



Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021

No. 74, 2021

An Act to amend the *Water Act 2007* and the *Basin Plan 2012*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 74, 2021

An Act to amend the *Water Act 2007* and the *Basin Plan 2012*, and for related purposes

[Assented to 30 June 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*.

No. 74, 2021

*Water Legislation Amendment (Inspector-General of Water
Compliance and Other Measures) Act 2021*

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day earlier than the day after the day the Minister is satisfied that the amendments of the referred provisions to be made by this Act have been approved by all referring States. The Minister must announce by notifiable instrument the day the Minister is so satisfied.</p> <p>However, if the provisions do not commence within the period of 6 months beginning on the day after the day the Minister is satisfied that the amendments of the referred provisions to be made by this Act have been approved by all referring States, they commence on the day after the end of that period. If the provisions commence in this way, the Minister must announce by notifiable instrument the day the provisions commenced.</p>	5 August 2021 (F2021N00176)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.
- (3) In this section, *referred provisions* and *referring State* have the meanings given by section 18B of the *Water Act 2007*.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the *Basin Plan 2012* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by a legislative instrument prepared and adopted under Division 1 of Part 2 of the *Water Act 2007* (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1—Amendment of the Water Act 2007

Part 1—Management of Basin water resources

Water Act 2007

1 Section 9 (after note 2)

Insert:

Note 3: See also sections 73C and 73D, which clarify the constitutional basis for sections 73A and 73B, and sections 73J and 73K, which clarify the constitutional basis for sections 73F to 73H.

2 After Division 3 of Part 2

Insert:

Division 3A—Offences and civil penalty provisions

Subdivision A—Contraventions of laws relating to taking water from a water resource

73A Taking water when not permitted under State law—basic contravention

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
 - (b) the conduct results in water being taken from a water resource; and
 - (c) a water resource plan for a water resource plan area applies to the water resource; and
 - (d) the taking of the water would constitute a contravention of the law of a State if any fault element or state of mind requirement were to be satisfied in relation to the taking of the water (the *potential State contravention*).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Note: See section 170A in relation to the physical elements of the offence.

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

- (3) For the purposes of subsection (2):
- (a) recklessness applies to paragraph (1)(b); and
 - (b) strict liability applies to paragraphs (1)(c) and (d).
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove the existence of any fault element or state of mind requirement in relation to the potential State contravention.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty:

- (a) for an individual—1,000 penalty units; or
- (b) for a body corporate—10,000 penalty units.

Presumption about taking water by means of works

- (6) For the purposes of subsection (5), if water was taken from a water resource by means of works that were on or beneath land (whether or not the works were attached to the land) at any time when the water was taken, then it must be presumed (in the absence of evidence to the contrary) that the water was taken by:
- (a) unless paragraph (b) applies, the person (the **owner**) who owned the land at any time when the water was taken; or
 - (b) if a person other than the owner occupied the land at all times when the water was taken—that person.

Defences

- (7) In a proceeding against a person (the **first person**) for an alleged contravention of subsection (1), it is not necessary for the person who instituted the proceeding to prove that no exception, exemption, excuse, qualification or justification provided by the law of the State applies in relation to the potential State contravention.
- (8) However:
- (a) the first person may rely on an exception, exemption, excuse, qualification or justification referred to in subsection (7) if the exception, exemption, excuse, qualification or justification does not involve determining the first person's state of mind; and
 - (b) if the first person wishes to rely on such an exception, exemption, excuse, qualification or justification, the first person bears an evidential burden in relation to that matter.
- Note: For **evidential burden**, see subsection 4(1) of this Act.
- (9) To avoid doubt, nothing in subsection (7) or (8) is intended to exclude the operation of Part 2.3 of the *Criminal Code* or section 154D of this Act (mistake of fact in relation to contraventions of civil penalty provisions) in relation to an alleged contravention of subsection (1).

73B Taking water when not permitted under State law—aggravated contravention

- (1) A person contravenes this subsection if:
- (a) the person engages in conduct; and
 - (b) the conduct results in water being taken from a water resource; and
 - (c) a water resource plan for a water resource plan area applies to the water resource; and
 - (d) the taking of the water would constitute a contravention of the law of a State if any fault element or state of mind requirement were to be satisfied in relation to the taking of the water (the **potential State contravention**); and
 - (e) any of the following circumstances exists:

- (i) tier 3 water sharing arrangements are in place when the water is taken;
- (ii) the water is taken from a place that is downstream from where held environmental water is, or was, being delivered during a period of environmental watering, and the taking of some or all of the water occurred within the period of 60 days starting on the first day the held environmental water started to be delivered;
- (iii) the circumstance in paragraph 6.12(1)(a) of the Basin Plan exists in relation to the surface water SDL resource unit from which the water is taken, and at the time the water is taken the State is taking, or is proposing to take, steps of the kind referred to in subsection 6.12(5) of the Basin Plan in relation to that circumstance;
- (iv) the circumstance in paragraph 6.12C(1)(a) of the Basin Plan exists in relation to the groundwater SDL resource unit from which the water is taken, and at the time the water is taken the State is taking, or is proposing to take, steps of the kind referred to in subsection 6.12C(5) of the Basin Plan in relation to that circumstance;
- (v) the taking of the water significantly contributes to, or is likely to significantly contribute to, harm to the environment in a State other than the State where the water was taken;
- (vi) the taking of the water significantly contributes to, or is likely to significantly contribute to, serious harm to the environment;
- (vii) the water is taken from a wetland (including declared Ramsar wetlands) that is protected under a law of the Commonwealth or a law of a State.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Note: See section 170A in relation to the physical elements of the offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) For the purposes of subsection (2):
-

- (a) recklessness applies to paragraphs (1)(b) and (e); and
 - (b) strict liability applies to paragraphs (1)(c) and (d).
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove the existence of any fault element or state of mind requirement in relation to the potential State contravention.

Alternative verdict

- (5) In a trial for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence, but guilty of an offence against subsection 73A(2), if:
- (a) the trier of fact is not satisfied that the defendant is guilty of the offence against subsection (2) of this section; and
 - (b) the trier of fact is satisfied that the defendant is guilty of the offence against subsection 73A(2); and
 - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty:

- (a) for an individual—5,000 penalty units; or
- (b) for a body corporate—50,000 penalty units.

Presumption about taking water by means of works

- (7) For the purposes of subsection (6), if water was taken from a water resource by means of works that were on or beneath land (whether or not the works were attached to the land) at any time when the water was taken, then it must be presumed (in the absence of evidence to the contrary) that the water was taken by:
- (a) unless paragraph (b) applies, the person (the **owner**) who owned the land at any time when the water was taken; or

- (b) if a person other than the owner occupied the land at all times when the water was taken—that person.

Defences

- (8) In a proceeding against a person (the **first person**) for an alleged contravention of subsection (1), it is not necessary for the person who instituted the proceeding to prove that no exception, exemption, excuse, qualification or justification provided by the law of the State applies in relation to the potential State contravention.
- (9) However:
- (a) the first person may rely on an exception, exemption, excuse, qualification or justification referred to in subsection (8) if the exception, exemption, excuse, qualification or justification does not involve determining the first person's state of mind; and
 - (b) if the first person wishes to rely on such an exception, exemption, excuse, qualification or justification, the first person bears an evidential burden in relation to that matter.

Note: For **evidential burden**, see subsection 4(1) of this Act.

- (10) To avoid doubt, nothing in subsection (8) or (9) is intended to exclude the operation of Part 2.3 of the *Criminal Code* or section 154D of this Act (mistake of fact in relation to contraventions of civil penalty provisions) in relation to an alleged contravention of subsection (1).

Definitions

- (11) In this section:

environment includes environmental assets and environmental outcomes.

groundwater SDL resource unit has the same meaning as in the Basin Plan.

harm includes direct harm, indirect harm, and the cumulative effect of any harm.

surface water SDL resource unit has the same meaning as in the Basin Plan.

tier 3 water sharing arrangements means the tier 3 water sharing arrangements provided for in the Agreement.

73C Constitutional basis of sections 73A and 73B

Sections 73A and 73B rely on the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under relevant international agreements, in particular:

- (a) paragraph 1 of Article 3 and paragraph 1 of Article 4 of the Ramsar Convention; and
- (b) subparagraphs (a), (c) to (e) and (k) of Article 8 and subparagraph (a) of Article 10 of the Biodiversity Convention.

73D Additional operation of sections 73A and 73B

- (1) In addition to section 73C, sections 73A and 73B have effect as provided by this section.

Corporations

- (2) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to:
 - (a) conduct by a constitutional corporation; or
 - (b) conduct by another person that affects the activities of a constitutional corporation.

Trade and commerce

- (3) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct that takes place in the course of trade and commerce:
 - (a) with other countries; or
 - (b) among the States; or
 - (c) between a State and a Territory.

Territories

- (4) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct that takes place in a Territory.

Agencies of the Commonwealth

- (5) Each of sections 73A and 73B also has the effect it would have if the relevant contravening conduct were expressly confined to conduct by an agency of the Commonwealth.

Definitions

- (6) In this section:

conduct includes an act or omission.

relevant contravening conduct, in relation to section 73A or 73B, means conduct that constitutes, or would constitute, a contravention of a provision of that section.

73E Restrictions on taking action under Part 8 or 10AA in relation to alleged contravention of section 73A or 73B

- (1) The Inspector-General or an authorised compliance officer must not take action under Part 8 or 10AA in relation to an alleged contravention of section 73A or 73B unless the Inspector-General has given the appropriate agency of the State where the contravention is alleged to have occurred a written notice stating that:
- (a) the Inspector-General intends to take action under Part 8 or 10AA in relation to the alleged contravention; and
 - (b) the appropriate agency of the State may, within 28 days after receiving the notice, notify the Inspector-General, in writing, that the appropriate agency of the State is investigating or taking other enforcement action in relation to the conduct constituting the alleged contravention.
- (2) If:

- (a) under subsection (1), the Inspector-General gives the appropriate agency of a State a written notice in relation to an alleged contravention; and
 - (b) within 28 days after receiving the notice, the appropriate agency of the State notifies the Inspector-General, in writing, under paragraph (1)(b);

the Inspector-General or an authorised compliance officer must not, within 3 months after the Inspector-General receives the notification, take action under Part 8 or 10AA in relation to the alleged contravention.
- (3) Despite subsection (2), if, within 3 months after the Inspector-General receives a notification from the appropriate agency of a State under paragraph (1)(b), the appropriate agency of the State:
 - (a) withdraws the notification by written notice to the Inspector-General; or
 - (b) requests the Inspector-General, in writing, to take action under Part 8 or 10AA in relation to the relevant alleged contravention;

the Inspector-General or an authorised compliance officer may, at any time after receiving the withdrawal notice or request, take action under Part 8 or 10AA in relation to the relevant alleged contravention.
- (4) A failure to comply with subsection (1) or (2) in relation to an alleged contravention does not affect the validity of any action taken by the Inspector-General or an authorised compliance officer under this Act in relation to the alleged contravention.
- (5) A notice or notification under this section is not a legislative instrument.
- (6) To avoid doubt, subsection (2) does not prevent the Inspector-General from exercising powers under this Act, other than under Part 8 or 10AA, during the 3 month period to which that subsection applies in relation to conduct constituting an alleged contravention of section 73A or 73B.

Note: For example, the Inspector-General may disclose information to a State or other body under Division 5 of Part 9A.

Subdivision B—Contraventions of the Basin Plan

73F Failing to give reasons for restricting trade of water delivery right as required by the Basin Plan

- (1) A person contravenes this subsection if:
- (a) the person is required to give a notification under subsection 12.30(1) of the Basin Plan; and
 - (b) the person fails to give the notification in accordance with subsection 12.30(2) of the Basin Plan.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: This section applies in relation to conduct described in section 73J.

Civil penalty: 60 penalty units.

73G Failing to report price for trade of water access right as required by the Basin Plan

- (1) A person contravenes this subsection if:
- (a) the person is required to give a notification under subsection 12.48(1) or (2) of the Basin Plan; and
 - (b) the person fails to give the notification in accordance with subsection 12.48(3) of the Basin Plan.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Civil penalty provision

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: This section applies in relation to conduct described in section 73J.

Civil penalty: 60 penalty units.

73H Trading water access right before water announcement made or generally available in contravention of the Basin Plan

- (1) A person contravenes this subsection if the person contravenes subsection 12.51(2) of the Basin Plan.

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: A person who wishes to rely on the exception in section 12.52 of the Basin Plan bears an evidential burden in relation to the matter in that section (see section 154E of this Act).

Note 3: This section applies in relation to conduct described in section 73J or 73K.

Civil penalty:

- (a) for an individual—1,000 penalty units; or
- (b) for a body corporate—10,000 penalty units.

73J Application of sections 73F to 73H

- (1) Sections 73F to 73H apply in relation to relevant contravening conduct of any of the following kinds:
- (a) relevant contravening conduct by a constitutional corporation;

- (b) relevant contravening conduct by another person that affects the activities of a constitutional corporation;
- (c) relevant contravening conduct that takes place in the course of trade and commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory;
- (d) relevant contravening conduct that:
 - (i) takes place in a Territory; or
 - (ii) relates to tradeable water rights in relation to a water resource in a Territory;
- (e) relevant contravening conduct by an agency of the Commonwealth.

Definitions

- (2) In this section:

conduct includes an act or omission.

relevant contravening conduct, in relation to section 73F, 73G or 73H, means conduct that constitutes, or would constitute, a contravention of a provision of that section.

73K Additional application of section 73H

Postal, telegraphic, telephonic or other like services

- (1) In addition to section 73J, section 73H also applies in relation to relevant contravening conduct that takes place using postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution).

Definitions

- (2) In this section:

conduct includes an act or omission.

relevant contravening conduct means conduct that constitutes, or would constitute, a contravention of section 73H.

Part 2—Compliance and enforcement

Water Act 2007

3 Subsection 4(1)

Insert:

authorised compliance officer means an individual whose appointment by the Inspector-General under section 222G is in force.

designated compliance provision means any of the following provisions:

- (a) a provision of Part 2 or regulations made for the purposes of that Part;
- (b) section 166;
- (c) section 222C;
- (d) section 222D;
- (e) section 237A;
- (f) section 238.

enforcement body has the meaning given by the *Privacy Act 1988*.

enforcement related activity has the meaning given by the *Privacy Act 1988*.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

4 Subsection 4(1) (definition of *evidential material*)

Repeal the definition, substitute:

evidential material means any of the following:

- (a) a thing with respect to which a designated compliance provision has been contravened or is suspected, on reasonable grounds, to have been contravened;

- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of a designated compliance provision;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening a designated compliance provision.

5 Subsection 4(1)

Insert:

Inspector-General means the Inspector-General of Water Compliance referred to in section 215B.

investigation warrant means:

- (a) a warrant issued by a magistrate under section 226; or
- (b) a warrant signed by a magistrate under section 227.

monitoring warrant means a warrant issued by a magistrate under section 225.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

relevant chief executive, in Division 5 of Part 8, has the meaning given by section 155A.

6 Section 9 (note 5)

Omit “Note 5”, substitute “Note 4”.

7 Section 9 (note 6)

Repeal the note, substitute:

Note 5: See also subsection 165(6), which clarifies the constitutional basis for giving a direction under subsection 165(2) in certain circumstances.

8 Paragraph 18E(5)(a)

Omit “section 216 or 219 or by subsection 238(1)”, substitute “section 219 or by subsection 222D(1)”.

9 After subsection 22(8)

Insert:

Basin Plan may confer functions or powers on Inspector-General

- (8A) A provision of the Basin Plan that relates to a matter set out in the table in subsection (1), or a matter prescribed by the regulations for the purposes of subsection (8), may confer functions or powers on the Inspector-General:
- (a) for the purpose of ensuring compliance with provisions of the Basin Plan that relate to that matter; or
 - (b) otherwise relating to that matter.

10 After subsection 46(2)

Insert:

- (2A) In preparing an amendment of a provision of the Basin Plan that confers functions or powers on the Inspector-General or otherwise relates to the Inspector-General, the Authority must obtain, and have regard to, the advice of the Inspector-General.

11 Subsection 71(1) (note)

Omit “Note”, substitute “Note 1”.

12 At the end of subsection 71(1)

Add:

Note 2: A Basin State must also provide information, in writing, to the Inspector-General about some of the matters referred to in this subsection (see the Basin Plan).

13 At the end of section 71

Add:

- (3) The Authority must give a copy of each report received under subsection (1) to the Inspector-General as soon as practicable after the Authority receives it.

14 Before Division 4 of Part 2

Insert:

Division 3B—Audits

73L Audits

- (1) The Inspector-General may conduct, or appoint or establish a person or body (an *auditor*) to conduct, periodic audits to assess the extent of compliance with either or both of the following:
 - (a) the Basin Plan;
 - (b) water resource plans.
- (2) In conducting an audit, the auditor must have regard to the following:
 - (a) guidelines (if any) issued by the Inspector-General relating to the conduct of an audit;
 - (b) any applicable guidelines issued by the Inspector-General under section 215V;
 - (c) any applicable standards issued by the Inspector-General under section 215VA.
- (3) The auditor must:
 - (a) prepare a report setting out the findings of the audit and any recommendations arising from the audit; and
 - (b) before the report is finalised, provide any person or body to which the audit relates with an opportunity to comment on the proposed findings and recommendations.
- (4) After a report prepared under subsection (3) is finalised, the Inspector-General must publish a copy of the report on the Inspector-General's website or the Department's website.

73M Responses to audit reports including recommendations that an agency take certain action

- (1) This section applies if:
 - (a) the Inspector-General publishes a report under subsection 73L(4); and
 - (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.

- (2) The agency to which the recommendation is made must give a written response to the Inspector-General, within 90 days after the report was published or within any longer period agreed to by the Inspector-General, that sets out:
- (a) whether the agency accepts the recommendation (in whole or in part); and
 - (b) if the agency accepts the recommendation (in whole or in part)—details of any action that the agency proposes to take to give effect to the recommendation (in whole or in part); and
 - (c) if the agency does not accept the recommendation (in whole or in part)—the reasons for not accepting the recommendation (in whole or in part).
- (3) The Inspector-General may publish a copy of a response received under subsection (2) on the Inspector-General’s website or the Department’s website.

15 Subsection 86J(2)

Omit “section 216 or 219 or by subsection 223(1) or 238(1)”, substitute “section 219 or by subsection 222D(1)”.

16 Subsection 86J(3)

Repeal the subsection, substitute:

- (3) Part 10 so applies as if references in section 221 to the Authority’s functions under section 219 included references to the Authority’s functions under this Part.

17 Paragraphs 86J(4)(b) and (c)

Repeal the paragraphs.

18 At the end of Part 2A

Add:

86K Additional functions of the Inspector-General

- (1) The Inspector-General has, in connection with:
-

- (a) the performance of the Inspector-General's functions and duties under this Part; and
 - (b) the exercise of the Inspector-General's powers under this Part;
such powers in a Basin State that is a referring State, or in the Australian Capital Territory, as the Inspector-General has in connection with the performance of the Inspector-General's other functions under this Act.
- (2) The application of subsection (1) to the Inspector-General's powers under Part 10AA in relation to premises in, or information held in, a referring State or the Australian Capital Territory is not limited by subsection 223(1) or 238(1).
- (3) Part 10AA applies as if:
- (a) for the purposes of Subdivision B of Division 1 of that Part, a reference in the definition of *evidential material* in subsection 4(1) to a designated compliance provision included a reference to a provision of this Part or regulations made for the purposes of this Part; and
 - (b) a reference in Subdivision B of Division 1 and Division 3 of that Part to a designated compliance provision included a reference to a provision of this Part or regulations made for the purposes of this Part.
- (4) However, an authorised compliance officer must not:
- (a) enter premises under Subdivision B of Division 1 of Part 10AA as applied by this section; or
 - (b) exercise any of the powers under that Subdivision;
- except:
- (c) to the extent that this is reasonably necessary for any of the following purposes:
 - (i) determining whether a provision of this Part or regulations made for the purposes of this Part has been, or is being, complied with;
 - (ii) determining whether information given in compliance, or purported compliance, with section 222D, in its application under section 86J, is correct;

- (iii) determining whether information given in compliance, or purported compliance, with section 238, as applied by this section, is correct; or
 - (d) if the authorised compliance officer has reasonable grounds for suspecting that there may be evidential material on the premises relating to a possible contravention of a provision of this Part or regulations made for the purposes of this Part.
- (5) Also, the Inspector-General must not require a person to give information under Division 3 of Part 10AA as applied by this section unless the Inspector-General has reason to believe that information relating to a matter that is relevant to the performance of the Inspector-General's functions or duties, or the exercise of the Inspector-General's powers, under this Part is in the person's possession, custody or control (whether held electronically or in any other form).

86L Functions and powers of the Inspector-General

The Inspector-General has, for the purposes of this Part, the functions and powers conferred on it under Part 8 as an appropriate enforcement agency.

19 Paragraph 137(a)

Repeal the paragraph, substitute:

- (a) the Inspector-General if the contravention is a contravention of:
 - (i) a designated compliance provision; or
 - (ii) a provision of Part 2A or regulations made for the purposes of that Part; or
 - (iii) a provision of Part 10AB; or

20 At the end of section 137

Add:

- ; or (d) if the contravention is of subsection 168(1) (the *executive officer contravention*)—the person or body that is the appropriate enforcement agency under paragraph (a), (b) or (c) of this section for the contravention by the body corporate of the civil penalty provision referred to in

paragraph 168(1)(a) that relates to the executive officer
contravention.

21 Section 140 (heading)

Repeal the heading, substitute:

140 Grant of injunctions

22 Paragraph 140(5)(a)

After “this Act,”, insert “the Basin Plan,”.

23 Paragraphs 147(3)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the wrongdoer is an individual and a single amount is specified for the civil penalty provision—the specified amount; or
- (b) if the wrongdoer is an individual and separate amounts for individuals and bodies corporate are specified for the civil penalty provision—the amount specified for an individual; or
- (c) if the wrongdoer is a body corporate and a single amount is specified for the civil penalty provision—an amount equal to 5 times the specified amount; or
- (d) if the wrongdoer is a body corporate and separate amounts for individuals and bodies corporate are specified for the civil penalty provision—the amount specified for a body corporate.

24 At the end of section 147

Add:

Civil double jeopardy

- (6) A Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if a pecuniary penalty order has been made against the person under a civil penalty provision of a law of the Commonwealth or a law of a State in relation to conduct that is substantially the same as the conduct constituting the contravention.

Note: See also Subdivision B of this Division and section 250B.

25 Sections 148 and 149

Repeal the sections, substitute:

148 Multiple contraventions

- (1) A Court may make a single pecuniary penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 154B.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

148A Proceedings may be heard together

A Court may direct that 2 or more proceedings for pecuniary penalty orders are to be heard together.

149 Civil evidence and procedure rules for pecuniary penalty orders

A Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty order.

26 Section 151

After “offence”, insert “against a law of the Commonwealth or a law of a State”.

27 Paragraph 152(1)(a)

Repeal the paragraph, substitute:

- (a) criminal proceedings for an offence against a law of the Commonwealth or a law of a State are started, or have already been started, against the person; and

28 Subsection 152(2)

Repeal the subsection, substitute:

- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
- (a) the civil proceedings are dismissed; and
 - (b) costs must not be awarded in relation to the civil proceedings.

29 Section 153

After “proceedings”, insert “for an offence against a law of the Commonwealth or a law of a State”.

30 Section 154

After “in criminal proceedings”, insert “for an offence against a law of the Commonwealth or a law of a State”.

31 At the end of Division 4 of Part 8

Add:

Subdivision C—Miscellaneous

154A Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (e) conspire with others to effect a contravention of a civil penalty provision.

Civil penalty provision

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 154C (which provides that a person’s state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to a contravention of subsection (1) of this section (see subsection 154C(2)).

154B Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

154C State of mind

- (1) In proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
 - (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
 - (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 154A(1) (ancillary contravention of civil penalty provisions).
 - (3) Subsection (1) does not affect the operation of section 154D (mistake of fact).
 - (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.
-

154D Mistake of fact

- (1) A person is not liable to have a pecuniary penalty order made against the person for a contravention of a civil penalty provision if:
 - (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
 - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a pecuniary penalty order bears an evidential burden in relation to that matter.

154E Exceptions etc. to civil penalty provisions—burden of proof

If, in proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification that applies in relation to the civil penalty provision, then the person bears an evidential burden in relation to that matter.

32 After section 155

Insert:

155A Relevant chief executive

The *relevant chief executive* for the purpose of exercising powers under this Division in relation to an infringement notice that has been given to a person by an appropriate enforcement agency is:

- (a) if the infringement notice was given by the Inspector-General—the Inspector-General; or
- (b) if the infringement notice was given by the ACCC—the ACCC; or
- (c) if the infringement notice was given by the Minister—the Secretary of the Department.

33 Subsection 156(3)

Repeal the subsection, substitute:

- (3) A single infringement notice must relate only to a single contravention of a single designated civil penalty provision unless subsection (4) applies.
- (4) The appropriate enforcement agency may give a person a single infringement notice relating to multiple contraventions of a single designated civil penalty provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than 1 day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

However, the infringement notice must not require the person to pay more than one penalty in respect of the same conduct.

Note: For continuing contraventions of civil penalty provisions, see section 154B.

34 Sections 157 to 159

Repeal the sections substitute:

157 Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the appropriate enforcement agency that gave the notice; and
 - (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
 - (i) the civil penalty provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount to the appropriate enforcement agency, on behalf of the Commonwealth, within 28 days after the day the notice is given, then (unless the notice is withdrawn), proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
 - (i) state that payment of the amount is not an admission of liability; and
 - (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that, if the notice is withdrawn, proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

- (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice; and
- (o) set out such other matters (if any) as are prescribed by the regulations.

Amount of penalty

- (2) If the infringement notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of the following:
 - (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention;
 - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.

Note: To work out the maximum penalty for the purposes of paragraph (a) of this subsection, see subsection 147(3).

- (3) If the infringement notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of the following:
 - (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention;
 - (b) either:
 - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
 - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

Note 1: Under subsection 156(4), a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

Note 2: To work out the maximum penalty for the purposes of paragraph (a) of this subsection, see subsection 147(3).

158 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 157(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.
- (3) If the relevant chief executive extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 157(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 157(1)(h) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 157(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend the period.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

159 Withdrawal of an infringement notice

Representations seeking withdrawal of infringement notice

- (1) A person to whom an infringement notice has been given may make written representations to the relevant chief executive seeking the withdrawal of the notice.

Withdrawal of infringement notice

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Division;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the relevant chief executive considers relevant.

Notice of withdrawal of infringement notice

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the relevant chief executive withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice; the Commonwealth must refund to the person an amount equal to the amount paid.

35 Paragraphs 163(2)(a) and (b)

After “this Act,”, insert “the Basin Plan,”.

36 Section 165 (heading)

Omit “Authority”, substitute “Inspector-General”.

37 Subsection 165(1)

Omit “the Authority”, substitute “the Inspector-General”.

38 Subsection 165(2)

Omit “The Authority”, substitute “The Inspector-General”.

39 At the end of subsection 165(2)

Add:

Note: The Inspector-General’s power to direct a person under this subsection is limited as provided by subsection (6).

40 Subsection 165(3)

Omit “the Authority”, substitute “the Inspector-General”.

41 Subsection 165(5)

Omit “The Authority”, substitute “The Inspector-General”.

42 At the end of section 165

Add:

Application of this section

- (6) If the Inspector-General is satisfied that a person:
- (a) has engaged in, is engaging in or is likely to engage in conduct referred to in paragraph (1)(b); or
 - (b) has omitted, is omitting or is likely to omit to perform an act and the omission is covered by paragraph (1)(c);
- the Inspector-General may direct the person under subsection (2) only if:
- (c) the direction gives effect to a relevant international agreement; or
 - (d) the person is a constitutional corporation; or

- (e) the direction relates to conduct or an omission that has affected, is affecting or is likely to affect the activities of a constitutional corporation; or
- (f) the direction relates to conduct or an omission that took place, is taking place or is likely to take place in the course of trade or commerce:
 - (i) with other countries; or
 - (ii) among the States; or
 - (iii) between a State and a Territory; or
- (g) the direction relates to conduct or an omission that took place, is taking place or is likely to take place in a Territory; or
- (h) the direction relates to conduct that took place, is taking place or is likely to take place using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or
- (i) the person is an agency of the Commonwealth.

43 Section 166

Repeal the section, substitute:

166 Failing to comply with enforcement notice

- (1) A person contravenes this subsection if:
 - (a) the person has been given a notice under subsection 165(2); and
 - (b) the person fails to comply with the direction in the notice.

Strict liability offence

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Note: See section 170A in relation to the physical elements of the offence.

Penalty: 30 penalty units.

- (3) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day the person is convicted of the offence or any later day) during which the contravention continues.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 600 penalty units.

- (5) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day a relevant pecuniary penalty order is made against the person or any subsequent day) during which the contravention continues.

44 Section 167

Omit "The Authority", substitute "The Inspector-General".

45 After Division 7 of Part 8

Insert:

Division 7A—Public warning notices

167A Inspector-General may issue public warning notice

- (1) The Inspector-General may issue to the public a written notice containing a warning about the conduct of a person if:
- (a) the Inspector-General reasonably suspects that the conduct may constitute a contravention of:
 - (i) section 34, 35, 58 or 59; or
 - (ii) a provision of Division 3A of Part 2; and
 - (b) the Inspector-General is satisfied that one or more of the following has occurred, is occurring or is likely to occur, as a result of the conduct:
 - (i) injury or damage to human beings;
 - (ii) damage to property;
 - (iii) harm to, or loss of, Basin water resources; and
 - (c) the Inspector-General is satisfied that it is in the public interest to issue the notice.

Note 1: The power conferred by this subsection may be delegated only to an SES employee or an acting SES employee (see subsection 215W(3)).

Note 2: No civil proceeding lies against the Inspector-General for loss, damage or injury of any kind suffered by another person as a result of the issue, in good faith, of a notice under this subsection (see section 215X).

(2) A notice issued under subsection (1) is not a legislative instrument.

(3) In this section:

conduct includes an act or omission.

46 Paragraph 168(1)(d)

Omit “all”.

47 Subsection 168(3)

Omit “contravened by the body corporate”, substitute “referred to in paragraph (1)(a)”.

48 Subsection 169(1)

Omit “all reasonable”, substitute “reasonable”.

49 Subparagraphs 169(1)(a)(i) and (iii)

After “this Act,”, insert “the Basin Plan,”.

50 After subparagraph 169(1)(b)(i)

Insert:

(ia) the Basin Plan; or

51 Subsection 170(1)

After “for the purposes of this Act”, insert “and each legislative instrument made under this Act”.

52 Subsection 170(2)

After “for the purposes of this Act”, insert “or any legislative instrument made under this Act”.

53 Subsection 170(3)

After “for the purposes of this Act”, insert “and each legislative instrument made under this Act”.

54 Subsection 170(4)

After “for the purposes of this Act”, insert “or any legislative instrument made under this Act”.

55 Paragraphs 170(5)(a) and (c)

Omit “this Act, the regulations, the water charge rules and the water market rules”, substitute “this Act and each legislative instrument made under this Act”.

56 At the end of Part 8

Add:

Division 10—General rules about offences and civil penalty provisions

170A Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

170B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.

- (2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

57 Paragraphs 175(2)(c) and (d)

Repeal the paragraphs.

58 Subsection 200(3)

Omit “section 238 or Part 8”, substitute “section 222D”.

59 Paragraph 210(1)(i)

Omit “(otherwise than under Part 8)”.

60 Section 215 (heading)

Repeal the heading, substitute:

215 Protection of confidential information

61 Subsection 215(1)

Omit “all”.

62 Subsection 215(2)

Omit “Disclosing”, substitute “For the purposes of subsection (1), the disclosure of”.

63 Subsection 215(4)

Omit “Disclosing”, substitute “For the purposes of subsection (1), the disclosure of”.

64 Paragraph 215(4)(b)

Repeal the paragraph, substitute:

- (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.

65 Subsection 215(6)

Omit “this section”, substitute “subsection (1)”.

66 At the end of Division 6 of Part 9

Add:

215A Disclosure of information to the Minister or the Secretary of the Department

- (1) This section applies to information obtained in, or in connection with, the performance of the Authority's functions or the exercise of the Authority's powers.

Authorisation to disclose information to Minister or the Secretary of Department

- (2) The Authority may disclose the information to:
- (a) the Minister; or
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.

Note 1: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Note 2: The Authority may also disclose information to the Inspector-General for the purposes of facilitating the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers (see section 215UC).

67 After Part 9

Insert:

**Part 9A—Inspector-General of Water Compliance
(administrative provisions)**

**Division 1—Inspector-General of Water Compliance:
establishment and functions**

215B Inspector-General of Water Compliance

There is to be an Inspector-General of Water Compliance.

215C Functions of the Inspector-General

- (1) The Inspector-General has the following functions:
- (a) to monitor and provide independent oversight of the performance of functions and exercise of powers by agencies of the Commonwealth under the following:
 - (i) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (ii) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (iii) the Basin Plan;
 - (iv) water resource plans;
 - (b) to monitor and provide independent oversight of the performance by agencies of the Basin States of their obligations in relation to the management of Basin water resources under the following:
 - (i) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (ii) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (iii) the Basin Plan;
 - (iv) water resource plans;
 - (c) to monitor and provide independent oversight of the implementation by agencies of the Commonwealth and agencies of the Basin States of the commitments in the agreements referred to in subsection (3);
 - (d) to engage with the Australian community in relation to the management of Basin water resources;
 - (e) functions conferred on the Inspector-General by:
 - (i) Part 8 (enforcement); and
 - (ii) Part 10AA (special powers); and
 - (iii) Part 10AB (inquiry powers);
 - (f) any other functions conferred on the Inspector-General by this Act, the Basin Plan or any other legislative instrument made under this Act;

- (g) to do anything incidental to, or conducive to, the performance of the above functions.
- (2) The Inspector-General's functions under subsection (1) do not include monitoring and providing independent oversight of the performance of functions or exercise of powers:
- (a) by the ACCC in giving advice:
 - (i) for the purposes of subsection 42(2) or 46(2) (relating to the water trading rules); or
 - (ii) under subsection 212(2) (relating to fees the Authority may charge for its services); or
 - (b) by the Productivity Commission in conducting an inquiry into a matter referred to the Productivity Commission under section 87 or 88.

Basin agreements

- (3) For the purposes of paragraph (1)(c), the agreements are the following agreements (including any amendments of those agreements):
- (a) the Murray-Darling Basin Compliance Compact entered into in June 2018;
 - (b) the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in June 2013;
 - (c) the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in February 2014;
 - (d) the Project Agreement for Murray-Darling Basin Water Infrastructure, New South Wales-Led Efficiency Projects entered into in August 2019;
 - (e) the Project Agreement for Murray-Darling Basin Water Infrastructure, South Australia-Led Efficiency Projects entered into in March 2019;
 - (f) the Project Agreement for Murray-Darling Basin Water Infrastructure, Australian Capital Territory-Led Efficiency Projects entered into in May 2019;
 - (g) the Murray-Darling Basin Plan 2012 Implementation Agreement entered into in August 2013;

- (h) the Intergovernmental Agreement on Federal Financial Relations entered into in July 2011, to the extent that it relates to:
 - (i) the National Partnership Agreement on Implementing Water Reform in the Murray-Darling Basin entered into in February 2014; and
 - (ii) project agreements relating to Basin water resources;
- (i) the Intergovernmental Agreement on a National Water Initiative entered into in June 2004, to the extent that it relates to Basin water resources;
- (j) any other agreement that:
 - (i) is entered into by the Authority, or the Commonwealth Environmental Water Holder, and one or more Basin States; and
 - (ii) is prescribed by the regulations for the purposes of this paragraph;
- (k) any other agreement that:
 - (i) is entered into by the Commonwealth and one or more Basin States; and
 - (ii) is prescribed by the regulations for the purposes of this paragraph.

Note 1: The Compact referred to in paragraph (3)(a) and the Agreement referred to in paragraph (3)(g) could in 2021 be viewed on the Authority's website (<http://www.mdba.gov.au>).

Note 2: The Agreements referred to in paragraphs (3)(b) to (f) and (i) could in 2021 be viewed on the Productivity Commission's website (<http://www.pc.gov.au>).

Note 3: The Agreement referred to in paragraph (3)(h) could in 2021 be viewed on the Federal Financial Relations website (<http://www.federalfinancialrelations.gov.au>).

215D Minister may give directions to Inspector-General

- (1) The Minister may give directions, which must be consistent with the objects of this Act, to the Inspector-General about the performance of the Inspector-General's functions.

Note: See also subsection 239AA(2) which provides for the Minister to direct the Inspector-General to conduct an inquiry into a particular matter.

- (2) However, the Inspector-General is not subject to direction under subsection (1) in relation to any of the following:
 - (a) the exercise of a power under Division 3B of Part 2 (audits);
 - (b) the performance of a function that is conferred by section 86K (enforcement of Part 2A);
 - (c) the exercise of a power under Part 8 (enforcement);
 - (d) the monitoring of compliance with, or the investigation of possible contraventions of, a designated compliance provision;
 - (e) the exercise of a power under Division 3 of Part 10AA (information gathering).
- (3) The Inspector-General must comply with a direction under subsection (1).
- (4) A direction given under subsection (1) is not a legislative instrument.

Division 2—Annual work plans

215E Inspector-General must prepare annual work plan

- (1) The Inspector-General must prepare a work plan, in writing, for each financial year.
- (2) The work plan for a financial year must set out the key outcomes and priorities for the Inspector-General for the financial year.
- (3) A work plan for a financial year is not a legislative instrument.
- (4) The Inspector-General must publish the work plan for a financial year on the Inspector-General's website or the Department's website as soon as practicable after it has been finalised.

215F Review of annual work plan

- (1) The Inspector-General must review the work plan for the Inspector-General for a financial year at least once during the financial year.

- (2) The review must consider whether the work plan continues to be appropriate having regard to:
 - (a) the nature of the functions to be performed by the Inspector-General during the financial year; and
 - (b) the resources available to perform those functions.

215G Variation of annual work plan

- (1) The Inspector-General may vary the work plan for the Inspector-General for a financial year:
 - (a) to take account of the findings of a review of the work plan conducted under section 215F; or
 - (b) if the Inspector-General considers the variation is necessary for any other reason.
- (2) The Inspector-General must publish the work plan, as varied, on the Inspector-General's website or the Department's website as soon as practicable after the work plan has been varied.
- (3) A varied work plan is not a legislative instrument.

Division 3—Administrative provisions

215J Appointment

- (1) The Inspector-General is to be appointed by the Governor-General by written instrument.

Note: The Inspector-General may be reappointed, subject to subsection 215K(2) (see section 33AA of the *Acts Interpretation Act 1901*).

- (2) The Inspector-General is to be appointed on a full-time basis.
- (3) To be eligible for appointment as the Inspector-General, an individual must, at the time of appointment:
 - (a) have a high level of expertise in one or more fields relevant to the Inspector-General's functions; and
 - (b) not be a member of the governing body of a relevant interest group.

Note: For *member of the governing body of a relevant interest group*, see subsection 178(4).

215JA Acting appointments

The Minister may, by written instrument, appoint a person to act as the Inspector-General:

- (a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Inspector-General:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

215K Term of office

- (1) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.
- (2) The Inspector-General must not hold office for a total of more than 8 years.

215KA Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Inspector-General is an official of the Department.

215L Remuneration

- (1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is determined under subsection (5).
- (2) The Inspector-General is to be paid the allowances that are determined under subsection (5).

- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of the Inspector-General of Water Compliance.

Note: The effect of this subsection is that remuneration or allowances of the Inspector-General will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).
- (5) The Minister may, by legislative instrument, determine:
- (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

215LA Leave of absence for Inspector-General

- (1) The Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

215M Engaging in other paid work

The Inspector-General must not engage in paid work outside the duties of the Inspector-General's office without the Minister's approval.

215N Disclosure of interests

- (1) The Inspector-General must give written notice to the Minister of all interests, pecuniary or otherwise, that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General's functions.
- (2) Subsection (1) applies in addition to any rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.

215P Other terms and conditions

The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

215Q Resignation

- (1) The Inspector-General may resign the Inspector-General's appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

215R Termination of appointment

- (1) The Governor-General may terminate the appointment of the Inspector-General:
 - (a) for misbehaviour; or
 - (b) if the Inspector-General is unable to perform the duties of the Inspector-General's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Inspector-General if:
 - (a) the Inspector-General:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Inspector-General's creditors; or
 - (iv) makes an assignment of the Inspector-General's remuneration for the benefit of the Inspector-General's creditors; or
 - (b) the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Inspector-General engages, except with the Minister's approval, in paid work outside the duties of the Inspector-General's office (see section 215M); or

- (d) the Inspector-General fails, without reasonable excuse, to comply with subsection 215N(1) (which deals with the duty to disclose interests, pecuniary or otherwise, that the Inspector-General has or acquires and that could conflict with the proper performance of the Inspector-General's functions); or
- (e) the Inspector-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

215S Staff and persons assisting the Inspector-General

- (1) The staff assisting the Inspector-General are to be persons engaged under the *Public Service Act 1999* who are made available by the Secretary.
- (2) The Inspector-General may also be assisted:
 - (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
 - (b) by officers and employees of a State; or
 - (c) by officers and employees of authorities of the Commonwealth or a State;whose services are made available to the Inspector-General in connection with the performance of any of the Inspector-General's functions.

Division 4—Advisory panels

215T Advisory panels

- (1) The Inspector-General may, by writing, establish advisory panels to assist the Inspector-General in performing any of the Inspector-General's functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) An advisory panel established under subsection (1) consists of such individuals who are appointed by the Inspector-General under subsection 215TA(1).
- (3) An instrument made under subsection (1) is not a legislative instrument.

215TA Appointment of advisory panels

Appointment of members

- (1) Each member of an advisory panel established under subsection 215T(1) is to be appointed by the Inspector-General by written instrument.

Note: An appointee may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Terms and conditions of appointment

- (2) An instrument of appointment may determine the terms and conditions of the appointment, including remuneration and allowances.

Termination of appointment

- (3) The Inspector-General may, in writing, terminate the appointment of a member of an advisory panel at any time.

Resignation by member

- (4) A member of an advisory panel may resign the member's appointment by giving the Inspector-General a written resignation. The resignation takes effect on the day it is received by the Inspector-General or, if a later day is specified in the resignation, on that later day.

215TB Procedural matters

- (1) The Inspector-General may give an advisory panel established under subsection 215T(1) written directions (procedural directions) as to:
 - (a) the way in which the panel is to carry out its functions; and

(b) procedures to be followed in relation to meetings.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Before giving a procedural direction about a matter to an advisory panel, the Inspector-General must have regard to any recommendations of that panel about the matter.
- (3) A procedural direction given under subsection (1) is not a legislative instrument.

Division 5—Confidentiality

215U Protection of confidential information

Inspector-General must protect confidential information

- (1) The Inspector-General must take reasonable measures to protect from unauthorised use or disclosure information:
 - (a) that is confidential information; and
 - (b) that is given to the Inspector-General in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Authorised uses and disclosures

- (2) For the purposes of subsection (1), the disclosure of summaries of information or statistics derived from information is authorised use and disclosure of the information, provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (3) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State is taken to be authorised use and disclosure of the information.
- (4) For the purposes of subsection (1), the disclosure of information to either of the following is authorised use and disclosure of the information:
 - (a) the Minister;

- (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.
- (5) For the purposes of subsection (1), the disclosure of information by a person for the purpose of:
- (a) performing functions or exercising powers as:
 - (i) the Inspector-General; or
 - (ii) a member of the Inspector-General's staff; or
 - (iii) a delegate of the Inspector-General; or
 - (iv) an authorised compliance officer; or
 - (v) a person who is authorised to perform a function or exercise a power of, or on behalf of, the Inspector-General; or
 - (b) the performance of functions or exercise of powers by the person by way of assisting the Inspector-General or a delegate of the Inspector-General;
- is taken to be authorised use and disclosure of the information.
- (6) Regulations made for the purposes of this subsection may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of subsection (1).
- (7) Nothing in subsection (2), (3), (4) or (5), or in regulations made for the purposes of subsection (6), limits:
- (a) anything else in any of those subsections or those regulations; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.

215UA Disclosure of information to the Authority, the Minister or the Secretary of the Department

- (1) This section applies to information obtained in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Authorisation to disclose information to the Authority

- (2) The Inspector-General may disclose the information to the Authority for the purposes of, or in connection with, the performance of the functions or the exercise of the powers of the Authority.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Authorisation to disclose information to the Minister or the Secretary of the Department

- (3) The Inspector-General may disclose the information to:
- (a) the Minister; or
 - (b) the Secretary of the Department, or an officer or employee in the Department, for the purpose of advising the Minister.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure of confidential information

- (4) Disclosure of confidential information that is permitted under subsection (2) is authorised use and disclosure of the information for the purposes of subsection 215U(1).

215UB Disclosure for purposes of enforcement or administration of Commonwealth or State laws

- (1) This section applies to information obtained in, or in connection with, the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Disclosure to enforcement bodies

- (2) The Inspector-General may disclose the information to an enforcement body if the Inspector-General reasonably believes that the disclosure is reasonably necessary for, or directly related to, one or more enforcement related activities of the enforcement body.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure to Commonwealth or State agencies

- (3) The Inspector-General may disclose the information to an agency of the Commonwealth or an agency of a State for the purpose of the administration of a law of the Commonwealth or a State that applies to the management of Basin water resources.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

Disclosure of confidential information

- (4) Disclosure of confidential information that is permitted under subsection (2) or (3) is authorised use and disclosure of the information for the purposes of subsection 215U(1).

215UC Commonwealth agency may disclose information to the Inspector-General

An agency of the Commonwealth, or a member of the staff of an agency of the Commonwealth, may disclose information to the Inspector-General for the purposes of facilitating the performance of the Inspector-General's functions or the exercise of the Inspector-General's powers.

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

215UD Information disclosed must not identify individual who wishes to remain anonymous

If:

- (a) an individual voluntarily gives information to the Inspector-General; and
(b) the individual requests that the individual remain anonymous;
then information disclosed under this Division must not include material identifying the individual or material that could be used to identify the individual.

Division 6—Guidelines and standards

215V Inspector-General may issue guidelines

- (1) The Inspector-General may, in writing, issue guidelines relating to the performance by agencies of the Commonwealth and agencies of the Basin States of their obligations (***water management obligations***) in relation to the management of Basin water resources under the following:
 - (a) this Act (other than Parts 1A, 2A, 4, 4A, 10A and 11A);
 - (b) regulations and other legislative instruments made under this Act (other than regulations or other legislative instruments made for the purposes of Part 1A, 2A, 4, 4A, 10A or 11A);
 - (c) the Basin Plan;
 - (d) water resource plans.
- (2) Without limiting subsection (1), guidelines issued under that subsection may relate to any of the following:
 - (a) reporting compliance activities carried out by agencies of the Basin States relating to their water management obligations;
 - (b) assessing the effectiveness of the regulatory frameworks in the Basin States for managing their water management obligations;
 - (c) any other matter prescribed by the regulations.
- (3) Guidelines issued under subsection (1) are not a legislative instrument.
- (4) The Inspector-General must publish guidelines issued under subsection (1) on the Inspector-General’s website or the Department’s website.
- (5) In performing its water management obligations, an agency of the Commonwealth or an agency of a Basin State must have regard to guidelines (if any) issued under subsection (1).

215VA Inspector-General may issue standards relating to measuring water taken from Basin water resources and data related to water trading

- (1) The Inspector-General may, by legislative instrument, issue standards relating to:
 - (a) measuring water taken from Basin water resources in water resource plan areas; and
 - (b) the collection, storage, transmission and online publication of Basin water market data and related information by providers of water trade services.

Note: Examples of water trade services are advisory services, information services, matching services, clearing services, settlement services and registration services.

- (2) In performing its obligations in relation to the management of Basin water resources, an agency of the Commonwealth or an agency of a Basin State must have regard to the standards (if any) issued under subsection (1).

215VB Consultation in preparing guidelines or standards

- (1) The Inspector-General must consult the Basin States, and have regard to any submissions made by the Basin States in connection with the consultation, in preparing guidelines under section 215V or standards under section 215VA.
- (2) In preparing guidelines under section 215V or standards under section 215VA, the Inspector-General may undertake such other consultation as the Inspector-General considers appropriate.

Division 7—Miscellaneous

215W Delegation

- (1) The Inspector-General may, in writing and subject to subsections (2), (3) and (4), delegate all or any of the Inspector-General's functions and powers under this Act to an APS employee in the Department.

- (2) The Inspector-General must not delegate the Inspector-General's functions and powers under the following provisions:
- (a) Division 3B of Part 2 (audits);
 - (b) Division 2 of Part 9A (other than subsections 215E(4) and 215G(2)) (annual work plans);
 - (c) Division 4 of Part 9A (advisory panels);
 - (d) Division 6 of Part 9A (other than subsection 215V(4)) (guidelines);
 - (e) section 215Y (annual report);
 - (f) section 239AA (conducting an inquiry);
 - (g) subsection 239AB(1) (determining terms of reference for an inquiry);
 - (h) subsection 239AC(2) (requiring a person to give information);
 - (i) subsection 239AD(2) (requiring a person to appear to answer questions);
 - (j) section 239AE (reporting on an inquiry).
- (3) The Inspector-General may delegate the Inspector-General's functions or powers under the following provisions only to an SES employee or an acting SES employee:
- (a) a provision in Part 8 (enforcement);
 - (b) section 215UA (disclosing information to the Authority, Minister or Secretary);
 - (c) section 222G (appointing an authorised compliance officer);
 - (d) section 233G (applying to retain seized thing);
 - (e) section 233H (disposing of seized thing);
 - (f) section 238 (requiring information to be produced);
 - (g) subsection 239AD(8) (giving a written record of answers).
- (4) The Inspector-General may delegate the Inspector-General's functions or powers under the following provisions only to an SES employee or an acting SES employee, or an APS employee who holds, or performs the duties of, an Executive Level 2, or equivalent, position in the Department:
- (a) subsection 73E(1) (giving notice to the appropriate agency of a State of the intention to take action in relation to an alleged contravention of section 73A or 73B);
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- (b) subsection 215UB(2) (disclosing information to an enforcement body);
- (c) subsection 215UB(3) (disclosing information to an agency of the Commonwealth or an agency of a State).

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (5) In performing any functions or exercising any powers under a delegation under subsection (1), the delegate must comply with any written directions of the Inspector-General.

215X Protection from liability

- (1) This section applies to the following persons (*protected persons*):
 - (a) the Inspector-General;
 - (b) an authorised compliance officer;
 - (c) a delegate of the Inspector-General;
 - (d) a person who is authorised to perform a function or exercise a power of, or on behalf of, the Inspector-General;
 - (e) a person assisting the Inspector-General or a person referred to in paragraph (c) or (d) in performing the Inspector-General's functions or exercising the Inspector-General's powers.
- (2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done by the protected person in good faith in the performance or purported performance of a function or duty conferred by this Act, or the exercise or purported exercise of a power conferred by this Act.

215Y Annual report

- (1) The Inspector-General must, as soon as practicable after the end of each financial year, prepare a report (an *annual report*) on the activities of the Inspector-General during the financial year.

Note: Certain material must not be included in an annual report (see section 239AG).

- (2) As soon as practicable after preparing an annual report, the Inspector-General must:
- (a) give the report to the Minister; and
 - (b) publish the report on the Inspector-General's website or the Department's website.

Note: Section 34C of the *Acts Interpretation Act 1901* applies to a report given to the Minister under this subsection.

215Z Review of the role of the Inspector-General

- (1) The Minister must cause a review of the role of the Inspector-General to be conducted during the financial year beginning on 1 July 2025.
- (2) The terms of reference for the review are to be determined by the Minister in consultation with the Basin States.
- (3) The review must be undertaken in consultation with the Basin States.
- (4) The Minister must cause to be prepared a written report of the review.
- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

68 Part 10 (after the heading)

Insert:

Note: Section 9 clarifies the constitutional basis for this Part.

69 Division 1 of Part 10

Repeal the Division.

70 Subsection 218(1)

Omit "recent photograph", insert "photograph that is no more than 5 years old".

71 Subsection 218(2)

After "offence", insert "of strict liability".

72 Paragraph 218(2)(c)

Repeal the paragraph, substitute:

- (c) the person does not return the identity card to the Authority within 14 days after ceasing to be an authorised officer.

73 After subsection 218(2)

Insert:

- (2A) Subsection (2) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

74 Subdivision B of Division 2 of Part 10 (heading)

Omit “other than for compliance purposes”.

75 Subsection 219(1)

Omit “(1)”.

76 Subsection 219(2)

Repeal the subsection (including the note).

77 Section 222 (note)

Repeal the note, substitute:

Note: A person who obstructs, hinders, intimidates or resists an authorised officer in the performance of the authorised officer’s functions or duties, or the exercise of the officer’s powers, under this Act may commit an offence (see section 149.1 of the *Criminal Code*) and may be liable to a civil penalty (see section 222C of this Act).

78 After Subdivision B of Division 2 of Part 10

Insert:

Subdivision C—Other matters

222A Privilege against self-incrimination and legal professional privilege not abrogated

Self-incrimination

- (1) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Legal professional privilege

- (2) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
 - (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.

222B Occupier entitled to be present during entry

- (1) If:
 - (a) an authorised officer is entering premises under Subdivision B; and
 - (b) an occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the occupier or other person is entitled to observe the activities of the authorised officer on the premises.
- (2) The right to observe the authorised officer's activities ceases if the occupier or other person impedes those activities.
- (3) This section does not prevent the authorised officer, or the authorised officers, from carrying out activities at 2 or more areas of the premises at the same time.

222C Obstructing authorised officers

Civil penalty provision

A person is liable to a civil penalty if the person obstructs, hinders, intimidates or resists an authorised officer in the performance of the officer's functions or duties, or the exercise of the officer's powers, under this Act.

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Note 2: A person who is liable to a civil penalty under this section may also commit an offence against section 149.1 of the *Criminal Code*.

Civil penalty: 100 penalty units.

Division 3—Information gathering

222D Power to require information

- (1) This section applies to a person that is an agency of the Commonwealth or an agency of a State if the Authority has reason to believe that information (the **compellable information**) relating to any of the following matters:
 - (a) the preparation and implementation of the Basin Plan;
 - (b) a matter:
 - (i) relevant to the performance of the Authority's functions; and
 - (ii) specified in regulations made for the purposes of this paragraph;is in the person's possession, custody or control (whether held electronically or in any other form).
- (2) The Authority may, in writing, require the person to give specified compellable information to the Authority:
 - (a) within a specified period of time (which must not be less than 14 days after the requirement is made); and
 - (b) in a specified form or manner.

Civil penalty provisions

- (4) A person is liable to a civil penalty if:
- (a) the person is subject to a requirement under subsection (2);
and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (5) A person is liable to a civil penalty if:
- (a) the person is subject to a requirement under subsection (2);
and
 - (b) the person gives information to the Authority in compliance or purported compliance with that requirement; and
 - (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

Exception

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
- (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E of this Act).

222E Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

79 Subdivision C of Division 2 of Part 10 (heading)

Repeal the heading.

80 Before section 223

Insert:

**Part 10AA—Inspector-General of Water
Compliance (special powers)**

Note: Section 9 clarifies the constitutional basis for this Part.

Division 1—Entry onto land etc.

Subdivision A—Authorised compliance officers

222G Appointment of authorised compliance officers

- (1) The Inspector-General may, by writing, appoint one or more individuals to be authorised compliance officers for the purposes of exercising the powers of an authorised compliance officer under this Division.
- (2) To be eligible for appointment as an authorised compliance officer, an individual must:
 - (a) be any of the following:
 - (i) an APS employee;
 - (ii) an individual whose services are made available to the Inspector-General under subsection 215S(2);
 - (iii) an individual who holds an office or position with a State or an authority of a State;
 - (iv) an individual whose services have been acquired by the Inspector-General under a contract; and

- (b) have a high level of expertise in one or more fields relevant to the performance of the duties of an authorised compliance officer under this Division.
- (3) The Inspector-General may appoint an individual mentioned in subparagraph (2)(a)(iii) to be an authorised compliance officer only if the relevant State or authority agrees to the appointment.
- (4) The Inspector-General must not appoint an individual mentioned in subparagraph (2)(a)(iv) to be an authorised compliance officer unless the Inspector-General is satisfied that the individual is fit and proper to be an authorised compliance officer.
- (5) In deciding, for the purposes of subsection (4), whether a person is fit and proper to be an authorised compliance officer, the Inspector-General:
 - (a) must have regard to the matters prescribed by the regulations; and
 - (b) may also have regard to any other matter the Inspector-General considers appropriate.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Inspector-General, for the purposes of subsection (4), that an individual mentioned in subparagraph (2)(a)(iv) is not fit and proper to be an authorised compliance officer.
- (7) In exercising powers or performing functions as an authorised compliance officer, an authorised compliance officer must comply with any written directions of the Inspector-General.

222H Identity cards

- (1) The Inspector-General must issue an identity card to an authorised compliance officer.
 - (2) The identity card must:
 - (a) be in the form approved by the Inspector-General; and
 - (b) contain a photograph that is no more than 5 years old of the authorised compliance officer.
 - (3) A person commits an offence of strict liability if:
-

- (a) the person has been issued with an identity card under subsection (1); and
- (b) the person ceases to be an authorised compliance officer; and
- (c) the person does not return the identity card to the Inspector-General within 14 days after ceasing to be an authorised compliance officer.

Penalty: 1 penalty unit.

- (4) Subsection (3) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

- (5) An authorised compliance officer must carry the identity card at all times when exercising powers or performing functions as an authorised compliance officer.

Subdivision B—Powers to enter land etc. for compliance purposes

81 Subsection 223(1)

Repeal the subsection, substitute:

- (1) An authorised compliance officer may enter any premises and exercise any or all of the powers described in subsection (2) for either or both of the following purposes:
 - (a) determining whether a designated compliance provision has been, or is being, complied with;
 - (b) determining whether information given in compliance, or purported compliance, with a designated compliance provision is correct.

82 Subsection 223(2)

Omit “authorised officer’s”, substitute “authorised compliance officer’s”.

83 Paragraph 223(2)(c)

Repeal the paragraph, substitute:

- (c) the power to examine or observe any activity conducted on the premises;

84 Subsection 223(3)

Omit “authorised officer”, substitute “authorised compliance officer”.

85 Paragraph 223(3)(b)

Omit “a warrant under section 225”, substitute “a monitoring warrant”.

86 After section 223

Insert:

223A Securing evidence of a contravention

- (1) An authorised compliance officer who has entered premises under subsection 223(1) may secure a thing for a period not exceeding 24 hours if:
 - (a) the thing is found during the exercise of powers on the premises under subsection 223(2); and
 - (b) an authorised compliance officer believes on reasonable grounds that:
 - (i) a designated compliance provision has been contravened with respect to the thing; or
 - (ii) the thing affords evidence of the contravention of a designated compliance provision; or
 - (iii) the thing is intended to be used for the purpose of contravening a designated compliance provision; or
 - (iv) the thing affords evidence that information given in compliance, or purported compliance, with a designated compliance provision is not correct; and
 - (c) the authorised compliance officer believes on reasonable grounds that:
 - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

The thing may be secured by locking it up, placing a guard or any other means.

Extensions

- (2) The authorised compliance officer may apply to a magistrate for an extension of the 24-hour period if the authorised compliance officer believes on reasonable grounds that the thing needs to be secured for more than that period.
- (3) Before making the application, the authorised compliance officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised compliance officer's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (4) The 24-hour period may be extended more than once.

Note: For the process by which a magistrate may extend the period, see section 232A.

223B Asking questions and seeking production of documents

Application

- (1) This section applies if an authorised compliance officer enters premises for the purposes of determining whether:
 - (a) a designated compliance provision has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with a designated compliance provision is correct.

Entry with consent

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised compliance officer may ask the occupier to answer any questions, and produce any document, relating to:
 - (a) the operation of the designated compliance provision; or
 - (b) the information.

Entry under a monitoring warrant

- (3) If the entry is authorised by a monitoring warrant, the authorised compliance officer may require any person on the premises to answer any questions, and produce any document, relating to:
- (a) the operation of the designated compliance provision; or
 - (b) the information.
- (4) A person is not subject to a requirement under subsection (3) if:
- (a) the person does not possess the information or document required; and
 - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

87 Subsection 224(1)

Omit “authorised officer” (wherever occurring), substitute “authorised compliance officer”.

88 Subsection 224(1) (note)

Repeal the note, substitute:

Note: For *evidential material*, see subsection 4(1).

89 Subsection 224(2)

Omit “authorised officer’s”, substitute “authorised compliance officer’s”.

90 At the end of subsection 224(2)

Add:

; (d) to seize evidential material of that kind if the authorised compliance officer finds it on the premises.

91 Paragraph 224(3)(a)

Omit “a warrant under section 226”, substitute “an investigation warrant”.

92 Paragraph 224(3)(a)

Omit “authorised officer” (wherever occurring), substitute “authorised compliance officer”.

93 Paragraph 224(3)(b)

Omit “authorised officer believes”, substitute “authorised compliance officer believes”.

94 After subparagraph 224(3)(b)(iv)

Insert:

(v) seize the other thing;

95 Paragraph 224(3)(b)

Omit “a provision of Part 2 or regulations made for the purposes of Part 2”, substitute “a designated compliance provision”.

96 Subsection 224(3)

Omit “authorise the authorised officer”, substitute “authorise the authorised compliance officer”.

97 Subsection 224(4)

Omit “authorised officer”, substitute “authorised compliance officer”.

98 Paragraph 224(4)(b)

Omit “a warrant under section 226”, substitute “an investigation warrant”.

99 After section 224

Insert:

224A Asking questions and seeking production of documents

Application

- (1) This section applies if an authorised compliance officer enters premises to search for evidential material.

Entry with consent

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised compliance officer may ask the occupier to answer any questions, and produce any document, relating to evidential material.

Entry under an investigation warrant

- (3) If the entry is authorised by an investigation warrant, the authorised compliance officer may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person is not subject to a requirement under subsection (3) if:
 - (a) the person does not possess the information or document required; and
 - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

Fault-based offence

- (5) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

100 Subsection 225(1)

Omit “authorised officer”, substitute “authorised compliance officer”.

101 Subsection 225(2)

Repeal the subsection, substitute:

- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised compliance officers should have access to the premises for the purposes of determining whether:
- (a) a designated compliance provision has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with a designated compliance provision is correct.

102 Subsection 225(3)

Omit “authorised officer”, substitute “authorised compliance officer”.

103 Subsection 225(4)

Repeal the subsection, substitute:

Content of warrant

- (4) The warrant must:
- (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state the purpose for which the warrant is issued; and
 - (d) authorise one or more authorised compliance officers (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in subsection 223(2) and sections 223A, 223B, 231 and 232 in relation to the premises; and
 - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (f) specify the day (not more than 3 months after the issue of the warrant) on which the warrant ceases to be in force.

104 Section 226 (heading)

Omit “**Contravention-related**”, substitute “**Investigation**”.

105 Subsections 226(1) and (3)

Omit “authorised officer”, substitute “authorised compliance officer”.

106 Subsection 226(4)

Repeal the subsection, substitute:

Content of warrant

- (4) The warrant must:
- (a) state the offence provision or offence provisions, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
 - (b) describe the premises to which the warrant relates; and
 - (c) state that the warrant is issued under this section; and
 - (d) specify the kinds of evidential material to be searched for under the warrant; and
 - (e) state that evidential material of the kind specified may be seized under the warrant; and
 - (f) state that the person executing the warrant may seize any other thing found in the course of executing the warrant if the person believes on reasonable grounds that the thing is evidential material of a kind not specified in the warrant; and
 - (g) name one or more authorised compliance officers; and
 - (h) authorise the authorised compliance officers named in the warrant:
 - (i) to enter the premises; and
 - (ii) to exercise the powers referred to in subsections 224(2) and (3) and sections 224A, 231 and 232 in relation to the premises; and
 - (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (j) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

107 Section 227 (heading)

Omit “**Contravention-related**”, substitute “**Investigation**”.

108 Subsections 227(1), (3), (4), (6) and (7)

Omit “authorised officer” (wherever occurring), substitute “authorised compliance officer”.

109 Subsection 227(11)

Repeal the subsection.

110 After section 227

Insert:

227A Persons assisting authorised compliance officers

Authorised compliance officers may be assisted by other persons

- (1) An authorised compliance officer may be assisted by other persons in exercising powers or performing functions or duties under this Subdivision at premises, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised compliance officer.

Powers, functions and duties of a person assisting

- (2) A person assisting the authorised compliance officer:
- (a) may enter the premises; and
 - (b) may exercise powers under this Subdivision:
 - (i) if the premises were entered under subsection 223(1)—for the purposes of assisting the authorised compliance officer to determine whether a designated compliance provision has been, or is being, complied with or information given in compliance, or purported compliance, with a designated compliance provision is correct; or
 - (ii) if the premises were entered under subsection 224(1)—in relation to evidential material; and

- (c) may exercise powers and perform functions and duties under this Subdivision that are incidental to the powers mentioned in subparagraph (b)(i) or (ii); and
 - (d) must do so in accordance with any direction given by the authorised compliance officer to the person assisting.
- (3) A power exercised by a person assisting the authorised compliance officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised compliance officer.
- (4) A function or duty performed by a person assisting the authorised compliance officer as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised compliance officer.
- (5) If a direction is given under paragraph (2)(d) in writing, the direction is not a legislative instrument.

111 Section 228

Repeal the section.

112 Section 229 (heading)

Omit “authorised officers”, substitute “authorised compliance officers”.

113 Subsections 229(1) and (2)

Omit “authorised officer”, substitute “authorised compliance officer”.

114 After subsection 229(2)

Insert:

- (2A) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.

115 Subsection 229(3)

Omit “authorised officer” (wherever occurring), substitute “authorised compliance officer”.

116 At the end of section 229

Add:

(4) If:

- (a) an authorised compliance officer is on premises by consent in accordance with subsection (1); and
- (b) the authorised compliance officer has not shown the occupier of the premises the officer's identity card before entering the premises;

the authorised compliance officer must do so on, or as soon as is reasonably practicable after, entering the premises.

117 Section 230 (heading)

Omit "authorised officers", substitute "authorised compliance officers".

118 Subsection 230(1)

Omit "authorised officer", substitute "authorised compliance officer".

119 Subsection 230(1)

Omit "a warrant issued under section 225 or 226", substitute "a monitoring warrant or an investigation warrant".

120 Paragraph 230(1)(a)

Repeal the paragraph, substitute:

- (a) announce that the authorised compliance officer is authorised to enter the premises; and
- (ab) show the authorised compliance officer's identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and

121 Subsection 230(2)

Omit "An authorised officer", substitute "An authorised compliance officer who is executing an investigation warrant".

122 After subsection 230(2)

Insert:

(2A) If:

- (a) an authorised compliance officer does not comply with subsection (1) because of subsection (2); and
- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the authorised compliance officer must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

123 Subsection 230(3)

Repeal the subsection, substitute:

- (3) If, when an authorised compliance officer is executing the warrant, an occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the authorised compliance officer must, as soon as practicable:
 - (a) make a copy of the warrant available to the occupier or other person; and
 - (b) inform the occupier or other person, in writing, of the responsibilities and rights of the occupier or other person under sections 233C and 237.

124 Subsection 230(4)

Omit “authorised officer”, substitute “authorised compliance officer”.

125 Sections 231 and 232

Repeal the sections, substitute:

231 Use of equipment at premises

- (1) This section applies if:
 - (a) an authorised compliance officer enters premises under subsection 223(1) or 224(1); and
 - (b) the authorised compliance officer believes on reasonable grounds that the authorised compliance officer can operate equipment at the premises without damaging the equipment.
 - (2) The authorised compliance officer may operate the equipment to:
 - (a) see whether the following may be accessible by doing so:
-

- (i) if the premises were entered under subsection 223(1)—
relevant information;
 - (ii) if the premises were entered under subsection 224(1)—
evidential material; and
- (b) put the relevant information or evidential material in
documentary form; and
- (c) copy the relevant information or evidential material to a
storage device that:
- (i) is brought to the premises for the exercise of the power;
or
 - (ii) is on the premises and the use of which for that purpose
has been agreed in writing by the occupier of the
premises.

The authorised compliance officer may then take the storage
device from the premises.

- (3) In subsection (2), **relevant information** means information relevant
to determining whether:
- (a) a designated compliance provision has been, or is being,
complied with; or
 - (b) information given in compliance, or purported compliance,
with a designated compliance provision is correct.
- (4) If:
- (a) the premises were entered under an investigation warrant;
and
 - (b) the authorised compliance officer suspects on reasonable
grounds that the equipment or a storage device on the
premises is or contains evidential material;
- the authorised compliance officer may seize the equipment or the
storage device.
- (5) An authorised compliance officer may seize equipment or a storage
device under subsection (4) only if:
- (a) it is not practicable to put the evidential material in
documentary form as mentioned in paragraph (2)(b) or copy
the evidential material as mentioned in paragraph (2)(c); or

- (b) possession of the equipment or the storage device by the occupier could constitute an offence against a law of the Commonwealth.

232 Expert assistance to operate equipment at premises

- (1) If an authorised compliance officer enters premises under a warrant issued under this Subdivision and the officer believes on reasonable grounds that:
 - (a) the following may be accessible by operating equipment at the premises:
 - (i) in the case of a monitoring warrant—relevant information (within the meaning of subsection 231(3));
 - (ii) in the case of an investigation warrant—evidential material; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if the authorised compliance officer does not take action under this subsection, the relevant information or evidential material may be destroyed, altered or otherwise interfered with;

the authorised compliance officer may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
 - (2) The authorised compliance officer must give notice to the occupier of the premises of the officer's intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.
 - (3) The equipment may be secured:
 - (a) for a period not exceeding 24 hours; or
 - (b) until the equipment has been operated by the expert; whichever happens first.
 - (4) If the authorised compliance officer believes on reasonable grounds that the expert assistance will not be available within 24 hours, the officer may apply to the magistrate for an extension of that period.
-

- (5) The authorised compliance officer must give notice to the occupier of the premises of the officer's intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The 24-hour period may be extended more than once.

Note: For the process by which a magistrate may extend the period, see section 232A.

232A Extension of periods in which things secured

Application

- (1) This section applies where an authorised compliance officer applies to a magistrate under subsection 223A(2) or 232(4) for an extension of the period during which a thing may be secured.

Granting extension

- (2) The magistrate may, by order, grant an extension of the period if the magistrate is satisfied, by information on oath or affirmation, that:
 - (a) if the thing is secured under section 223A—it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; or
 - (b) if the thing is equipment that is secured under section 232—it is necessary to secure the thing:
 - (i) to ensure that relevant information is not destroyed, altered or otherwise interfered with; or
 - (ii) to prevent evidential material from being destroyed, altered or otherwise interfered with.
- (3) However, the magistrate must not grant the extension unless the authorised compliance officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the extension is being sought.

Content of order

- (4) The order extending the period must:
- (a) describe the thing to which the order relates; and
 - (b) state the period for which the extension is granted; and
 - (c) state that the order is made under this section; and
 - (d) state that the authorised compliance officer is authorised to secure the thing for that period.

126 Subsection 233(1)

Repeal the subsection, substitute:

- (1) This section applies if:
- (a) as a result of equipment being operated as mentioned in this Subdivision:
 - (i) damage is caused to the equipment; or
 - (ii) data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.

127 Subsection 233(2)

After “payable”, insert “to the owner of the equipment, or the user of the data or programs, for the damage or corruption”.

128 After subsection 233(2)

Insert:

- (2A) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court referred to in section 138 for such reasonable amount of compensation as the court determines.

129 Subsection 233(3)

Omit “thing”, substitute “equipment”.

130 After section 233

Insert:

233A Completing execution of warrant after temporary cessation

- (1) This section applies if an authorised compliance officer, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The authorised compliance officer, and persons assisting, may complete the execution of the warrant if:
 - (a) the warrant is still in force; and
 - (b) the authorised compliance officer and persons assisting are absent from the premises:
 - (i) for not more than 1 hour; or
 - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
 - (iii) for a longer period if the occupier of the premises consents in writing.

Application for extension in emergency situation

- (3) An authorised compliance officer may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
 - (a) there is an emergency situation; and
 - (b) the authorised compliance officer believes on reasonable grounds that the authorised compliance officer and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the authorised compliance officer or person assisting must give notice to the occupier of the premises of the intention to apply for an extension.

Extension in emergency situation

- (5) A magistrate may extend the period during which the authorised compliance officer and persons assisting may be away from the premises if:
- (a) an application is made under subsection (3); and
 - (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
 - (c) the extension would not result in the period ending after the warrant ceases to be in force.

233B Completing execution of warrant stopped by court order

An authorised compliance officer, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a Court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

233C Responsibility to provide facilities and assistance

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or another person who apparently represents the occupier, must provide:
- (a) an authorised compliance officer executing the warrant; and
 - (b) any person assisting the authorised compliance officer;
- with all reasonable facilities and assistance for the effective exercise of their powers.

Fault-based offence

- (2) A person commits an offence if:
- (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

233D Copies of seized things to be provided

- (1) This section applies if:
 - (a) an investigation warrant is being executed in relation to premises; and
 - (b) an authorised compliance officer seizes one or more of the following from the premises under this Subdivision:
 - (i) a document, film, computer file or other thing that can be readily copied;
 - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, may request the authorised compliance officer to give a copy of the thing or the information to the occupier or other person.
- (3) The authorised compliance officer must comply with the request as soon as practicable after the seizure.
- (4) However, the authorised compliance officer is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

233E Receipts for seized things

- (1) An authorised compliance officer must provide a receipt for a thing that is seized under this Subdivision.
- (2) One receipt may cover 2 or more things seized.

233F Return of seized things

- (1) The Inspector-General must take reasonable steps to return a thing seized under this Subdivision when the earliest of the following happens:
 - (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

Note: For exceptions to this rule, see subsections (2) and (3).

Exceptions

- (2) Subsection (1):
- (a) is subject to any contrary order of a Court; and
 - (b) does not apply if the thing:
 - (i) is forfeited or forfeitable to the Commonwealth; or
 - (ii) is the subject of a dispute as to ownership.
- (3) The Inspector-General is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and those proceedings (and any appeal from those proceedings) have not been completed; or
 - (b) the thing may continue to be retained because of an order under section 233G; or
 - (c) the Commonwealth or the Inspector-General is otherwise authorised (by a law, or an order of a Court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

233G Magistrate may permit a thing to be retained

- (1) The Inspector-General may apply to a magistrate for an order permitting the retention of a thing seized under this Subdivision for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
- (a) 60 days after the seizure; or
 - (b) a period previously specified in an order of a magistrate under this section.
- (2) Before making the application, the Inspector-General must:
-

- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person who the Inspector-General believes to have such an interest of the proposed application.
- (3) Any person notified under paragraph (2)(b) is entitled to be heard in relation to the application.

Order to retain thing

- (4) The magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation as to whether a designated compliance provision has been contravened; or
 - (b) to enable evidence of a contravention mentioned in paragraph (a) to be secured for the purposes of a prosecution or an action to obtain a pecuniary penalty order.
- (5) The period specified must not exceed 3 years.

233H Disposal of things

- (1) The Inspector-General may dispose of a thing seized under this Subdivision if:
- (a) the Inspector-General has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the Inspector-General has been unable to locate the person; or
 - (ii) the person has refused to take possession of the thing.
- (2) The Inspector-General may dispose of the thing in such manner as the Inspector-General thinks appropriate.

131 Paragraph 234(1)(a)

Omit “authorised officer”, substitute “authorised compliance officer”.

132 Paragraph 234(1)(b)

Omit “a warrant under section 225 or 226”, substitute “a monitoring warrant or an investigation warrant”.

133 Subsection 234(2)

Omit “an authorised officer”, substitute “an authorised compliance officer”.

134 Paragraph 234(2)(b)

Omit “authorised officer’s”, substitute “authorised compliance officer’s”.

135 Paragraphs 234(2)(c) and (d)

Omit “authorised officer”, substitute “authorised compliance officer”.

136 Section 235

Repeal the section, substitute:

Subdivision C—Powers of magistrates

235 Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by Subdivision B is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by Subdivision B has the same protection and immunity as if the magistrate were exercising the power:
 - (a) as the court of which the magistrate is a member; or

- (b) as a member of the court of which the magistrate is a member.

137 Section 236 (at the end of the heading)

Add “or legal professional privilege”.

138 Section 236 (after the heading)

Insert:

Self-incrimination

139 Section 236

Before “Nothing”, insert “(1)”.

140 At the end of section 236

Add:

Legal professional privilege

- (2) Nothing in this Division affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.

141 Paragraph 237(1)(a)

Repeal the paragraph, substitute:

- (a) an authorised compliance officer is entering premises under Subdivision B; and

142 Subsection 237(1)

Omit “the authorised officer”, substitute “the authorised compliance officer”.

143 Subsection 237(2)

Omit “authorised officer’s”, substitute “authorised compliance officer’s”.

144 Subsection 237(3)

Omit “the authorised officer”, substitute “the authorised compliance officer”.

145 Subsection 237(3)

Omit “the authorised officers”, substitute “the authorised compliance officers”.

146 At the end of Subdivision D of Division 2 of Part 10

Add:

237A Obstructing authorised compliance officers

Civil penalty provision

A person is liable to a civil penalty if the person obstructs, hinders, intimidates or resists an authorised compliance officer in the performance of the officer’s functions or duties, or the exercise of the officer’s powers, under this Act.

Note 1: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person’s state of mind (see section 154C).

Note 2: A person who is liable to a civil penalty under this section may also commit an offence against section 149.1 of the *Criminal Code*.

Civil penalty: 100 penalty units.

147 Section 238

Repeal the section, substitute:

238 Power to require information

- (1) This section applies to a person if the Inspector-General has reason to believe that information (the *compellable information*) relating to any of the following matters:

- (a) the investigation of a designated compliance provision;
- (b) an audit being conducted under section 73L;
- (c) a matter:
 - (i) relevant to the performance of the Inspector-General's functions (other than the functions referred to in any of paragraphs 215C(1)(a) to (c)); and
 - (ii) specified in regulations made for the purposes of this paragraph;

is in the person's possession, custody or control (whether held electronically or in any other form).

- (2) The Inspector-General may, in writing, require the person to give specified compellable information to the Inspector-General:
 - (a) within a specified period of time (which must not be less than 14 days after the requirement is made); and
 - (b) in a specified form or manner.

Fault-based offence

- (3) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provisions

- (4) A person is liable to a civil penalty if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (5) A person is liable to a civil penalty if:

- (a) the person is subject to a requirement under subsection (2);
and
- (b) the person gives information to the Inspector-General in compliance or purported compliance with that requirement;
and
- (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

Exceptions

- (6) Subsection (4) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
 - (a) of a commercial nature; or
 - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
 - (c) commercially sensitive.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

- (7) Subsection (4) does not apply in relation to compellable information relating to a matter referred to in paragraph (1)(a) or (b) if giving the information might tend to incriminate the person or expose the person to a penalty.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

148 Before Part 10A

Insert:

Part 10AB—Inspector-General of Water **Compliance (inquiry powers)**

239AA Inspector-General may conduct inquiry

Inspector-General may conduct inquiry on own initiative

- (1) The Inspector-General may, on the Inspector-General's own initiative, conduct an inquiry for the purpose of performing the function referred to in paragraph 215C(1)(a), (b) or (c).

Minister may direct Inspector-General to conduct inquiry

- (2) The Minister may direct the Inspector-General, in writing, to conduct an inquiry into a particular matter related to the function referred to in paragraph 215C(1)(a), (b) or (c).
- (3) A direction under subsection (2) to conduct an inquiry may specify either or both of the following:
 - (a) the date by which the inquiry is to be completed;
 - (b) that the Inspector-General must prepare a written report on the inquiry and give it to the Minister.
- (4) A direction under subsection (2) must not specify the way in which an inquiry is to be conducted.
- (5) The Inspector-General must comply with a direction given under subsection (2).
- (6) A direction given under subsection (2) is not a legislative instrument.

Conduct of inquiry

- (7) In conducting an inquiry, the Inspector-General must have regard to any applicable guidelines issued under section 215V and standards issued under section 215VA.
- (8) The regulations may make other provision for and in relation to the process to be followed in conducting an inquiry.

Note: Section 239AE makes provision in relation to reports of an inquiry.

239AB Terms of reference for inquiry

- (1) The Inspector-General may, in writing, determine the terms of reference for an inquiry under section 239AA.
- (2) A determination under subsection (1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise by the Inspector-General of the powers in subsections 239AC(2) and 239AD(2) in relation to the inquiry.
- (3) A determination under subsection (1) is not a legislative instrument.
- (4) The Inspector-General must publish the determination of the terms of reference for an inquiry under section 239AA on the Inspector-General's website or the Department's website.

239AC Inspector-General may require person to give information for the purpose of certain inquiries

- (1) This section applies in relation to an inquiry under section 239AA if the Inspector-General determined the terms of reference for the inquiry under section 239AB.

Note: A determination under subsection 239AB(1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise of the power in subsection (2) of this section (see subsection 239AB(2)).

- (2) If the Inspector-General reasonably believes that information (the **compellable information**) that may assist the Inspector-General in conducting the inquiry is in a person's possession, custody or control (whether held electronically or in any other form), the Inspector-General may, by written notice, require the person to give specified compellable information to the Inspector-General:
 - (a) within the period of time specified in the notice (which must be at least 14 days after the notice is given); and
 - (b) in the form or manner specified in the notice.
- (3) A notice given under subsection (2) must also set out the effect of:

- (a) subsections (4) to (6) of this section and section 239AH (which deals with the privilege against self-incrimination and legal professional privilege); and
- (b) section 137.1 of the *Criminal Code* (which deals with false or misleading information).

Fault-based offence

- (4) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provisions

- (5) A person is liable to a civil penalty if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

- (7) A person is liable to a civil penalty if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person gives information to the Inspector-General in compliance or purported compliance with that requirement; and
 - (c) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or

- (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: A person may commit an offence if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code*).

Civil penalty: 100 penalty units.

239AD Inspector-General may require person to appear to answer questions for the purpose of certain inquiries

- (1) This section applies in relation to an inquiry under section 239AA if the Inspector-General determined the terms of reference for the inquiry under section 239AB.

Note: A determination under subsection 239AB(1) of the terms of reference for an inquiry under section 239AA must specify the legislative powers of the Commonwealth that support the exercise of the power in subsection (2) of this section (see subsection 239AB(2)).

- (2) If the Inspector-General reasonably believes that a person has information or knowledge (the ***compellable information***) that may assist the Inspector-General in conducting the inquiry, the Inspector-General may, by written notice, require the person to appear before the Inspector-General to answer questions in relation to the compellable information.

- (3) A notice given under subsection (2) must:
 - (a) specify the time and place the person must appear to answer questions; and
 - (b) specify the nature of the compellable information to which the questions will relate; and
 - (c) state that the person may be accompanied by a lawyer; and
 - (d) state whether any other persons may accompany the person; and
 - (e) set out the effect of:
 - (i) subsections (5) and (6) of this section and section 239AH (which deals with the privilege against self-incrimination and legal professional privilege); and
 - (ii) section 137.1 of the *Criminal Code* (which deals with false or misleading information).

- (4) The time specified under paragraph (3)(a) must be at least 14 days after the notice is given.

Fault-based offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty provision

- (6) A person is liable to a civil penalty if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Note: In proceedings against a person for a contravention of a civil penalty provision, it is generally not necessary to prove the person's state of mind (see section 154C).

Civil penalty: 100 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse.

Note: The person bears an evidential burden in relation to the matter in this subsection (see section 154E).

Record of interview

- (8) If a person gives answers to questions in compliance with a notice given to the person under subsection (2), the Inspector-General must give a written record of the answers to the person.

239AE Reports by Inspector-General

- (1) The Inspector-General must report to the Minister on each inquiry conducted under section 239AA.
- (2) If:

- (a) the Inspector-General conducted an inquiry under section 239AA at the request of the Minister; and
 - (b) the Minister requested the Inspector-General to prepare a written report on the inquiry;
- the Inspector-General must give the Minister a written report on the inquiry.

Note: Certain material must not be included in a report of an inquiry (see section 239AG).

- (3) The Inspector-General may prepare a single report covering more than one inquiry conducted under section 239AA.
- (4) A report of an inquiry may include findings and recommendations in relation to any matter included in the report.
- (5) The Inspector-General may publish a report of an inquiry on the Inspector-General's website or the Department's website.

239AF Responses to inquiry reports including recommendations that an agency take certain action

- (1) This section applies if:
 - (a) the Inspector-General publishes a report of an inquiry under subsection 239AE(5); and
 - (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.
- (2) The agency to which the recommendation is made must give a written response to the Inspector-General, within 90 days after the report was published or within any longer period agreed to by the Inspector-General, that sets out:
 - (a) whether the agency accepts the recommendation (in whole or in part); and
 - (b) if the agency accepts the recommendation (in whole or in part)—details of any action that the agency proposes to take to give effect to the recommendation (in whole or in part); and

- (c) if the agency does not accept the recommendation (in whole or in part)—the reasons for not accepting the recommendation (in whole or in part).
- (3) However, the agency to which the recommendation is made is not required to comply with subsection (2) if the recommendation relates to the Inspector-General's function referred to in paragraph 215C(1)(c).
- (4) The Inspector-General may publish a copy of each response received under subsection (2) on the Inspector-General's website or the Department's website.

239AG Including criticism in reports

Opportunity to comment on critical material in report

- (1) If the Inspector-General proposes to include in a report prepared under section 239AE, or an annual report prepared under section 215Y, material that is expressly or impliedly critical of a person or body, the Inspector-General must, before the report is finalised, give the person or body an opportunity to comment on the material.
- (2) The person or body may give comments orally or in writing.

Protection from liability for persons who give comments

- (3) If a person or body gives comments, in good faith, under this section, the person or body is not liable:
- (a) to any proceedings for contravening a law of the Commonwealth because of giving the comments; or
 - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of giving the comments.

No loss of legal professional privilege

- (4) Information or a document does not cease to be the subject of legal professional privilege merely because it is included or referred to in comments given under this section.

239AH Privilege against self-incrimination and legal professional privilege not abrogated

Self-incrimination

- (1) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information or the production of the document might tend to incriminate the person or make the person liable to a penalty.

Legal professional privilege

- (2) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.

149 At the end of subsection 251(2)

Add:

- ; (k) the power to give directions to the Inspector-General under section 215D.

Part 3—Transitional provisions

Water Act 2007

150 At the end of Part 2 of Schedule 10

Add:

Division 2—Other amendments

2 Definitions

In this Division:

commencement day means the day Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* commences.

3 Appropriate enforcement agency

The amendment of paragraph 137(a) of this Act made by item 19 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to contraventions occurring before, on or after the commencement day.

4 Legal proceedings involving the Murray-Darling Basin Authority

- (1) If, immediately before the commencement day:
 - (a) the Murray-Darling Basin Authority was a party to proceedings pending in any court or tribunal; and
 - (b) the proceedings:
 - (ii) were brought as permitted by Part 8 of the Act, as in force before the commencement day; or
 - (ii) related to the exercise of powers under Part 10 of the Act, as in force before the commencement day;
- the Inspector-General of Water Compliance is substituted for the Murray-Darling Basin Authority as a party to the proceedings on and after that day.

- (2) Subclause (1) does not apply in relation to pending proceedings relating to the payment of compensation to a person under section 233 or 254 of this Act arising from the exercise of powers under Part 10 of this Act, as in force before the commencement day.

5 Enforceable undertakings

If:

- (a) before the commencement day, the Authority had accepted an undertaking given by a person under section 163 of this Act; and
- (b) the undertaking had not been withdrawn or cancelled before that day;

then the undertaking continues to have effect on and after the commencement day as if it were an undertaking accepted by the Inspector-General under that section.

6 Enforcement notices

- (1) The amendments of section 165 of this Act made by items 36 to 42 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* apply in relation to contraventions, conduct and omissions occurring before, on or after the commencement day.
- (2) Section 166 of this Act, as substituted by item 43 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, applies in relation to a contravention of a notice that is given under subsection 165(2) of this Act on or after the commencement day.
- (3) The amendment of section 167 of this Act made by item 44 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to a notice given under section 165 of this Act before, on or after the commencement day.

7 Public warning notices

Section 167A of this Act applies in relation to conduct occurring on or after the commencement day.

8 Offences and civil penalty provisions

- (1) An offence provision or a civil penalty provision that was inserted into this Act by Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in relation to an act or omission that occurs on or after the commencement day.
- (2) An offence provision or a civil penalty provision, as amended by Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, applies in relation to an act or omission that occurs on or after the commencement day.

9 Credits to the Murray-Darling Basin Special Account

The amendment of paragraph 210(1)(i) of this Act made by item 59 of Schedule 1 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021* applies in connection with the performance of the Authority's functions under this Act or the regulations on or after the commencement day.

10 Disclosure of information by the Authority

Section 215A of this Act applies in relation to information obtained before, on or after the commencement day.

11 Inquiry may relate to matters occurring before, on or after commencement day

The Inspector-General may conduct an inquiry under section 239AA of this Act for the purpose of performing the function referred to in paragraph 215C(1)(a), (b) or (c) of this Act in relation to the performance of functions or obligations, exercise of powers or implementation of commitments referred to in those

paragraphs by agencies of the Commonwealth, or agencies of the Basin States, before, on or after the commencement day.

12 Inspector-General's first annual work plan

For the purposes of subsection 215E(1) of the Act, the Inspector-General must prepare a work plan for the financial year that includes the commencement day within 3 months after the commencement day.

13 Inspector-General's compliance powers

- (1) The powers conferred on the Inspector-General by Subdivision B of Division 1 of Part 10AA of this Act may be exercised in relation to contraventions or acts or omissions occurring before, on or after the commencement day.
- (2) Subclause (1) has effect subject to clause 8 of this Schedule.

14 Declaration by the Authority before commencement day relating to restrictions on trading water access right

- (1) If:
 - (a) a declaration was made by the Authority under subsection 12.20(1) of the Basin Plan before the commencement day; and
 - (b) the declaration was in force immediately before that day; the declaration continues in force on and after that day as if it had been made by the Inspector-General under that subsection.
- (2) If:
 - (a) before the commencement day, a Basin State had, under paragraph 12.20(1)(a) of the Basin Plan, requested the Authority to make a declaration; and
 - (b) no decision on the request had been made before the commencement day; the request is taken, on and after the commencement day, to be a request made under paragraph 12.20(1)(a) of the Basin Plan to the Inspector-General to make the declaration.

**15 Declaration by the Authority before commencement day
permitting application of exchange rate to trade of water
access entitlement**

- (1) If:
- (a) a declaration was made by the Authority under subsection 12.22(3) of the Basin Plan before the commencement day; and
 - (b) the declaration was in force immediately before that day; the declaration continues in force on and after that day as if it had been made by the Inspector-General under that subsection.
- (2) If:
- (a) before the commencement day, a Basin State had, under subsection 12.22(2) of the Basin Plan, requested the Authority to make a declaration; and
 - (b) no decision on the request had been made before the commencement day;
- the request is taken, on and after the commencement day, to be a request made under subsection 12.22(2) of the Basin Plan to the Inspector-General to make the declaration.

16 Audits

Inspector-General may conduct audit to assess compliance occurring before, on or after commencement day

- (1) The Inspector-General may conduct an audit under section 73L of this Act to assess the extent of compliance with the Basin Plan or water resource plans occurring before, on or after the commencement day.

Audits to assess compliance with Basin Plan in progress before commencement day

- (2) If:
- (a) an audit was being conducted under Division 3 of Part 3 of Chapter 13 of the Basin Plan before the commencement day; and
 - (b) the audit had not been completed before that day;

then, despite the repeal of Division 3 of Part 3 of Chapter 13 and section 13.20 of the Basin Plan (the ***Basin Plan audit provisions***) by items 18 and 20 of Schedule 2 to the *Water Legislation Amendment (Inspector-General of Water Compliance and Other Measures) Act 2021*, the Basin Plan audit provisions continue to apply on and after the commencement day in relation to the audit.

- (3) Subsection 73M(2) of this Act applies in relation to an audit that is completed after the commencement day under Division 3 of Part 3 of Chapter 13 of the Basin Plan (as that Division continues to apply because of subclause (2) of this clause) if:
- (a) a report setting out the findings of the audit and any recommendations arising from the audit is published under section 13.20 of the Basin Plan (as that section continues to apply because of subclause (2) of this clause); and
 - (b) the report includes a recommendation that an agency of the Commonwealth, or an agency of a State or Territory, take certain action.

17 Regulations may provide for other transitional matters relating to the Inspector-General

The regulations may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:

- (a) the establishment of the Inspector-General; and
- (b) the transfer of functions from the Authority to the Inspector-General.

Schedule 2—Amendment of the Basin Plan 2012

Basin Plan 2012

1 Subsection 6.12(3)

After “the Authority”, insert “and to the Inspector-General”.

2 Subsection 6.12(5)

After “the Authority”, insert “and the Inspector-General”.

3 Section 6.12 (note 2)

Repeal the note, substitute:

Note 2: The Inspector-General may conduct, or appoint or establish a person or body to conduct, an audit in relation to compliance using the Inspector-General’s powers under the Act. The Inspector-General must publish a copy of a report of the audit on the Inspector-General’s website or the Department’s website. The findings of such an audit may also lead to further action being taken by the Inspector-General to ensure compliance with sections 34, 35, 58 and 59 of the Act.

4 Subsection 6.12C(3)

After “the Authority”, insert “and to the Inspector-General”.

5 Subsection 6.12C(5)

After “the Authority”, insert “and the Inspector-General”.

6 Section 6.12C (note 2)

Repeal the note, substitute:

Note 2: The Inspector-General may conduct, or appoint or establish a person or body to conduct, an audit in relation to compliance using the Inspector-General’s powers under the Act. The Inspector-General must publish a copy of a report of the audit on the Inspector-General’s website or the Department’s website. The findings of such an audit may also lead to further action being taken by the Inspector-General to ensure compliance with sections 34, 35, 58 and 59 of the Act.

7 Section 12.19 (heading)

Omit “the Authority”, substitute “the Inspector-General”.

8 Subsection 12.19(1)

Omit “the Authority”, substitute “the Inspector-General”.

9 Section 12.20 (heading)

Omit “Authority”, substitute “the Inspector-General”.

10 Subsection 12.20(1)

Omit “The Authority”, substitute “The Inspector-General”.

11 Paragraphs 12.20(1)(a) and (b)

Omit “the Authority”, substitute “the Inspector-General”.

12 Subsections 12.20(2) and (3)

Omit “The Authority”, substitute “The Inspector-General”.

13 Subsection 12.20(3)

Omit “its” (wherever occurring), substitute “the Inspector-General’s”.

14 Section 12.22 (heading)

Omit “Authority”, substitute “Inspector-General”.

15 Section 12.22

Omit “Authority” (wherever occurring), substitute “Inspector-General”.

16 Subparagraph 13.01(2)(b)(i)

Omit “, conducting audits,”.

17 Part 3 of Chapter 13 (heading)

Omit “, audits”.

18 Division 3 of Part 3 of Chapter 13

Repeal the Division.

19 Paragraph 13.12(1)(e)

Omit “Division 3”, substitute “Division 3B of Part 2 of the Act”.

20 Section 13.20

Repeal the section.

Schedule 3—Other amendments of the Water Act 2007

Water Act 2007

1 Subsection 4(1) (paragraph (f) of the definition of State water management law)

After “Basin State”, insert “, or a part of such a law,”.

2 After subsection 18C(2)

Insert:

(2A) Subsection 14(2) of the *Legislation Act 2003* does not apply to regulations made for the purposes of subsection (1) of this section.

3 Paragraph 193(2)(a)

Omit “section 183 prevents”, substitute “rules in force for the purposes of paragraph 29(2)(c) of the *Public Governance, Performance and Accountability Act 2013* prevent”.

4 Subsection 197(3)

Repeal the subsection, substitute:

(3) Paragraph (1)(a) does not apply to an Authority member who would be prevented by rules in force for the purposes of paragraph 29(2)(c) of the *Public Governance, Performance and Accountability Act 2013* from deliberating on the proposed decision at a meeting of the Authority.

5 At the end of Schedule 10

Add:

**Part 2—Transitional provisions relating to the
Water Legislation Amendment
(Inspector-General of Water Compliance
and Other Measures) Act 2021**

**Division 1—Amendments to Schedule 1 to this Act made by
regulations**

**1 Application of amendments—amendments to Schedule 1 to this
Act made by regulations**

Subsection 18C(2A) of this Act, as inserted by item 2 of
Schedule 3 to the *Water Legislation Amendment
(Inspector-General of Water Compliance and Other Measures) Act
2021*, applies:

- (a) in relation to regulations made after the commencement of
that subsection; and
- (b) in relation to regulations made before the commencement of
that subsection as if that subsection had been in force when
the regulations were made.

[*Minister's second reading speech made in—
House of Representatives on 26 May 2021
Senate on 15 June 2021*]

(64/21)
