;
- (c) whether any use, consumption, waste, misuse or undue consumption of water supplied by the Board is occurring; or
- (d) whether any offence against this Act has been, or is being, committed.

**(3)** The Board shall not exercise the powers conferred by subsection (1) unless—

- (a) reasonable written notice of its intention to do so has first been given to the owner or occupier of the land, building or dwelling-house; or
- (b) a prescribed employee authorises the entry after forming the opinion that the giving of the notice would cause undue delay.

**(4)** Reasonable force may be used to enter land, or a building other than a dwelling-house, under this section.

**(5)** If the powers of entry under this section are exercised—

- (a) without notice being given; or
- (b) by force,

the Board shall, without delay, notify such persons as it considers appropriate of the action taken.

**(6)** The Board may, by notice in writing given to the owner or occupier of the land or building, require all defective or improper work discovered on an inspection to be repaired, altered or removed within 24 hours or such longer period as is stated in the notice.

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(7) If a notice under subsection (6) is not complied with, the Board may, by its employees or authorised persons, enter the land, building or dwelling-house and repair, alter or remove the defective or improper work.

(8) If a notice is given under subsection (6)—

- (a) the costs and expenses of the entry and inspection by the Board; and
- (b) if the notice is not complied with, the costs and expenses of the Board in acting under subsection (7),

are recoverable from the owner or occupier as a service charge.

(9) If, on an inspection under this section—

- (a) no defective or improper work is discovered;
- (b) no waste, misuse or undue consumption of water supplied by the Board is occurring; and
- (c) no offence against this Act is discovered,

the Board shall make good any damage or disturbance caused by it for the purposes of the inspection.

(10) In exercising its powers under this section, the Board shall do as little damage as practicable.

**Power to break up roads**

17. (1) The Board may, on giving the prescribed notices, open and break up—

- (a) the soil and pavement of a public road or public reserve; and
- (b) any sewer, drain or tunnel in or under a public road or public reserve,

for the purpose of exercising its functions.

(2) The statutory body having the control and management of a public road or public reserve may, as prescribed, require the Board to comply with conditions in exercising its powers under subsection (1), including conditions for restoration of the surface and removal of rubbish.

(3) If a public road or public reserve is damaged by a leakage from, or a bursting of, a main of the Board, the statutory body having the control and management of the public road or public reserve may require the Board to make good the damage without delay.

**(4) If the Board fails—**

- (a) to comply with a condition in force under subsection (2); or
- (b) to comply with a requirement under subsection (3),

the statutory body affected by the failure may remedy it and recover the cost of doing so as a debt owed to the statutory body by the Board.

**Altering position of conduit of another**

**18. (1) If—**

- (a) the Board, in order to exercise its functions, needs an alteration to be made in the position of a conduit owned by another person; and
- (b) the alteration would not permanently damage the conduit or adversely affect its operation,

the Board may serve on the person a written notice that complies with subsection (2).

**(2) A notice must—**

- (a) specify the alteration needed;
- (b) require the alteration to be made within a reasonable time stated in the notice; and
- (c) include an undertaking by the Board to pay the reasonable cost of the alteration.

**(3)** If the alteration is not made as required by the notice, the Board may make the alteration in such a manner as not to damage the conduit permanently or adversely affect its operation on completion of the alteration.

**(4)** In this section, “conduit” means anything that is in or under a public road and is used for the conveyance of a substance, energy or signals.

**Obstruction of works**

**19. (1)** If a person places a structure or other thing in or near a work of the Board in such a manner as to interfere with the work, the Board may—

- (a) demolish and remove the structure or other thing;
- (b) repair the work; and
- (c) recover the cost of doing so as a debt owing to the Board by the person who placed the structure or other thing there.



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(2) The Board may apply for and obtain an injunction to prevent a structure or other thing being placed as referred to in subsection (1).

**Finding source of pollution of water supply**

20. (1) If water supplied by the Board is being polluted, the Board may, after the expiration of the prescribed period of notice given to the prescribed persons, dig up the ground and try to find the source of the pollution.

(2) Section 17 applies to the opening of a public road for the purposes of this section in the same way as it applies for other purposes.

(3) If it is found that a person given notice under this section is not responsible for the pollution, the Board shall bear the expenses of—

- (a) the digging, examination, repair and reinstatement of the broken ground; and
- (b) the repair of any damage caused by the Board to the property of the person.

(4) The Board may recover the expenses incurred by it as a debt due to the Board by any person responsible for the pollution.

**Special areas**

21. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare an area of land described in the order to be a special area for the Board.

(2) The Minister may recommend an order only if of the opinion that the exercise of the powers conferred on the Ministerial Corporation by section 12 of the Water Administration Act 1986 in relation to the use, flow and control of water could be adversely affected unless the order is made.

(3) A proclamation of a catchment area in force immediately before the commencement of this Act shall be deemed to be an order in force under this section declaring the area to be a special area.

**Crown land in special areas**

22. (1) Action may not be taken under the Crown Lands Consolidation Act 1913 in respect of land within a special area unless—

- (a) the Board has given its approval in writing; and
- (b) any conditions to which the approval is subject are complied with.

(2) The Board may, in a special area, exercise the functions of a trustee appointed under Part IIIB of the Crown Lands Consolidation Act 1913 without being appointed as such.

**Exercise of certain functions in special areas**

**23. (1)** A public agency may not, in relation to land within a special area, exercise functions other than functions under this Act unless notice is first given as prescribed to the Board.

(2) On receipt of such a notice, the Board may make such representations to the public agency as it thinks fit.

(3) A public agency may not exercise functions contrary to any such representations made by the Board unless—

- (a) not less than 14 days' notice has been given to the Board of the functions intended to be exercised; and
- (b) that period has expired without the matter being referred to the Minister as a dispute for determination under section 64.

(4) In this section, "public agency" means—

- (a) the Governor;
- (b) a Minister of the Crown; or
- (c) a statutory body.

**DIVISION 2—*Construction of works for developers***

**Definitions**

**24.** In this Division—

"additional works agreement" means an agreement referred to in section 25;

"approval to which this Division applies" means—

- (a) an approval under Part XI of the Local Government Act 1919 for the erection of a building, being an approval belonging to a class of approvals as prescribed for the purposes of this paragraph;
- (b) an approval under Part XII of the Local Government Act 1919 for the subdivision of land;

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- (c) a development consent under Part IV of the Environmental Planning and Assessment Act 1979 for the carrying out of development of a kind prescribed for the purposes of this paragraph;

“compliance certificate” means a certificate referred to in section 26;

“developer” means a person to whom an approval to which this Division applies has been given;

“works” includes—

- (a) water mains and water headworks;
- (b) sewer mains and sewage treatment works;
- (c) drainage channels; and
- (d) any works ancillary to the works referred to in paragraph (a), (b) or (c).

**Contracts for the construction of additional works**

25. (1) The Board may enter into an agreement with the owner of any land within its area providing for the construction of such works as may be specified in the agreement.

(2) Such an agreement may provide for—

- (a) the payment to the Board by the owner of the land—
  - (i) of the whole of the cost of the construction of the works referred to in the agreement; or
  - (ii) of such part of that cost as, in the opinion of the Board, is reasonable, having regard to the benefit of the works to that land and any other land that will, in the opinion of the Board, be capable of being served by those works; and
- (b) such other matters as may be prescribed or as may be agreed upon between the Board and the owner of the land.

(3) Any works constructed under such an agreement are the property of the Board.

**Application for compliance certificate**

26. (1) If an approval to which this Division applies has been given with respect to any land within the Board's area, the developer may apply to the Board for a certificate to the effect that the development complies with the requirements of this Division.

(2) An application under this section shall be accompanied by a copy of the approval.

**Issue of compliance certificates**

27. (1) If an application is made to the Board under section 26—

(a) the Board may grant the developer a compliance certificate with respect to the proposed development;

(b) if—

(i) any works constructed, or to be constructed, under an additional works agreement benefit, or will benefit, the land on which the proposed development is to be carried out; and

(ii) the application is made within 25 years after the date of the agreement,

the Board may serve a notice on the developer requiring the developer—

(iii) to pay to the Board such amount as is specified in the notice towards the cost of the construction of those works; or

(iv) to enter into an additional works agreement providing for the construction of such works as may be specified in the notice,

or requiring the developer to do both of those things; or

(c) where the land is not land in respect of which the Board is entitled to serve a notice under paragraph (b)—the Board may serve a notice on the developer requiring the developer to enter into an additional works agreement providing for the construction of such works as may be specified in the notice.

(2) When the Board is satisfied that the requirements of a notice referred to in subsection (1) have been complied with, the Board shall grant the developer a compliance certificate with respect to the proposed development.

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**(3) If—**

- (a) within 60 days after an application is made to the Board under section 26; or
- (b) within such further period as may be approved by the Minister in a particular case, and as is notified to the developer, within the period of 60 days referred to in paragraph (a),

no compliance certificate has been granted to, and no notice referred to in subsection (1) has been served on, the developer, the Board shall, at the developer's request, grant the developer a compliance certificate with respect to the proposed development.

(4) If a notice served under subsection (1) requires payment of an amount referred to in subsection (1) (b) (iii), the requirement shall be deemed to have been complied with if security, in such form as the Board may approve, for the payment of that amount has been lodged with the Board.

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**PART 4****FINANCE****DIVISION 1—Revenue****Orders for purpose of service charges**

**28. (1)** The Governor may, by order published in the Gazette, declare any land described in the order to be a development area for the purposes of this Act.

(2) The Minister may, by order published in the Gazette, declare a period of 12 months to be the charging year for the Board.

(3) The Minister may, by order published in the Gazette, declare any land described in the order to be a drainage area for the purposes of this Act.

(4) The Minister may, by order published in the Gazette, declare any land described in the order to be a flood plain for the purposes of this Act.

(5) The Minister may, by order published in the Gazette, declare any land described in the order to be a river management area for the purposes of this Act.

(6) The Minister may, by order published in the Gazette, declare any industry specified in the order to be a special industry for the purposes of this Act.

### **Connections**

29. (1) Upon a water main or a sewer main of the Board becoming available for connection, the Board may—

- (a) publish in the Gazette notice of its availability; and
- (b) give such other notices as may be prescribed.

(2) An owner of land to which a notice under subsection (1) (a) relates becomes liable—

- (a) in the case of a water main—to payment of water service charges after the expiration of 21 days from publication of the notice; or
- (b) in the case of a sewer main—to payment of sewerage service charges after the expiration of 21 days from publication of the notice.

(3) If an owner does not make a connection to the main of the Board before becoming liable under subsection (2), the Board may make the connection at the expense of the owner.

(4) Any amount due to the Board for a connection made under subsection (3) is a charge on the land connected and may be recovered as a debt owed to the Board by the owner of the land.

(5) If an owner of land fails—

- (a) to connect the land to a water or sewer main before becoming liable under subsection (2); and
- (b) to do any work that by this Act is required to be done by the owner,

the occupier of the land may make the connection or do the work and, in accordance with subsection (6), recover the cost from the owner with interest at the prescribed rate.

(6) An amount (including interest) recoverable under subsection (5) by an occupier from an owner may be recovered—

- (a) by deducting it from any rent from time to time payable to the owner by the occupier; or
- (b) as a debt owed to the occupier by the owner.

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(7) A person may open up the surface and soil of a public road or public reserve to the extent necessary for making a connection to a main of the Board.

**Board may levy service charges, fees and other charges**

30. (1) The Board may, in accordance with this Part, levy—

- (a) water service charges;
- (b) sewerage service charges;
- (c) drainage service charges;
- (d) loan service charges;
- (e) developmental works service charges;
- (f) flood mitigation service charges;
- (g) river management service charges; and
- (h) special industry service charges,

on land within its area.

(2) The Board may, in accordance with the regulations, impose fees and charges for the goods and services supplied or provided by it in the exercise of its functions under this Act.

**Land in respect of which the Board may levy service charges**

31. (1) The Board may only levy water service charges on land—

- (a) to which water is supplied; or
- (b) to which, in the opinion of the Board, it is reasonably practicable for water to be supplied,

from one of the Board's water mains.

(2) The Board may only levy sewerage service charges on land—

- (a) from which sewage may be discharged; or
- (b) from which, in the opinion of the Board, it is reasonably practicable for sewage to be discharged,

into one of the Board's sewer mains.

(3) The Board may only levy drainage service charges on land that is within a drainage area.

(4) The Board may only levy developmental works service charges on land within a development area.

(5) The Board may only levy flood mitigation service charges on land within a flood plain.

(6) The Board may only levy river management service charges on land within a river management area.

(7) The Board may only levy special industry service charges on land on which a special industry is conducted.

(8) The Board may not levy service charges in respect of any land described in Part 1 of Schedule 3 unless it is land described in Part 2 of Schedule 3.

#### **Classification of lands**

32. (1) The regulations shall specify the factor or factors according to which the Board may classify land for the purpose of levying service charges.

(2) Without limiting the generality of subsection (1), the regulations may specify that the Board may classify land according to any one or more of the following factors:

- (a) the purpose for which the land is actually being used;
- (b) the intensity with which the land is being used for that purpose;
- (c) the purposes for which the land is capable of being used;
- (d) the nature and extent of the water or sewerage services connected to the land.

(3) For the purposes of subsection (2) (c), land is not capable of being used for a purpose if the use of the land for that purpose would be in contravention of—

- (a) the Environmental Planning and Assessment Act 1979;
- (b) any environmental planning instrument in force under that Act; or
- (c) any other Act or law relating to the use of land.

#### **Basis of levying service charges**

33. (1) The regulations shall specify the basis or bases according to which the Board may levy service charges.



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(2) Without limiting the generality of subsection (1), the regulations may specify that the Board may levy service charges according to any one or more of the following factors:

- (a) the land value of land within the meaning of the Valuation of Land Act 1916;
- (b) the assessed annual value of land within the meaning of the Valuation of Land Act 1916;
- (c) the nominal size (as determined in accordance with the regulations) of the water service pipe supplying water to the land;
- (d) the nominal size (as determined in accordance with the regulations) of the sewerage service pipe discharging sewage from the land;
- (e) the area of the land.

(3) If a regulation provides that the Board may levy a service charge on the basis of the value of land (whether on the land value of the land, the assessed annual value of the land or otherwise) the value of the land shall be that calculated in accordance with the provisions of the Valuation of Land Act 1916.

**Determinations by Board**

34. (1) Not later than 1 month before the end of each charging year the Board shall, in accordance with the regulations, determine—

- (a) the amount of money that it proposes to raise by way of service charges levied on land within its area;
- (b) the factor or factors according to which land within its area is to be classified for the purposes of levying service charges;
- (c) the basis or bases according to which service charges are to be levied; and
- (d) the rate at which service charges are to be levied on, or the maximum or minimum service charges that are to be applicable to, land within its area of operations,

for the next succeeding charging year.

(2) In making a determination under this section, the Board may have regard to—

- (a) its estimation of the degree of benefit that accrues to land in respect of each service for which a charge is to be levied;

- (b) its estimation of the degree to which each service is or may be used in relation to land in respect of which a charge is to be levied;
- (c) its estimation of the cost involved in the construction, maintenance and operation of each service for which a charge is to be levied; and
- (d) such other matters as it considers relevant to the levying of charges for each such service.

(3) A determination under this section—

- (a) shall not be made except with the approval of the Minister;
- (b) shall be published in the Gazette before the commencement of the charging year to which it relates; and
- (c) shall take effect on the commencement of the charging year to which it relates.

(4) A determination does not fail merely because it is not published in the Gazette before the commencement of the charging year to which it relates but, in that event, no person is liable for payment of the service charges to which the determination relates until the determination is published in the Gazette.

(5) A service charge determined under this section is levied on publication of the determination in the Gazette.

#### **Assessment of service charges**

**35. (1)** After making a determination under section 34, the Board shall, in accordance with the determination—

- (a) classify each parcel of land within its area in respect of which a service charge is to be levied; and
- (b) assess the service charges payable for each such parcel of land.

(2) After it makes an assessment under this section, the Board shall, in accordance with the regulations, cause a notice to be served on the owner of each parcel of land in respect of which a service charge has been levied.

(3) Such a notice shall include information as to—

- (a) the manner in which the parcel of land has been classified for the purposes of the levying of service charges;
- (b) the basis or bases according to which service charges have been levied in respect of the parcel of land;

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- (c) if service charges have been levied on the basis of the value of the parcel of land—the value of the parcel on which those service charges have been levied;
  - (d) the rate at which service charges have been levied on, or the maximum or minimum service charges that are applicable to, the parcel of land; and
  - (e) the amounts payable in respect of each service charge that has been levied in respect of the parcel of land.
- (4) Upon service of such a notice, the owner of the land to which the notice relates becomes liable for payment of the service charges specified in the notice.

**Re-assessment of service charges**

**36. (1)** This section applies to any land in respect of which a service charge has been levied on the basis of the value of the land.

(2) If the Board becomes aware that the value (as calculated in accordance with this Act) of any parcel of land in respect of which it has levied a service charge for any charging year differs from the value (as so calculated) as at the date on which the service charge was assessed under section 35, the Board may re-assess the service charge on the basis of the different value.

(3) A service charge may only be re-assessed as from the date from which the revised calculation of the value of the land has effect.

(4) After it makes a re-assessment under this section, the Board shall, in accordance with the regulations, cause a notice to be served on the owner of the parcel of land in respect of which the re-assessment has been made.

(5) Such a notice shall specify—

- (a) the revised calculation of the value of the land;
- (b) the date from which the revised calculation of the value of the land has effect; and
- (c) the revised assessment of the amounts payable in respect of each service charge that has been levied on that land.

(6) Upon service of such a notice, the service charges for which the owner of the land to which the notice relates is liable are varied in accordance with the terms of the notice.

**Service charges a charge on land**

37. A service charge for payment of which a person is liable is a charge on the land to which the service charge relates.

**Interest on overdue service charges etc.**

38. The Board may charge interest on overdue fees, service charges and other charges at a rate not exceeding the rate prescribed for the purposes of this section.

**DIVISION 2—Miscellaneous****Recovery of charges, fees and other money**

39. (1) Any charge, fee or money due to the Board under this Act may be recovered in any court of competent jurisdiction as if it were a debt due to the Crown.

(2) An unsatisfied judgment or order of any court for the recovery of any charge or fee from any person shall not be a bar to the recovery of the charge or fee from any other person who is liable under this Act for the payment of the charge or fee.

**Sale or land for unpaid charges**

40. (1) The provisions of sections 602–613 of the Local Government Act 1919 apply to land in respect of which a charge (being a charge that is, by virtue of this Act, a charge on land) remains unpaid in the same way as they apply to land in respect of which rates under that Act remain unpaid.

(2) For the purpose of applying the provisions of sections 602–613 of the Local Government Act 1919 to land in respect of which a charge remains unpaid—

- (a) a reference in those provisions to a council shall be read as a reference to the Board;
- (b) a reference to a town or shire clerk shall be read as a reference to the Managing Director of the Board;
- (c) a reference to a county council shall be read as including a reference to a council;
- (d) a reference to an officer of a council shall be read as a reference to an employee of the Board; and

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- (e) a reference to a rating authority shall be read as including a reference to a council.

**Certificate as to amount due**

**41. (1)** The Board shall, upon written application being made to it and payment of the prescribed fee, issue to the applicant a certificate—

- (a) containing the prescribed particulars relating to any amounts payable to the Board in respect of a parcel of separately assessed land; or
- (b) to the effect that there are no such amounts.

**(2)** An application for a certificate shall—

- (a) specify the name and address of the applicant; and
- (b) identify the land to which the application relates.

**(3)** Such a certificate is conclusive proof, in favour of a purchaser in good faith and for value of the land to which the certificate relates that, at the date of its issue, no amounts were payable to the Board in respect of that land other than such amounts as are specified in the certificate.

**Inspection of council records**

**42.** A council shall permit an authorised person, at any reasonable time and without charge, to inspect the valuation, rate or assessment records of the council of an area that is wholly or partly within the Board's area and make or obtain a copy of, or extract from, the records.

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**PART 5**  
**OFFENCES**

**Illegal diversion of water**

**43. (1)** A person shall not—

- (a) wrongfully take, use or divert any water from which the Board draws its supply or that is available for supply by the Board; or
- (b) wrongfully alter the index of a meter or prevent a meter from duly registering the quantity of water supplied.

Penalty: \$20,000 in the case of a corporation or \$10,000 in any other case.

(2) It shall be presumed, unless the contrary is proved, that any wrongful taking or diversion of water to, or any wrongful use of water on, any land was at the direction, or with the connivance, of the owner or occupier of the land.

(3) If, in connection with the pipes or other apparatus of the Board used to supply water to any land there exists any artificial means for—

- (a) taking, using or diverting the water; or
- (b) altering the index of a meter or preventing it from duly registering the quantity of water supplied,

it shall be presumed, unless the contrary is proved, that the taking, use, diversion, alteration or prevention was wrongfully effected or caused by the occupier of the land.

#### **Damage to works**

44. A person shall not wilfully or negligently interfere with, destroy or damage a work or structure that belongs to, or is under the control and management of, the Board.

Penalty: \$20,000 in the case of a corporation or \$10,000 in any other case.

#### **Obstruction of the Board**

45. A person shall not—

- (a) wilfully delay or obstruct the Board or an authorised person exercising a function under this Act;
- (b) threaten or abuse a person exercising functions under this Act; or
- (c) wilfully remove any poles or stakes driven into the ground, or wilfully deface or destroy a mark made, for the purpose of setting out a work of the Board.

Penalty: \$5,000.

#### **Obstruction of works**

46. A person shall not place a structure in or near a work of the Board in such a manner as to interfere with the operation of the work.

Penalty: \$1,000.

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**Exposure of underground pipes**

47. A person shall not, by opening any ground, expose any pipe or other work of the Board—

- (a) without lawful excuse; or
- (b) without having given the Board at least 2 days' written notice of intention to open the ground.

Penalty: \$10,000 in the case of a corporation or \$2,000 in any other case.

**Work done by unlicensed person**

48. A person shall not do any kind of work of water supply, sewerage or drainage intended for direct or indirect connection with the pipes, sewers or drains of the Board unless the person—

- (a) holds a licence in force under the Plumbers, Gasfitters and Drainers Act 1979 authorising the holder to do that kind of work; or
- (b) does the work under the immediate supervision of the holder of such a licence.

Penalty: \$5,000.

**Payment of penalty does not affect other proceedings**

49. (1) Prosecution or conviction of a person for an act or omission that is an offence against this Act does not affect any right of the Board to recover from the person—

- (a) an amount in respect of damage caused by the act or omission;
- (b) the expenses incurred by the Board in remedying any such damage;  
or
- (c) the value of water lost to the Board because of the act or omission.

(2) Payment of a penalty for an offence against this Act does not affect any right of the Board to institute any other action or proceeding.

**Persons causing offences**

50. (1) A person—

- (a) who causes the commission of an offence against this Act;
- (b) by whose order or direction an offence against this Act is committed;  
or

- (c) who aids, abets, counsels or procures the commission of an offence against this Act,

is guilty of an offence against this Act and liable to a penalty in the same way as the principal offender.

- (2) A person may be proceeded against for an offence under subsection (1) whether or not the principal offender has been prosecuted or convicted.

#### **Penalty notices**

51. (1) In this section, "authorised employee" means an employee appointed in writing by the Board as an authorised employee for the purposes of this section.

(2) If it appears to an authorised employee that any person has committed an offence prescribed for the purposes of this section, the authorised employee may serve a notice on the apparent offender to the effect that if it is not desired to have the matter determined by a court, the person served may pay to the Board within the time specified in the notice the amount of the penalty prescribed for the offence if dealt with under this section.

(3) A notice under this section may be served personally or by post.

(4) A person alleged to have committed an offence to which this section applies has the right to decline to be dealt with under this section.

(5) A person who fails to pay the amount of a penalty within the time specified in the notice given to the person under this section or within such further time as may in any particular case be allowed shall be deemed to have declined to be dealt with under this section.

(6) If the amount of any prescribed penalty for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(7) Payment of a penalty under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(8) The regulations may prescribe an offence for the purposes of this section by setting out the offence or by a reference to the provision of this Act or the regulations creating the offence.

(9) A penalty prescribed under this section for any offence shall not exceed any maximum amount of penalty which could be imposed for the offence by a court.



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(10) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act in relation to proceedings which may be taken in respect of offences.

**Disposal of proceedings for offence**

52. (1) Proceedings for an offence against this Act or the regulations shall be disposed of summarily before—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) the Supreme Court in its summary jurisdiction.

(2) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is \$5,000 or the maximum penalty for the offence, whichever is the lesser.

(3) Proceedings in the Supreme Court in its summary jurisdiction in relation to an offence against this Act may be commenced not later than 6 months after discovery of the offence.

(4) Proceedings in a Local Court in relation to an offence may be commenced not later than 12 months after discovery of the offence.

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**PART 6**  
**MISCELLANEOUS**

**Delegation**

53. (1) The Board may delegate to a person the exercise of any of its functions, other than this power of delegation.

(2) The Managing Director may delegate to a person the exercise of any of the functions delegated to the Managing Director by the Board, unless the Board otherwise provides in its instrument of delegation to the Managing Director.

(3) A delegation—

- (a) shall be in writing;
- (b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Board or Managing Director, as the case requires.

(4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(5) A delegated function, when exercised by the delegate, shall be deemed to have been exercised by the Board.

(6) A delegation does not prevent the exercise of a function by the Board or Managing Director.

(7) A function purporting to have been exercised by a delegate shall, unless the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

**Proof of certain matters not required**

54. (1) In any legal proceedings, proof is not required, unless evidence is given to the contrary, of—

- (a) the constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of, or the holding of office by, any member of the Board; or
- (d) the presence of a quorum at a meeting of the Board.

(2) A document that is produced by an authorised person and purports to be a copy of, or extract from, the records of an Authority is, without further proof, evidence of the matter it contains.

(3) In the absence of evidence to the contrary, proof is not required that an occasion has arisen for the exercise by the Deputy Managing Director of a function under section 8.

**Appropriation or resumption of land**

55. (1) The Board may, for the purposes of this Act, acquire land by appropriation or resumption effected by the Governor under the Public Works Act 1912.

(2) An appropriation or resumption under this section shall be deemed to be for an authorised work for which the Board is the Constructing Authority.

(3) For the purposes only of this section, Schedule 4 has effect.

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**Council rates**

**56. (1)** Land that is within a special area for the Board and is Crown land (as defined in the Crown Lands Consolidation Act 1913) or land vested in the Board, is exempt from any rate that a council might have levied but for this subsection.

**(2)** A tunnel, water or sewer main or drainage channel of the Board is exempt from any rental charge that a council might have imposed but for this subsection.

**Compensation for interference or damage**

**57. (1)** If—

- (a) a person does, or causes to be done, any work that interferes with, or damages, any property of the Board; and
- (b) there was reasonable cause to believe that the interference or damage would result from the doing of the work,

the person is liable to compensate the Board for the interference or damage.

**(2)** The Board is not entitled to compensation both under this section and another provision of this Act for the same interference or damage.

**Commercial operations**

**58. (1)** With the approval of the Minister, the Board may enter into commercial operations with respect to—

- (a) any services developed in connection with the exercise of its functions;
- (b) any products or by-products resulting from the exercise of those functions;
- (c) without limiting the above, any intellectual property resulting from the exercise of those functions; or
- (d) any other prescribed matters.

**(2)** With the approval of the Governor, the Board may form, or join in forming, a company, partnership or trust for the purpose of exercising its powers under this section.

**Minister may act as an agent**

59. (1) The Minister administering this Act may arrange with another Minister of the Crown or a statutory body for the exercise by the Minister administering this Act, or by his or her delegate, as agent of the other Minister or the statutory body, of a function of the other Minister or statutory body.

(2) A document executed by an agent, or a delegate of an agent, under this Act has effect as if it had been executed by the principal.

**Board must provide information**

60. The Board shall provide the Minister with such information and material as the Minister may require in relation to its policies, operations and procedures.

**Efficiency review**

61. (1) The Minister may appoint a person to investigate and review the efficiency of the Board in exercising its functions.

(2) The Board shall bear the costs of an investigation and review under this section that is requested by it.

**Appointment of administrator**

62. (1) If the Board refuses or fails to comply with a direction or requirement given or made by the Minister in relation to this Act, the Minister may, by order published in the Gazette, appoint an administrator to exercise all the functions, or specified functions, of the Board.

(2) An administrator has, during his or her term of office and to the exclusion of the Board, the functions the administrator was appointed to exercise.

(3) Regulations may be made for or with respect to—

- (a) the accommodation (if any) to be provided at the offices of the Board for the administrator and his or her assistants; and
- (b) requiring the employees of the Board to assist, and to refrain from obstructing, the administrator in the exercise of his or her functions.

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**Injunctions**

**63. (1)** On the application of the Board, the Supreme Court may grant an injunction restraining a threatened contravention, or the continuation of a contravention, of this Act or of a requirement of the Board under this Act.

**(2)** An injunction may be granted without the Board being required to show a likelihood of damage.

**Settlement of disputes**

**64. (1)** The Minister shall establish a standing committee to advise—

- (a) the Premier;
- (b) the Minister; and
- (c) the Minister administering any other Act,

on any dispute arising between the Board and a person or statutory body having functions under the other Act where the dispute relates to the exercise by the Board of its functions under this Act.

**(2)** A standing committee established under this section shall—

- (a) consist of such persons; and
- (b) follow such procedures,

as are from time to time directed by the Minister with the concurrence of the Premier.

**Regulations relating to hot water apparatus**

**65. (1)** Regulations may not be made prescribing specifications for hot water apparatus.

**(2)** Regulations may not be made authorising or requiring the Board to be concerned in—

- (a) testing hot water apparatus (other than fittings connected to hot water apparatus); or
- (b) the connection of hot water apparatus to a source of heat energy other than heated water added to or mixed with water in the apparatus.

**(3)** For the purpose of regulations made by reference to an outlet from water service pipes connected to a water main of the Board, hot water apparatus is not such an outlet.

(4) In so far as regulations may be made in relation to fittings, they may include regulations made in relation to—

- (a) fittings used, or intended to be used, for hot water; and
- (b) fittings by which apparatus may be connected to service pipes.

(5) In so far as regulations may be made in relation to a water service pipe between a water main and the outlet of the pipe, they may include regulations made in relation to—

- (a) a water service pipe used, or intended to be used, for hot water; and
- (b) a safety discharge pipe or overflow pipe connected to hot water apparatus.

(6) In this section, “hot water apparatus” means apparatus—

- (a) for heating water;
- (b) for storing hot water; or
- (c) for both heating water and storing hot water,

the inlet of which is connected to a water main of the Board by a water service pipe.

### **Regulations**

**66. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) fees, service charges and other charges;
- (b) development of land;
- (c) the supply and use of water;
- (d) special areas;
- (e) water, sewerage and drainage systems;
- (f) trade wastes;
- (g) drainage areas;
- (h) the opening of the surface of roads;

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- (i) public recreation;
- (j) water flow management including river improvement, stream management, flood mitigation and flood control; and
- (k) the procedure at meetings of the Board.

(3) A regulation may create an offence punishable by a penalty for a breach of the regulation not exceeding—

- (a) \$20,000 in the case of an offence by a corporation; or
- (b) \$10,000 in any other case.

(4) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

(5) Without limiting the generality of subsection (2) (a), a regulation may make provision—

- (a) for the reduction of service charges and other charges in specified circumstances;
- (b) for the payment of service charges and other charges by instalments;
- (c) for the creation of hardship funds;
- (d) for the deferral of payment of service charges and other charges;
- (e) for the fixing of minimum and maximum service charges;
- (f) for the waiving of service charges in specified circumstances;
- (g) for the payment of interest on unpaid amounts due to the Board;
- (h) for the making of objections to the Board in relation to a valuation or in relation to service charges and other charges imposed on or in relation to land;
- (i) for the making of objections from the Board's decision on an objection referred to in paragraph (h);
- (j) for the manner in which, and the times at which, service charges and other charges are to be paid;

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- (k) for the service of notices;
- (l) for the apportionment of service charges and other charges between successive owners of land;
- (m) for the keeping of records in relation to service charges and other charges;
- (n) for the liability for the payment of service charges and other charges imposed on land, including land the subject of a Crown lease;
- (o) for the lodging of notices of dispositions of land and the effect of lodgment of such a notice;
- (p) for the payment by an occupier of land of service charges and other charges that remain unpaid by the owner of the land; and
- (q) for the levying of expenses incurred in relation to the recovery of unpaid fees, service charges and other charges.

(6) A regulation made for or with respect to a special area prevails to the extent of any inconsistency with a statutory instrument made under another Act, including an environmental planning instrument made under the Environmental Planning and Assessment Act 1979.

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## SCHEDULE 1

(Sec. 6)

## PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

**Age of members**

1. A person of or above the age of 70 years is not eligible to be appointed as a part-time member or to act in the office of a part-time member.

**Elected member**

2. (1) Regulations may be made for or with respect to the election of a person to hold office as an elected member.

(2) The Electoral Commissioner for New South Wales, or a person employed in the office of and nominated by the Electoral Commissioner—

- (a) shall be the returning officer for an election; and
- (b) shall have and may exercise the functions conferred or imposed on the returning officer by the regulations made under this clause in relation to the election.



*Water Board 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(3) Employees of the Board are entitled to vote at an election in accordance with the regulations made under this clause.

(4) A person's nomination as a candidate for election as elected member is invalid if—

(a) the nomination is not made by at least 2 persons who are employees of the Board;

(b) the person is not, at the time of nomination, an employee of the Board;

(c) the person is not, at the time of nomination, a member of—

(i) an industrial union registered as such under the Industrial Arbitration Act 1940; or

(ii) an association of employees registered as an organization under the Conciliation and Arbitration Act 1904 of the Commonwealth,

being such an industrial union or association that is prescribed by the regulations for the purposes of this paragraph as being an industrial union or association representing employees of the Board; or

(d) the instrument of nomination is not accompanied by a statutory declaration to the effect that the person is, at the time of nomination, such a member.

(5) The returning officer is entitled to rely on the information contained in the statutory declaration.

(6) A person may be, at the same time, both the elected member and an employee of the Board.

(7) Nothing in any law, rule, direction or other requirement that—

(a) is applicable to the elected member in his or her capacity as an employee of the Board; and

(b) would not be so applicable if the elected member were not such an employee,

operates so as to prevent or restrict the exercise by the elected member of any of the functions of an elected member.

(8) If no person is nominated at an election, or if for any other reason an election fails, the Governor may appoint a person eligible for election to be a part-time member, and the person shall, on being appointed, be deemed to be a person elected in the manner prescribed by the regulations made under this clause.

*Water Board 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(9) If a vacancy occurs in the office of elected member otherwise than by reason of the expiration of the period for which an elected member was appointed—

- (a) the Governor may appoint a person eligible for election to hold, subject to this Schedule, the office of elected member for a term commencing on the date of appointment or a later date specified in the relevant instrument of appointment and ending on the commencement of the term of office of the next elected member; and
- (b) any such person shall, on being so appointed, be deemed to be a person elected in the manner prescribed by the regulations made under this clause.

**Chairperson of the Board**

3. (1) Of the part-time members, one shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as Chairperson of the Board.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Governor under subclause (2);
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

(4) The Minister may appoint a part-time member to act in the office of Chairperson during a vacancy in the office or during the illness or absence of the Chairperson and the person, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

**Acting members**

4. (1) The Minister may, from time to time, appoint a person to act in the office of a part-time member during a vacancy in the office or during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

(2) The Minister may remove a person from any office to which the person was appointed under this clause.

(3) A person while acting in the office of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

*Water Board 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued***Terms of office**

5. Subject to this Schedule, a part-time member shall hold office—

- (a) in the case of a part-time member other than an elected member—for such period not exceeding 5 years; or
- (b) in the case of an elected member—for such period not exceeding 5 years but not less than 3 years,

as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

6. A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Filling of vacancy in office of member**

7. If the office of any part-time member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

8. (1) A part-time member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for being absent from those meetings;
- (c) being an elected member, ceases to be an employee of the Board for which he or she is an elected member;
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (e) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (f) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;

SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) reaches the age of 70 years; or
- (i) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a part-time member from office.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 9.

**Disclosure of pecuniary interests**

9. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body;
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or a specified person,

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board shall cause particulars of any disclosure made under this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to this clause, the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing.

(5) Notwithstanding that a member contravenes this clause, the contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

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*Water Board 1987*

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SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

(6) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

**Effect of certain other Acts**

10. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a part-time member and a member is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

**Liability of members etc.**

11. No matter or thing done by the Board, any member or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

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SCHEDULE 2

(Secs. 7, 8)

PROVISIONS RELATING TO THE MANAGING DIRECTOR AND THE DEPUTY  
MANAGING DIRECTOR**Definition**

1. In this Schedule, “executive officer” means the Managing Director or Deputy Managing Director.

**Age of executive officer**

2. A person of or above the age of 65 years is not eligible to be appointed as an executive officer or to act in the office of an executive officer.

*Water Board 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MANAGING DIRECTOR AND THE DEPUTY  
MANAGING DIRECTOR—*continued***Acting executive officer**

3. (1) The Minister may from time to time appoint a person to act in the office of an executive officer during a vacancy in the office or during the illness or absence of the executive officer and the person, while so acting, shall have and may exercise the functions of the executive officer and shall be deemed to be the executive officer.

(2) The Minister may remove a person from any office to which the person was appointed under this clause.

(3) A person while acting in the office of an executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Term of office**

4. Subject to this Schedule, an executive officer shall hold office for such period not exceeding 7 years as may be specified in the instrument of appointment of the executive officer, but is eligible (if otherwise qualified) for re-appointment.

**Obligation of executive officer**

5. An executive officer shall devote the whole of his or her time to the duties of the office of executive officer, except as permitted by this Act or except with the consent of the Minister.

**Remuneration**

6. An executive officer is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

**Filling of vacancy**

7. If the office of an executive officer becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

8. An executive officer shall be deemed to have vacated office if the executive officer—

- (a) dies;
- (b) absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;

*Water Board 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MANAGING DIRECTOR AND THE DEPUTY  
MANAGING DIRECTOR—*continued*

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (f) engages in any paid employment outside the duties of the office of executive officer except as permitted by this Act or except with the consent of the Minister;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) is retired from office by the Governor under subclause (2); or
- (i) is removed from office by the Governor under subclause (3) or (4).

(2) An executive officer may, after reaching the age of 60 years and before reaching the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Governor may remove an executive officer from office for incapacity, incompetence or misbehaviour.

(4) Without affecting the generality of subclause (3), the Governor may remove from office an executive officer who contravenes the provisions of clause 9 of Schedule 1.

**Effect of Public Service Act 1979**

9. The Public Service Act 1979 does not apply to or in respect of the appointment of an executive officer and an executive officer is not, as an executive officer, subject to that Act.

**Preservation of rights of executive officer previously public servant etc.**

10. (1) Subject to subclause (2) and to the terms of appointment, if an executive officer was, immediately before being appointed as an executive officer—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or

*Water Board 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MANAGING DIRECTOR AND THE DEPUTY  
MANAGING DIRECTOR—*continued*

- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee, he or she—
- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as an executive officer; and
- (g) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if he or she had continued to be such an officer, contributor or person during his or her service as an executive officer and—
- (h) his or her service as an executive officer shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee, and the Board shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (2) If an executive officer would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—
- (a) he or she shall not be so entitled upon becoming (whether upon appointment as an executive officer or at any later time while holding office as an executive officer) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the executive officer in any case where he or she becomes a contributor to any such other superannuation scheme.
- (3) Subclause (2) does not prevent the payment to an executive officer upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.
- (4) An executive officer is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.
- (5) In this clause—
- “statutory body” means any statutory body declared under clause 12 to be a statutory body for the purposes of this Schedule;



*Water Board 1987***SCHEDULE 2—continued****PROVISIONS RELATING TO THE MANAGING DIRECTOR AND THE DEPUTY  
MANAGING DIRECTOR—continued**

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

**Executive officer entitled to re-appointment to former employment in certain cases**

11. (1) A person who—

- (a) ceases to be an executive officer by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as an executive officer—
  - (i) an officer of the Public Service or a Teaching Service; or
  - (ii) an officer or employee of a statutory body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as an executive officer.

(2) If subclause (1) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
- (b) is after that appointment appointed as an executive officer,

the person has such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be an executive officer, as are specified in the instrument of appointment as an executive officer or as are agreed upon by the person and by or on behalf of the Government.

(3) In this clause, “statutory body” means any statutory body declared under clause 12 to be a statutory body for the purposes of this Schedule.

**Declaration of statutory bodies**

12. The Governor may, by proclamation published in the Gazette, declare any statutory body to be a statutory body for the purposes of this Schedule.

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## SCHEDULE 3

(Sec. 31 (8))

## PART 1

## LAND EXEMPT FROM SERVICE CHARGES

1. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public cemetery.
2. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a common.
3. Land which is vested in the Crown, or in a public body, or in trustees, and is used for a public reserve or park.
4. Land which belongs to any public hospital, public benevolent institution, or public charity, and is used or occupied by the hospital, institution or charity for its purposes.
5. Land which is used or occupied solely for the purposes of, or connected with, a baby health centre, day nursery, kindergarten or amenities for the aged not conducted for private gain.
6. Land which is vested in an area health service constituted under the Area Health Services Act 1986 and is used or occupied by the area health service for its purposes.
7. Land which is vested in the Crown, or in a public body, or in trustees, and is used solely for the purposes of a free public library.
8. Land owned by the Crown that, except in the case of land leased to a caretaker at a nominal rental, is not leased by the Crown to any person for private purposes.
9. Land which belongs to a religious body and which is occupied and used in connection with—
  - (a) any church or other building used or occupied for public worship;
  - (b) any building used or occupied solely as the residence of a minister of religion in connection with any such church or building;
  - (c) any building used or occupied for the purposes of religious teaching or training; or
  - (d) any building used or occupied solely as the residence of the official head or the assistant official head, or both, of any religious body in the State or in any diocese in the State.
10. Land which is a public place within the meaning of the Local Government Act 1919.
11. Land which—
  - (a) is unoccupied;
  - (b) is not supplied with water from any water-pipe of the Board and is not connected to any sewer of the Board; and

*Water Board 1987*SCHEDULE 3—*continued*PART 1—*continued*LAND EXEMPT FROM SERVICE CHARGES—*continued*

- (c) has been determined, by the council of the city, municipality or shire in which the land is situated, to be unsuitable for the erection of a building because of flooding or landslip.

12. Land which is unoccupied and which is below highwater mark of any tidal water.

13. Land which belongs to and which is occupied and used in connection with any school registered under the Bursary Endowment Act 1912, or any certified school under the Public Instruction (Amendment) Act 1916, including any playground which belongs to and is used in connection with any such school, and any building occupied as a residence by any caretaker, servant, or teacher of any such school which belongs to and is used in connection with the school.

14. Drill grounds, sports grounds, gardens, or children's playgrounds provided by the council of a city, municipality or shire under the powers conferred by the Local Government Act 1919.

15. Land which is vested in—

- (a) The University of Sydney;
- (b) The Macquarie University;
- (c) The University of New South Wales;
- (d) The University of Wollongong; or
- (e) a college of any of them,

and is used or occupied by the University or college solely for its purposes.

16. Land which is vested in a corporate college of advanced education constituted or continued under the Colleges of Advanced Education Act 1975 and is used or occupied by the college solely for its purposes.

17. Land vested in the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council or a Local Aboriginal Land Council constituted under the Aboriginal Land Rights Act 1983, being land which is declared under Division 5 of Part VI of that Act to be exempt from the payment of rates under this Act.

18. Land which is vested in the Mines Rescue Board constituted under the Mines Rescue Act 1925 and is used for the purposes of a central rescue station or subsidiary rescue station, within the meaning of that Act.

19. Until a day appointed by the Governor by proclamation published in the Gazette—the land comprised in Lot 1 Deposited Plan 561879 and Lot 3 Deposited Plan 601512, known as the Sydney Entertainment Centre.

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SCHEDULE 3—*continued*

PART 2

EXCEPTIONS

1. Land within a public reserve or park that is the subject of a lease, licence or other authority under which a person carries on a trade or business.
  2. Land that is vested in the Crown or a public body and is leased to any person for private purposes.
  3. Land used or occupied by the Crown in connection with an undertaking declared by the Governor by proclamation published in the Gazette to be an industrial undertaking for the purposes of this Schedule.
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SCHEDULE 4

(Sec. 55)

APPLICATION OF THE PUBLIC WORKS ACT 1912

For the purposes of section 55, the Public Works Act 1912 has effect as if it had been amended—

- (a) by omitting Part III;
- (b) by omitting from section 53 the words “so seised, possessed or entitled as aforesaid”;
- (c) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of the compensation”;
- (d) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;
- (e) by omitting section 53 (5);
- (f) by omitting Division 7 of Part VI;

*Water Board 1987*SCHEDULE 4—*continued*APPLICATION OF THE PUBLIC WORKS ACT 1912—*continued*

(g) by omitting section 124 and by inserting instead:

**Compensation generally**

124. (1) For the purpose of assessing compensation, the Land and Environment Court shall have regard to—

- (a) the value, at the date of publication of the notification in the Gazette, of the land, estate or interest taken; and
- (b) any damage caused by the severing of the land taken from other land or by the exercise by the Constructing Authority of any of its statutory powers in a manner injuriously affecting that other land.

(2) In assessing the compensation, the Land and Environment Court shall disregard—

- (a) any valuation notified to the claimant; and
- (b) any alteration of value arising from the construction of any works on the land taken.

(3) In assessing the compensation, the Land and Environment Court shall set off any enhancement in value of adjoining land of the person who owned the land taken or severed by the construction of works on the land taken.

(4) An owner of land is not required to make a payment to the Constructing Authority in consideration of any enhancement in value referred to in subsection (3).

(5) Compensation is not payable for land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel unless—

- (a) the surface of the overlying soil is disturbed;
- (b) the support of such surface is destroyed or injuriously affected by the construction of such a tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.

(h) by omitting section 126 (3);

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SCHEDULE 4—*continued*

APPLICATION OF THE PUBLIC WORKS ACT 1912—*continued*

- (i) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;
- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendor as of the purchaser,”.