



New South Wales

Sydney Water Catchment Management Amendment Act 2007 No 83

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New South Wales

Sydney Water Catchment Management Amendment Act 2007 No 83

Act No 83, 2007

An Act to amend the *Sydney Water Catchment Management Act 1998* with respect to the functions of the Sydney Catchment Authority, its operating licence, catchment audits, special areas and enforcement powers, and to offences and evidentiary matters; and for other purposes. [Assented to 7 December 2007]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sydney Water Catchment Management Amendment Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Sydney Water Catchment Management Act 1998 No 171

The *Sydney Water Catchment Management Act 1998* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 **Amendment of Sydney Water Catchment Management Act 1998**

(Section 3)

[1] Whole Act

Omit “the Authority” wherever occurring (except where otherwise amended).
Insert instead “the SCA”.

[2] Whole Act

Omit “The Authority” wherever occurring (except where otherwise amended).
Insert instead “The SCA”.

[3] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

authorised officer means a person appointed as an authorised officer under section 69F.

catchment audit means an audit conducted under section 42A.

catchment health, in relation to the catchment area, means the condition of ecosystems and systems of management (such as sewerage and stormwater systems) in that catchment that protect water quality.

catchment management means the management of land and water resources in the catchment area.

motor vehicle means any motor car, motor cycle or other vehicle propelled by any means other than human or animal power.

SCA means the Sydney Catchment Authority constituted under this Act.

[4] Section 3 (1), definitions of “Authority”, “local council” and “Managing Director”

Omit the definitions.

[5] Section 7 Board

Omit section 7 (2) (a).

[6] Parts 3 and 4 and Schedule 3, headings

Omit “Authority” wherever occurring. Insert instead “SCA”.

[7] Section 13 Role

Omit “bulk water” from section 13 (b). Insert instead “raw water”.

[8] Section 15 General functions

Omit “, to the extent to which the operating licence enables the Authority to exercise those functions” from section 15 (1).

[9] Section 16 Specific functions

Re-number section 16 (1) (c1) as section 16 (1) (c3).

[10] Section 16 (1) (c1) and (c2)

Insert after section 16 (1) (c):

- (c1) to provide or construct systems or services for supplying water,
- (c2) to install new works,

[11] Section 17 Concurrence and other roles under environmental planning instruments

Insert after section 17 (1):

- (1A) For the purpose of enabling the SCA to exercise the functions conferred on it by this section:
 - (a) the SCA has and may exercise the powers conferred on a council under Division 1A of Part 6 of the *Environmental Planning and Assessment Act 1979*, and
 - (b) an authorised officer has and may exercise the powers conferred by that Division on a person authorised by a council under section 118A (1) of that Act, subject to that Division.

[12] Section 19 Compliance role under other legislation

Omit “an officer of the Authority” from section 19 (3).

Insert instead “a member of staff of the Sydney Catchment Authority Division”.

[13] Part 3, Division 3A

Insert after section 21:

Division 3A Arrangements for drawing water

21A Arrangements for drawing water

- (1) Subject to the operating licence, the SCA has control over all water in its water storages or pipelines.

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- (2) Water in the SCA's water storages or pipelines is available for supply by the SCA.
 - (3) The SCA may enter into an arrangement with any person to permit that person to draw or take water from the SCA's water storages or pipelines.

[14] Section 24C Payments out of Fund

Omit "Director-General of National Parks and Wildlife" from section 24C (b).
Insert instead "Director-General of the Department of Environment and Climate Change".

[15] Section 25 Grant of operating licence

Omit section 25 (2)–(5). Insert instead:

- (2) Except to the extent to which this Act expressly provides, nothing in the operating licence limits the requirements imposed by or under any other Act or law with respect to the provision, construction, operation, management or maintenance of any system or service referred to in subsection (1).

[16] Section 26 Terms and conditions of operating licence

Omit section 26 (1) (c). Insert instead:

- (c) to compile indicators of the direct impact of the SCA's activities (including, but not limited to, the impact of energy used and waste generated) on the environment:
 - (i) to enable preparation of an annual report on the SCA's performance, and
 - (ii) to provide information for a year-to-year comparison in relation to the SCA's performance in this area, and
 - (iii) to enable preparation of reports to Parliament as referred to in Division 5.

[17] Section 35 Definition

Omit the definition of *regulatory agencies*. Insert instead:

regulatory agencies means:

- (a) the Environment Protection Authority and the Director-General of the Department of Health, and
- (b) the Director-General of the Department of Environment and Climate Change, the Director-General of the Department of Primary Industries, local councils, county

councils, and any persons, bodies or agencies for the time being nominated by order of the Minister communicated to the SCA.

[18] Sections 42–42D

Omit section 42. Insert instead:

42 Catchment health indicators

- (1) The Minister must appoint a public authority or other person to be *the appointed person* to carry out functions under this section.
- (2) The appointed person must develop and approve catchment health indicators of the catchment health of the catchment area.
- (3) The appointed person must publish the approved catchment health indicators in the Gazette.
- (4) Those indicators may be amended or replaced in the same way as they were originally developed, approved and published.
- (5) The first indicators required under this section must be approved and published before 1 January 2009.

42A Catchment audits

- (1) The Minister must appoint a public authority or other person (the *appointed auditor*) to carry out functions under this section.
- (2) The appointed auditor must:
 - (a) conduct an audit (a *catchment audit*) of the catchment health of the catchment area, and
 - (b) present a report on that audit to the Minister.
- (3) The catchment audit must assess the state of the catchment area having regard to the catchment health indicators approved under section 42, as in force at the time of the assessment.
- (4) A catchment audit must be conducted, and a report presented to the Minister on that audit, no more than 3 years after the date the 2007 report is presented under section 42 (as in force immediately before its repeal by the *Sydney Water Catchment Management Amendment Act 2007*). Subsequent audits must be conducted, and reports must be presented to the Minister on those audits, at intervals of no more than 3 years calculated from the date the 2010 report is presented.
- (5) Section 39 (2)–(4) apply to and in respect of a report presented to the Minister under this section in the same way as it applies to the reports referred to in section 39 (1).

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- (6) The Minister is to forward a copy of the report of a catchment audit to the SCA as soon as practicable after the report is received.

42B Incorporation of catchment audit findings

- (1) The SCA must evaluate the findings of a catchment audit, as stated in the report of the catchment audit, to the extent to which they relate to the activities of the SCA and risks to water quality.
- (2) The SCA must incorporate the findings of a catchment audit, to the extent to which they relate to the activities of the SCA and water quality, into:
- (a) the SCA's risk framework, and
 - (b) the SCA's programs and activities relating to catchment management.
- (3) This section must be complied with within 6 months after the catchment audit report is received by the Minister.

42C Report concerning adjustments as a result of catchment audit findings

- (1) The SCA must report to the Minister on the SCA's progress to achieve improvements in catchment health, to prevent degradation of existing catchment health and to maintain existing catchment health, having regard to the findings of the most recent catchment audit conducted under this Division.
- (2) Such a report must be provided within 2 years after the catchment audit report is received by the Minister.

42D Operation of this Division

Nothing in this Division:

- (a) prevents the operating licence from including terms and conditions relating to the SCA's activities (including, but not limited to, the SCA's catchment management functions) or requiring reports on those activities, or
- (b) prevents the Tribunal from recommending to the Minister that the SCA's operating licence include terms and conditions relating to the SCA's catchment management functions or requiring reports on those functions.

[19] Section 43 Definitions

Omit “Director-General of National Parks and Wildlife” from the definition of *joint sponsors*.

Insert instead “Director-General of the Department of Environment and Climate Change”.

[20] Section 44 Special areas

Insert after section 44 (5):

- (6) The Governor may, on the recommendation of the Minister, by order published in the Gazette, declare that any previous order specified in Schedule 7 is repealed on the date specified in the later order.

[21] Section 53 Regional environmental plan to be made

Insert at the end of the section:

Note. The *Drinking Water Catchments Regional Environmental Plan No 1*, which commenced on 1 January 2007, was made pursuant to the power conferred by this section and the *Environmental Planning and Assessment Act 1979*.

[22] Section 55 Entry onto land

Omit “persons issued with certificates of authority under section 56” from section 55 (1).

Insert instead “an authorised officer”.

[23] Section 56 Certificates of authority

Omit the section.

[24] Parts 6A and 6B

Insert after section 62:

Part 6A Catchment correction notices and catchment protection notices

Division 1 Definitions

62A Definitions

In this Part:

catchment correction notice means a notice under Division 2.

catchment protection notice means a notice under Division 3.

compliance cost notice means a notice under section 62K.

corrective action, in relation to a targeted activity, includes the following:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any adverse impact on water quality or catchment health resulting or likely to result from the activity,
- (b) ascertaining the nature and extent of the targeted activity and of the actual or likely resulting adverse impact on water quality or catchment health,
- (c) preparing and carrying out a remedial plan of action.

targeted activity means an activity in a special area or controlled area that has, or is likely to have, caused damage to, or detrimentally affected, the quality of any water, or the catchment health of any land, in the area concerned.

Division 2 Catchment correction notices

62B Corrective action by occupiers or persons carrying on certain activities

- (1) The SCA may, by notice in writing (a ***catchment correction notice***), do either or both of the following:
 - (a) direct an occupier of land on or from which the SCA reasonably suspects that a targeted activity has been carried out or is being carried out,
 - (b) direct a person who is reasonably suspected by the SCA of carrying out or having carried out a targeted activity,to take the corrective action specified in the notice within such period as is specified in the notice.
- (2) The catchment correction notice may require the person to whom the notice is given to furnish reports to the SCA regarding progress on the carrying out of the corrective action.
- (3) If the person given a catchment correction notice complies with the notice but was not the person who carried out the targeted activity, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who carried out the targeted activity.
- (4) A catchment correction notice, or a variation of a catchment correction notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.

- (5) A person who, without reasonable excuse, does not comply with a catchment correction notice given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

62C Corrective action by public authorities

- (1) If the SCA reasonably suspects that a targeted activity has been carried out or is being carried out, the SCA may, by notice in writing, direct a public authority to take such corrective action as is specified in the notice. The public authority is authorised and required to take that action.
- (2) If a public authority reasonably suspects that a targeted activity has been carried out or is being carried out, the public authority may take such corrective action as it considers necessary. The public authority is authorised to take that action, whether or not it is directed to take corrective action under subsection (1).
- (3) Notices may be given, and action may be taken, under this section whether or not a catchment correction notice has been given under section 62B, and (if such a notice has been given) whether or not the period specified in the notice under that section has expired.
- (4) A public authority may take corrective action under this section by itself or by its employees, agents or contractors.
- (5) In this section:
public authority does not include a State owned corporation.

62D Catchment correction notice may be given orally

- (1) The SCA may, instead of giving a direction under this Division by notice in writing, cause the direction to be given orally by an authorised officer.
- (2) A direction given orally to a person ceases to have effect on the expiration of the period of 72 hours after the time it was given unless confirmed by the SCA by a written correction notice given to the person within that period.

- (3) A direction given orally has the same effect as a direction given by notice in writing, and is taken to be a catchment correction notice.

62E Fee for catchment correction notice

- (1) The purpose of this section is to enable the SCA to recover the administrative costs of preparing and giving catchment correction notices.
- (2) A person who is given a catchment correction notice under section 62B must within 30 days after the notice is given pay the fee prescribed under section 94 of the *Protection of the Environment Operations Act 1997* to the SCA.
- (3) The SCA may:
- (a) extend the time for payment of the fee, on the application of the person given the catchment correction notice, or
 - (b) waive payment of the whole or any part of the fee, on the SCA's own initiative or on the application of the person.
- (4) A person who does not pay the fee within the time required under this section is guilty of an offence.
Maximum penalty: 200 penalty units.

Division 3 Catchment protection notices

62F Preventive action

- (1) This section applies when the SCA reasonably suspects that a targeted activity has been, will be or is being carried out on any land in a special area or a controlled area.
- (2) The SCA may, by notice in writing (a *catchment protection notice*), do either or both of the following:
- (a) direct the occupier of the land,
 - (b) direct the person carrying on the activity,
- to take such action, as is specified in the notice within such period (if any) as is specified in the notice, to ensure that either the targeted activity is not commenced, is no longer carried on, or if the targeted activity is permitted to be carried on in future, it is carried on in a manner that does not cause damage to, or detrimentally affect, the quality of any water, or the catchment health of any land, in the special area or controlled area.

- (3) The action to be taken may (without limitation) include any of the following:
 - (a) ceasing to carry on or not commencing to carry on an activity,
 - (b) carrying on an activity in a particular manner,
 - (c) carrying on an activity only during particular times,
 - (d) preparing and carrying out a plan of action to control, prevent or minimise any damage to, or detrimental effect on, the quality of any water, or the catchment health of any land, in the special area or controlled area.
- (4) If the occupier who is given a notice is not the person carrying on the targeted activity, the notice is taken to require the occupier to take all available steps to cause the action to be taken by the person carrying on the targeted activity.
- (5) A catchment protection notice may require the person to whom the notice is given to furnish reports to the SCA regarding progress on carrying out the action required to be taken by the notice.
- (6) A person who does not comply with a catchment protection notice given to the person is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
 - (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

62G Action in event of failure to comply

If a person does not comply with a catchment protection notice given to the person, the SCA may take action to cause the notice to be complied with by itself or by its employees, agents or contractors.

62H Commencement of operation of catchment protection notice or variation of catchment protection notice

- (1) A catchment protection notice, or a variation of a catchment protection notice, operates from the day the notice or notice of the variation is given or from such later day as the notice specifies.
- (2) If an appeal is made against a catchment protection notice or the variation of a catchment protection notice and the Land and

Environment Court directs that the notice is stayed, the notice or variation does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice or the appeal is withdrawn, whichever first occurs.

62I Fee for catchment protection notice

- (1) The purpose of this section is to enable the SCA to recover the administrative costs of preparing and giving catchment protection notices.
- (2) A person who is given a catchment protection notice must within 30 days after the notice is given pay the fee prescribed under section 94 of the *Protection of the Environment Operations Act 1997* to the SCA.
- (3) The SCA may:
 - (a) extend the time for payment of the fee, on the application of the person given the notice, or
 - (b) waive payment of the whole or any part of the fee, on the SCA's own initiative or on the application of the person.
- (4) The fee is not payable during the currency of an appeal against the catchment protection notice.
- (5) If the decision of the Land and Environment Court on an appeal does not invalidate the catchment protection notice, the fee is payable within 30 days of the decision.
- (6) A person who does not pay the fee within the time required under this section is guilty of an offence.
Maximum penalty: 200 penalty units.

62J Appeals against catchment protection notices

- (1) A person served with a catchment protection notice may, within 21 days (or such other period as is prescribed by the regulations) after being served with the notice, appeal to the Land and Environment Court against the notice.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice appealed against.
- (3) There is no appeal against a decision not to extend the time for complying with a catchment protection notice.
- (4) For the purposes of this section, a *catchment protection notice* includes a notice that varies a catchment protection notice.

Division 4 Compliance costs

62K Compliance cost notices

- (1) The SCA may, by notice in writing, require a person to whom a catchment correction notice has been given to pay all or any reasonable costs and expenses incurred by the SCA in connection with:
 - (a) monitoring action required to be taken by the notice, and
 - (b) ensuring that the notice is complied with, and
 - (c) any other associated matters.
- (2) A public authority that takes corrective action under section 62C may, by notice in writing, require:
 - (a) the occupier of the land on or from which the authority reasonably suspects that the targeted activity was carried out, or
 - (b) the person who is reasonably suspected by the authority of having carried out the targeted activity,or both, to pay all or any reasonable costs and expenses incurred by it in connection with the corrective action.
- (3) If the SCA takes action under section 62G because a catchment protection notice is not complied with, the SCA may, by notice in writing, require the person to whom the catchment protection notice was given to pay all or any reasonable costs and expenses incurred by it in taking the action.

62L Recovery of amounts

- (1) The SCA or a public authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (2) If the person given a compliance cost notice complies with the notice but was not the person who carried out the targeted activity, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who carried out the targeted activity.

62M Registration of compliance cost notices in relation to land

- (1) If a compliance cost notice has been given by the SCA or a public authority to a person, the SCA or the public authority may apply to the Registrar-General for registration of the notice in relation to any land owned by the person.

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- (2) An application under this section must define the land to which it relates.
 - (3) The Registrar-General must, on application under this section and lodgment of a copy of the compliance cost notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
 - (4) If the notice relates to land under the provisions of the *Real Property Act 1900*, the notice is to be registered under that Act.

62N Charge on land subject to compliance cost notice

- (1) This section applies where a compliance cost notice is registered under section 62M, on the application of the SCA or a public authority, in relation to particular land owned by a person.
- (2) There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the SCA or the public authority of the amount specified in the notice.
- (3) Such a charge ceases to have effect in relation to the land:
 - (a) on payment to the SCA or the public authority of the amount concerned, or
 - (b) on the sale or other disposition of the land with the written consent of the SCA or the public authority, or
 - (c) on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,whichever first occurs.
- (4) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.
- (5) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).
- (6) If:
 - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
 - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.

- (7) The regulations may make provision for or with respect to the removal of a charge under this section.
- (8) The SCA or a public authority may, by notice in writing, require the person to whom the compliance cost notice was given to pay all or any of the reasonable costs and expenses incurred by the SCA or the public authority in respect of the lodgment or registration of the compliance cost notice and the registration of any resulting charge (including the costs of discharging the charge). The SCA or the public authority may recover any unpaid amounts specified in the notice as a debt in a court of competent jurisdiction.

Division 5 Miscellaneous

62O Multiple notices

More than one notice under a provision of this Part may be given to the same person.

62P Revocation or variation

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice given by the SCA may be revoked only by the SCA and a notice given by a public authority may be revoked only by the public authority.
- (5) A fee is not payable for the variation of a notice under this Part.

62Q Obstruction of persons

A person who wilfully delays or obstructs:

- (a) a person who is carrying out any action in compliance with a catchment correction notice or a catchment protection notice, or another person authorised by the person to carry it out, or

- (b) a public authority that is taking corrective action under section 62C, or any person authorised by the public authority to take corrective action under section 62C,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

Part 6B Requirements to provide information

62R Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act to answer questions in relation to those matters.
- (2) The SCA may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) A person must not:
 - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
 - (b) in purported compliance with such a requirement, give an answer that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

- (5) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (6) The place and time at which a person may be required to attend under subsection (5) is to be:
 - (a) a place and time nominated by the person, or
 - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.

62S Requirement to provide information and records

- (1) The SCA may, by notice in writing given to a person, require the person to furnish to it such information or records (or both) as it requires by the notice in connection with determining whether there has been compliance with or a contravention of this Act or the regulations or any notice issued under this Act.
- (2) A person must not:
 - (a) fail or refuse to comply with a requirement under subsection (1), or
 - (b) in purported compliance with such a requirement, give information, or provide a record, that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

62T Provisions relating to records

- (1) A notice under this Part may require a person to furnish only existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The SCA may take copies of any record furnished to it under this Part.
- (3) If any record required to be furnished under this Part is in electronic, mechanical or other form, the notice is taken to

require the record to be furnished in written form, unless the notice otherwise provides.

62U Requirement to state name and address or produce driver licence

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to be offending against this Act or the regulations to state the person's full name and residential address.
- (2) An authorised officer may require the driver of a motor vehicle in the catchment area to produce his or her driver licence and to state his or her full name and residential address.
- (3) An authorised officer may request a person who is required under this section to state his or her full name and residential address to provide proof of the name and address. It is not an offence under this section to fail to comply with any such request.
- (4) A person must not:
 - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
 - (b) in purported compliance with such a requirement, state a name that is not the person's name or an address that is not the person's residential address or produce the driver licence of another person.

Maximum penalty: 100 penalty units.

62V Requirement for owner of motor vehicle and others to give information

- (1) If the SCA or an authorised officer suspects on reasonable grounds that the driver of a motor vehicle has committed an offence against this Act or the regulations, the SCA or the authorised officer may:
 - (a) require the owner of the vehicle, or the person in whose name it is registered, or the person having the custody of the vehicle, to give information (which must, if so required, be given in the form of a statement in writing, signed by that owner or person) as to the name and residential address of the driver, or
 - (b) require any other person to give any information which is in that other person's power to give and which may lead to the identification of the driver.

- (2) A person must not:
- (a) fail or refuse to comply with a requirement under subsection (1), or
 - (b) in purported compliance with such a requirement, give any information that is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

- (3) In a prosecution for an offence in respect of a failure or refusal to comply with a requirement under subsection (1) (a), it is a defence if the defendant proves to the satisfaction of the court that the defendant did not know and could not with reasonable diligence have ascertained the name or residential address of the driver concerned, or both, as the case may require.
- (4) If a statement in writing purporting to be furnished under subsection (1) (a) and to contain particulars of the name and residential address of the driver of a motor vehicle at the time of commission of an alleged offence against this Act or the regulations is produced in any court in proceedings against the person named in the statement as the driver for the offence, the statement is, if that person does not appear before the court, evidence without proof of signature that the person was the driver of the vehicle at that time.

62W Provisions relating to requirements to furnish records, information or answer questions

- (1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish records or information or to answer a question unless the person was warned on the relevant occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this Part to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
 - (b) the person was not warned on the relevant occasion that the person may object to furnishing the information or giving

the answer on the ground that it might incriminate the person.

- (4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
 - (a) that the record or information had to be furnished or the answer had to be given, or
 - (b) that the record or information furnished or answer given might incriminate the person.
- (6) This section extends to a requirement under this Part to state a person's name and address.

62X Revocation or variation

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may be revoked or varied only by the person who gave it.

[25] Section 63 Illegal diversion of water

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

[26] Section 64 Offence to discharge into works

Omit the penalty provision from section 64 (1). Insert instead:

Maximum penalty:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$15,000 for each day the offence continues.

[27] Sections 64A and 64B

Insert after section 64:

64A Obstruction of authorised officer

A person must not:

- (a) obstruct, hinder or interfere with an authorised officer in the exercise of the officer's functions under this Act or the regulations, or
- (b) impersonate an authorised officer.

Maximum penalty:

- (a) in the case of a corporation—\$250,000, or
- (b) in the case of an individual—\$120,000.

64B Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
 - (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

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- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
 - (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
 - (5) In this section, the *state of mind* of a person includes:
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

[28] Section 68 Disposal of proceedings for offences

Omit "Supreme Court" from section 68 (1) (b).

Insert instead "Land and Environment Court".

[29] Section 68 (2)

Omit "100 penalty units". Insert instead "200 penalty units".

[30] Section 69 Time within which proceedings may be commenced

Omit "any officer of the Authority who is designated by the Authority" from the definition of *authorised officer* in section 69 (5).

Insert instead "a member of staff of the Sydney Catchment Authority Division who is designated by the SCA".

[31] Parts 7A and 7B

Insert after section 69:

Part 7A Evidentiary matters

69A Onus of proof of certain matters

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

69B Proof of certain appointments not required

In any proceedings under this Act, no proof is required (until evidence is given to the contrary) of:

- (a) the appointment of the Chief Executive or any member of the staff of the SCA, or
- (b) the appointment of any authorised officer.

69C Documentary evidence generally

Any instrument (including a notice, order or written direction) purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

is admissible in any proceedings under this Act and, in the absence of evidence to the contrary, is to be taken to be such an instrument and to have been so signed.

69D Certificate evidence of certain matters

- (1) A document signed by the Chief Executive or an officer of the SCA designated in writing by the SCA for the purposes of this section and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is, in the absence of evidence to the contrary, evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are the following:
 - (a) that an instrument (including a notice, order or written direction), a copy of which is set out in or annexed to the document, being an instrument purporting:
 - (i) to be issued, made or given for the purposes of this Act, and
 - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person, was issued, made or given on a specified day,
 - (b) that a person was or was not, at a specified time or during a specified period, an authorised officer,
 - (c) that a person was or was not, at a specified time or during a specified period, a member of staff of the Sydney Catchment Authority Division.

69E Evidence of analysts

- (1) The SCA may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of such an analyst that, on receipt of a container containing a sample submitted to the analyst by an authorised officer or any other person, the container was sealed and the seal securing the container was unbroken is admissible in evidence in any proceedings under this Act or the regulations as evidence:
 - (a) of the facts stated in the certificate, and
 - (b) that the sample was the same sample as the one obtained by the authorised officer or other person, and
 - (c) that the sample had not been tampered with before it was received by the analyst.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

Part 7B Authorised officers

69F Appointment of authorised officers

The SCA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.

69G Scope of authority

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or for limited purposes only.
- (2) If such authorisation is given subject to conditions, limitations or restrictions or for limited purposes only, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

69H Identification

- (1) Every authorised officer is to be provided with an identification card as an authorised officer by the SCA.

- (2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.

[32] Section 71

Insert after section 70:

71 Service of notices

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
- (a) by delivering it personally to the person, or
 - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
 - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the SCA as the person's place of residence or business, or
 - (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including, for example, a post office box), or
 - (e) by sending it by facsimile or electronic transmission (including, for example, over the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
 - (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

[33] Section 74 Regulations

Omit "200 penalty units" from section 74 (2) (a).

Insert instead "400 penalty units".

[34] Section 74 (2) (b)

Omit "100 penalty units". Insert instead "200 penalty units".

[35] Schedule 1 Constitution and procedure of Board

Omit “Managing Director or the” from the definition of *appointed member* in clause 1.

[36] Schedule 1, clause 3 (1)

Omit “Managing Director” wherever occurring.
Insert instead “Chief Executive”.

[37] Schedule 1, clause 9 (1)

Omit “*Public Sector Management Act 1988*”.
Insert instead “*Public Sector Employment and Management Act 2002*”.

[38] Schedule 1, clause 9 (1)

Omit “Part 8”. Insert instead “Chapter 5”.

[39] Schedule 1, clause 12 (2)

Omit “If both the Chairperson and the Chief Executive are absent, the Managing Director (if present) is to preside.”.

[40] Schedule 5 Amendment of other Acts

Omit Schedule 5.4.

[41] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Sydney Water Catchment Management Amendment Act 2007

[42] Schedule 6, Part 4

Insert after clause 9:

**Part 4 Provisions consequent on enactment of
Sydney Water Catchment Management
Amendment Act 2007**

10 Definition

In this Part:

amending Act means the *Sydney Water Catchment Management Amendment Act 2007*.

11 Validation: functions

Anything done or omitted to be done by the SCA, before the commencement of the amendment to section 15 made by the amending Act, that would have been valid if it had been done or omitted after that commencement, is validated.

12 Validation: construction and installations

Anything done or omitted to be done by the SCA to provide or construct systems or services for supplying water, or to install new works, before the commencement of section 16 (1) (c1) or (c2), as inserted by the amending Act, that would have been valid if it had been done or omitted after that commencement, is validated.

13 Annual reports under operating licence

The requirement under section 26 (1) (c) of this Act, as substituted by the amending Act, to make an annual report first applies in respect of the calendar year 2008.

14 Memorandum of understanding with Water Administration Ministerial Corporation

- (1) The memorandum of understanding entered into between the SCA and the Water Administration Ministerial Corporation is of no further effect.
- (2) Any provision of the operating licence referring to the memorandum of understanding with the Water Administration Ministerial Corporation (as referred to in section 36 (2)) is of no effect to the extent to which it applies to such a memorandum of understanding.

15 Catchment correction notices and catchment protection notices

Sections 62B and 62F extend to apply to any targeted activity carried out before the commencement of those sections.

16 Disposal of proceedings for offences

The amendments made to section 68 by the amending Act extend to proceedings for offences alleged to have been committed before the commencement of the amendments, but not if proceedings in respect of the offence concerned had commenced before that commencement.

17 Certificates of authority

A person to whom a certificate of authority had been issued under section 56 that was in force immediately before the repeal of that section by the amending Act is taken to have been appointed as an authorised officer under Part 7B and his or her certificate of authority is taken to be an identification card issued under section 69H.

[43] Schedule 7

Insert after Schedule 6:

Schedule 7 Orders declaring special areas that may be repealed by further order

(Section 44 (6))

The order declaring an area of land at Devine's Weir to be a special area, being an order published in Gazette No 103 of 29 August 1969 at page 3418.

The order declaring an area of land at O'Hare's Creek to be a special area, being an order published in Gazette No 51 of 14 April 1927 at page 1862 and amended by proclamation published in Gazette No 178 of 21 September 1934 at page 3525.

The order declaring an area of land at Penrith to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

The order declaring an area of land at Richmond to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

The order declaring an area of land at Windsor to be a special area, being an order published in Gazette No 113 of 8 October 1971 at page 3916.

The order declaring an area of land at Woodford to be a special area, being an order published in Gazette No 45 of 15 March 1991 at page 2186.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

[1] Section 17 Class 1—environmental planning and protection appeals

Insert after section 17 (a):

- (aa) appeals under section 62J of the *Sydney Water Catchment Management Act 1998*,

[2] Section 21 Class 5—environmental planning and protection summary enforcement

Insert after section 21 (a):

- (a1) proceedings under section 62B, 62E, 62F, 62I, 62Q, 62R, 62S, 62U, 62V, 63, 64 or 64A of the *Sydney Water Catchment Management Act 1998* or offences under regulations made under that Act,

2.2 Water Management Act 2000 No 92

Schedule 8 Amendment of other Acts

Omit Schedule 8.28 [2].

[Agreement in principle speech made in Legislative Assembly on 13 November 2007
Second reading speech made in Legislative Council on 29 November 2007]

BY AUTHORITY