

South Australia

Landscape South Australia (Water Register) Regulations 2020

under the *Landscape South Australia Act 2019*

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Part 1—Preliminary**1—Short title**

These regulations may be cited as the *Landscape South Australia (Water Register) Regulations 2020*.

2—Commencement

- (1) Subject to subregulation (2), these regulations come into operation on the day on [date to be inserted].
- (2) The following regulations come into operation on the day on which Schedule 4 Parts 3 and 4 of the Act come into operation:
 - (a) regulation 4(1)(i) and (2);
 - (b) Part 3 to Part 6 (inclusive);
 - (c) regulation 32 and 33;
 - (d) regulations 35, 36 and 37;

- (e) regulations 39, 40 and 41.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Landscape South Australia Act 2019*;

bundled water licence means a water licence that does not make express provision for a water access entitlement in the manner contemplated by section 121(2) of the Act;

caveatable interest means an interest held by virtue of being 1 of the following in relation to a relevant entitlement:

- (a) the holder of an interest in a relevant entitlement;
- (b) the holder of a security interest that relates to an interest in a relevant entitlement;
- (c) a party to a dealing, or prospective dealing, that relates to an interest in a relevant entitlement;
- (d) a person entitled, or claiming to be entitled, to be registered as the holder of an interest in a relevant entitlement;
- (e) a person who is the representative, by virtue of an appointment or order made under statute or otherwise by the operation of any law, of the holder of—
 - (i) an interest in a relevant entitlement; or
 - (ii) a security interest that relates to an interest in a relevant entitlement;
- (f) a person who has an interest that is otherwise related to a relevant entitlement;

caveator means a person who has the benefit of a caveat registered under Part 5 and includes the Minister when the Minister has registered a caveat on the Minister's own initiative;

consent caveat means a caveat that is registered under these regulations with the express consent of the holder of the relevant water licence;

register means The Water Register;

related body corporate, in relation to a particular entity (being a body corporate), is a body corporate that is related to the entity under section 50 of the *Corporations Act 2001* of the Commonwealth;

relevant entitlement means—

- (a) a water licence (or an interest in a water licence); or
- (b) a water access entitlement, or part of a water access entitlement;

water access entitlement includes a quantity of water included as part of a water licence that is taken to be water access entitlement under regulation 13 of the *Landscape South Australia (Transitional Provisions) Regulations 2019*.

Part 2—Information on register

4—Information to be recorded on register

- (1) For the purposes of Schedule 4 clause 6(g) of the Act, the following information (in detail determined by the Minister) is prescribed:
 - (a) information about each application made to the Minister under Part 8 of the Act, and the status of the application;
 - (b) in relation to a Schedule 4 entitlement, water resource works approval or site use approval—information about any condition attached to the Schedule 4 entitlement or approval;
 - (c) in relation to a Schedule 4 entitlement—information about any devolution of the Schedule 4 entitlement;
 - (d) in relation to a water licence—information about—
 - (i) the nature of the holding of the water licence (and if there are 2 or more holders of the water licence as tenants in common, the proportions of their respective interests); and
 - (ii) the consumptive pool or consumptive pools to which the water licence relates; and
 - (iii) any subdivision of the water licence, or any consolidation of the water licence with another water licence; and
 - (iv) in the case of a bundled water licence—the site with which the water licence is associated; and
 - (v) the nature or effect of any variation of the water licence; and
 - (vi) any transfer of the water licence, distinguishing between an absolute transfer and a transfer for a limited period; and
 - (vii) the surrender of the water licence; and
 - (viii) the exercise of any power of sale over the licence;
 - (e) in relation to a water access entitlement—information about—
 - (i) the water licence to which it relates; and
 - (ii) any classification assigned to the water access entitlement by or under the relevant water allocation plan; and
 - (iii) the nature or effect of any variation of, or reduction in, a water access entitlement; and
 - (iv) any transfer of the water licence, distinguishing between an absolute transfer and a transfer for a limited period; and
 - (v) the exercise of any power of sale over the water access entitlement;
 - (f) in relation to a water allocation—information about—
 - (i) the amount of water allocated on account of any water access entitlement from time to time; and

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- (ii) any amount of water permitted as carryover from time to time; and
 - (iii) the consumption or volume of allocated water used; and
 - (iv) any variation of, or reduction in, the allocation made from time to time; and
 - (v) any tagging of the water allocation in connection with an Interstate Water Entitlements Transfer Scheme;
 - (g) in relation to a water resource works approval or a site use approval—information about—
 - (i) the certificate of title (or other legal description) of the land where the works are to be located or the water is to be used (as the case may be); and
 - (ii) the maximum volume of water that may be taken, collected, diverted, extracted or used under the approval (as applies in the appropriate case); and
 - (iii) in the case of a water resource works approval—the works that are authorised under the approval; and
 - (iv) in the case of a site use approval—the purpose or purposes for which the water may be used; and
 - (v) any water allocation, and associated water licence, under which water may be taken or used on account of the relevant approval;
 - (h) in relation to a forest water licence—information about—
 - (i) the amount of water attached to the licence; and
 - (ii) the purpose or purposes for which the water may be used;
 - (i) in relation to a security interest registered under Schedule 4—
 - (i) the contact details of the person who has the benefit of the security interest; and
 - (ii) if relevant, the interest of a tenant in common to which the security interest applies; and
 - (iii) the order of priority that applies in relation to the security interest; and
 - (iv) the date and time of any discharge of the security interest; and
 - (v) if so determined by the Minister, any instrument reference number assigned to the instrument evidencing the security interest;
 - (j) in relation to any water levy, penalty, fee or charge that relates to a Schedule 4 entitlement—
 - (i) the amount of the levy, penalty, fee or charge; and
 - (ii) information about the person who is liable for payment (including in relation to any interest on an unpaid amount);
 - (k) in relation to a permit granted for a water affecting activity—information about—

- (i) the name and contact details of the person to whom the permit is issued; and
 - (ii) the date of issue; and
 - (iii) the activity authorised under the permit; and
 - (iv) any condition to which the permit is subject; and
 - (v) the land with which the permit is associated; and
 - (vi) the date of any variation of the permit; and
 - (vii) the date of expiry, surrender or revocation.
- (2) For the purposes of Schedule 4 clause 6(f) of the Act, the following information (in detail determined by the Minister) is prescribed in relation to any caveat registered under Part 4 of that Schedule:
- (a) the name and contact details of the caveator or caveators;
 - (b) the date and time of registration;
 - (c) the nature of the caveat and caveatable interest (determined according to criteria adopted by the Minister);
 - (d) if so determined by the Minister, any instrument reference number assigned to an instrument evidencing a caveatable interest;
 - (e) if the caveat applies in relation to part of a water access entitlement—the interest to which it relates;
 - (f) the dealings forbidden by the caveat and, if relevant, any dealings permitted under the terms of the caveat or by the caveator;
 - (g) the date of an application to remove the caveat;
 - (h) the period of the caveat, or other information about the expiry, lapsing or removal of the caveat.

5—Priority of registration

- (1) The priority of instruments lodged for registration in relation to an interest or entitlement as between themselves is according to the time and date of lodgement with the Minister unless some other order of priority is indicated by the parties at the time of lodgement of 2 or more instruments.
- (2) A registration takes effect at the time the registration is made.
- (3) In this regulation—
instrument includes an application and any supporting documentation;
registration includes recording.

6—Application to alter details on register

- (1) A person may apply to the Minister for an alteration to be made to the register—
 - (a) to record any dealing, transaction or other action or circumstance that affects information registered or recorded on the register; or
 - (b) otherwise to change any information on the register.

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- (2) An application under subregulation (1)—
 - (a) must be in a form approved by the Minister; and
 - (b) must be accompanied by the prescribed fee.
 - (3) The Minister may give effect to the application if satisfied (in such manner as the Minister thinks fit) that the alteration should be made.

Part 3—Transfers

7—Registration of transfers

- (1) In connection with the operation of Schedule 4 clause 7 of the Act, the Minister gives effect to a transfer—
 - (a) by registering the transfer on the register after approving the transfer on application made in accordance with the relevant designated section; or
 - (b) in the case of a designated transfer (but subject to the operation of this regulation)—by—
 - (i) approving the transfer on application made in accordance with the relevant designated section; and
 - (ii) registering the transfer on a separate application made for the purposes of this paragraph within the period applying under subregulation (4).
- (2) The holder of a designated entitlement may, at the time of making an application under a designated section for a designated transfer, request the Minister to give effect to the transfer—
 - (a) under subregulation (1)(a); or
 - (b) under subregulation (1)(b).
- (3) If a request is not made at the time of application, it will be taken that the Minister is to give effect to the transfer under subregulation (1)(a).
- (4) An application for the registration of a transfer under subregulation (1)(b)(ii) must be made within 2 months after the Minister grants approval to the transfer under the relevant designated section.
- (5) For the purposes of Schedule 4 clause 7 of the Act—
 - (a) subregulation (1)(a) is recognised as the procedure for the purposes of clause 7(2)(a); and
 - (b) the period under subregulation (4) is the prescribed period that applies under clause 7(2)(b); and
 - (c) a designated transfer is a transfer of a prescribed kind for the purposes of clause 7(3) (in a case where subregulation (1)(b) applies).
- (6) In this regulation—

designated entitlement means—

 - (a) a water licence; or
 - (b) a water access entitlement, or part of a water access entitlement;

designated section means section 125 or 132 of the Act;

designated transfer means a permanent transfer of a designated entitlement.

8—Co holders

- (1) If 2 or more persons hold a water licence or water access entitlement as joint tenants, the consent of each person is required in connection with the transfer of the licence or water access entitlement (or an interest in the licence or a part of the water access entitlement), as the case may be, to another person.
- (2) A tenant in common may transfer their interest in a water licence or water access entitlement (or a part of a water access entitlement) without the consent of any other tenant in common.

Part 4—Security interests

9—Creation of security interest—tenants in common

A tenant in common holding an interest in respect of a water licence or a water access entitlement (or part of a water access entitlement) may create a security interest over that interest without the consent of a tenant in common holding another interest in the same water licence or water access entitlement.

10—Consent to register security interest

The consent of the person, or each person, who holds an interest in a water licence or water access entitlement (or part of a water access entitlement) is required in order to register a security interest over that interest.

11—Minister not required to consider legal effect

Subject to the requirements of Schedule 4 clause 8(4) of the Act, the Minister is to proceed to register a security interest on the receipt of an instrument under Schedule 4 clause 8(2) of the Act without inquiring into, or being concerned with, the legal effect of the security interest.

12—Certain dealings not to be registered

For the purposes of Schedule 4 clause 8(4)(b) of the Act, the Minister must not register a security interest if the application is being made in relation to a water licence or a water access entitlement that is being, or has been, transferred for a limited time.

13—Registration not to impact certain matters

The registration of a security interest—

- (a) does not warrant or confirm the validity of the security interest to which the registration relates; and
- (b) does not limit or affect any action that the Minister may take in relation to a water licence or a water access entitlement under the Act, any regulations or a water allocation plan, or in the exercise of any other statutory function or power; and
- (c) does not prevent or require the holder of the security interest to consent to any transfer of a water allocation during a particular water use year; and

- (d) does not affect or prevent any transfer, variation, or surrender of a water licence, or any water access entitlement, required by law or by an order of a court or tribunal constituted by law; and
- (e) does not prevent the expiry of a water licence or water access entitlement, or any associated water allocation or other authorisation under the Act.

14—Effect of security interest

The registration of a security interest under Schedule 4—

- (a) provides for a record to be made of the security that has been provided by the holder of the interest in the water licence or water access entitlement to which the security interest relates; and
- (b) secures the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement to which the security interest relates; and
- (c) gives rise to the requirement that certain dealings with the interest in the water licence or water access entitlement to which the security interest relates requires the consent of the holder of the security interest; and
- (d) ensures that a transfer of the interest subject to the security interest will take effect subject to the security interest unless the security interest is discharged before the transfer occurs; and
- (e) gives priority to the security interest over other security interests registered after the security interest, and over all unregistered interests; and
- (f) provides the holder of the security interest with a scheme for the enforcement of the security interest in the case of a default by the holder of the interest in the water licence or water access entitlement to which the security interest relates.

15—Priority of interests

- (1) For the purposes of Schedule 4 clause 9(2) of the Act, an application to vary the priority between registered security interests—
 - (a) must set out the order of priority of interests, as it will apply after the variation; and
 - (b) must be made with the consent of each party to a registered security interest that will be affected by the change in the order of priority.
- (2) For the purposes of Schedule 4 clause 9(4)(a) of the Act, a consent caveat applying to an unregistered security interest is a caveat of a prescribed kind.

16—Transfers

For the purposes of Schedule 4 clause 11(1) of the Act, the interest of the holder of a security interest, or of a part interest in a security interest, is prescribed.

17—Discharge of registered security interests

- (1) For the purposes of Schedule 4 clause 12(1) of the Act, the interest of a person holding a security interest, or a part interest in a security interest, is prescribed.

- (2) For the purposes of Schedule 4 clause 12(2) of the Act, the Minister may discharge the registration of a security interest—
- (a) on account of an order of a court or tribunal constituted by law; or
 - (b) if a power of sale has been exercised under Schedule 4 clause 13 of the Act in accordance with these regulations; or
 - (c) if otherwise required by or under any other Act or law.

18—Enforcement of security interests

- (1) This regulation applies if—
- (a) a registered security interest secures the payment of a debt; and
 - (b) the holder of an interest in the water licence or water access entitlement that is subject to the security interest is in default in relation to that payment (the *defaulter*); and
 - (c) a person who is the holder of the security interest (the *claimant*) determines to initiate action under Schedule 4 clause 13 of the Act to enforce the registered security interest.
- (2) In a case where this regulation applies, the claimant must first serve a notice of the proposed enforcement action on the following persons:
- (a) the defaulter;
 - (b) any other person who is the holder of an interest in the water licence and, if the security interest relates to a water access entitlement, of an interest in the water access entitlement, and who is registered under the Act;
 - (c) any other person who is the holder of a security interest in respect of the water licence or, if the security interest relates to a water access entitlement, in respect of the water access entitlement (whether or not having greater priority);
 - (d) any person who is the holder of a caveat registered in relation to the water licence and, if the security interest relates to a water access entitlement, of a caveat registered in relation to the water access entitlement;
 - (e) the Minister.
- (3) A notice under subregulation (2)—
- (a) must be in a form determined or approved by the Minister for the purposes of this regulation; and
 - (b) must be served in accordance with section 222 of the Act.
- (4) If the defaulter does not rectify the default within 30 days of service of a notice under subregulation (3) (or within such longer period as the claimant may allow), the claimant may proceed to offer the relevant interest in the water licence (in the case of a security interest registered in respect of a licence) or the water access entitlement (in the case of a security interest registered in respect of a water access entitlement) for sale.

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- (5) However, before acting under subregulation (4), the claimant must serve a notice of their proposed course of action under that subregulation in accordance with section 222 of the Act.
 - (6) After taking the steps envisaged by subregulations (4) and (5), the claimant may apply to the Minister—
 - (a) in the case of a sale—for the transfer of the interest in the water licence or water access entitlement (or part of the water access entitlement) to the purchaser; or
 - (b) in the event that the claimant has been unable to effect a sale within a reasonable time for a reasonable price—for the transfer of the interest in the water licence or water access entitlement (or part of the water access entitlement) to the claimant.
 - (7) An application under subregulation (6) must be made in accordance with section 125 of the Act (and the provisions of that section relating to the payment of an application fee, and the grounds on which the Minister may decide to grant or refuse approval for the transfer of a licence or water access entitlement (or part of a water access entitlement), will apply).
 - (8) However, it is declared that the requirement to obtain the consent of a person recorded on the register as having an interest in a water licence under section 125(10) of the Act will not apply.
 - (9) Any purchase money obtained by the exercise of a power of sale under this regulation will be applied as follows:
 - (a) firstly—in discharging any liability for any outstanding levy, fee or charges payable under the Act in relation to the water licence or water access entitlement;
 - (b) secondly—in paying the costs of any sale and any other costs incurred by the claimant in proceeding under this regulation;
 - (c) thirdly—in discharging any liabilities secured by any registered security interests, or unregistered security interests protected by a registered caveat under Schedule 4 clause 9(4)(a) of the Act, in order of their priority;
 - (d) fourthly—in payment to the defaulter.
 - (10) On the transfer of an interest in a water licence or water access entitlement (or part of the water access entitlement) under this regulation, all security interests registered in respect of that interest or water access entitlement (or part of the water access entitlement), as the case may be, are to be discharged by the Minister.
 - (11) The transfer of an interest in a water licence or water access entitlement (or part of the water access entitlement) under this regulation does not affect—
 - (a) any prior transfer to another person for a limited period that applies under section 125(3) of the Act; or
 - (b) any condition, requirement or other obligation applying in relation to the relevant water licence (unless the Minister varies a condition under section 125 of the Act); or

- (c) any other action that the Minister may take in relation to a transfer, or proposed transfer, of a water licence or water access entitlement (or part of the water access entitlement); or
 - (d) the operation or affect of a water allocation plan as it relates to the relevant water licence or any water access entitlement (or part of a water access entitlement).
- (12) A person who is entitled to receive a notice under subregulation (2) may apply to the ERD Court for an order—
 - (a) that a sale should not proceed under subregulation (4); or
 - (b) that a transfer should not proceed under subregulation (6); or
 - (c) that compensation should be paid to the person on the ground that the claimant did not take reasonable steps to secure the highest possible amount by way of a power of sale under this regulation.
- (13) An application to the ERD Court under subregulation (12) must be made—
 - (a) in the case of an application under subregulation (12)(a)—within 21 days after a notice is given under subregulation (2); or
 - (b) in the case of an application under subregulation (12)(b)—within 14 days after an application is made to the Minister under subregulation (6); or
 - (c) in the case of an application under subregulation (12)(c)—within 6 months after an application is made to the Minister under subregulation (6).
- (14) The ERD Court may—
 - (a) on an application under subregulation (12)(a)—order that any action under subregulation (4) not proceed if the court is satisfied that there has been no default under the terms of the security interest, or that the default has been rectified; and
 - (b) on an application under subregulation (12)(b)—order that a transfer of a water licence not proceed if the court is satisfied that there has been a failure to comply with a relevant regulation or provision of the Act; and
 - (c) in any case—
 - (i) order that a claimant pay compensation for any loss or damage suffered because the claimant acted to enforce the security interest without reasonable cause, failed to comply with a requirement under these regulations or a provision of the Act, or failed to take reasonable steps to secure the highest possible amount by way of a power of sale under this regulation;
 - (ii) make any consequential or ancillary order or direction, or impose any condition, that the court considers necessary or expedient.

19—Expiry of registered security interests

- (1) Unless discharged at an earlier time, the registration of a security interest under Schedule 4 of the Act expires at the end of the period of 7 years from the date of its registration (subject to any extension under this regulation).

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- (2) The parties to a security interest registered under Schedule 4 may apply to the Minister to extend the period of registration of a security interest.
 - (3) An application under subregulation (2)—
 - (a) must be made not later than 14 business days before the expiration of the period of the registration; and
 - (b) must be in a form determined by the Minister; and
 - (c) must be accompanied by the prescribed fee.
 - (4) The Minister may, on application under this regulation, extend the period of registration of a security interest for a further period of 7 years (and any such period may be extended from time to time by further applications under this regulation).
 - (5) If an application for the extension of a registration is not decided before the date of expiry or if the Minister, on application under this regulation or on the Minister's own motion, in the Minister's discretion, extends the time by which an application for an extension must be made, the registration continues in operation until the application is decided and, if the registration is extended, the extension dates from the time on which the registration would, but for this subregulation, have expired.

Part 5—Caveats

20—Registration of caveat on application

- (1) Subject to this regulation, a caveat may relate to a caveatable interest.
- (2) An application for the registration of a caveat under this Part may be made by a person claiming a caveatable interest.
- (3) An application for the registration of a caveat—
 - (a) must be in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (4) The Minister may require a person to provide evidence or other information, in a manner determined by the Minister, that relates to any interest or other matter that is relevant to an application under this regulation.
- (5) Without limiting subregulation (4), the Minister may require that a person applying for the registration of a caveat include a statutory declaration as to the truthfulness and accuracy of any matter specified by the person in the application.
- (6) If a caveat is registered without the express consent of the holder of the relevant entitlement, the Minister must notify the holder of the relevant entitlement of the registration of the caveat.
- (7) A notification under subregulation (6)—
 - (a) will be made in a manner and form determined by the Minister; and
 - (b) must include advice about the processes available under regulation 23 to have the caveat removed.
- (8) Subject to the preceding subregulations, the Minister may register a caveat without inquiring into, or being concerned with, the legal effect of any instrument or agreement that relates to the interest being claimed under the caveat.

21—Registration of caveat by Minister

The Minister may register a caveat—

- (a) on behalf of the Crown; or
- (b) for the prevention of fraud or an improper dealing; or
- (c) if it appears to the Minister that an error has been made by in an instrument;
or
- (d) for the protection of a person who has a legal disability or is otherwise impaired or incapacitated in any way; or
- (e) if the Minister considers it is in the public interest to do so.

22—Effect of caveat

- (1) Subject to subregulation (2), a caveat that has been registered under this Part may (according to its terms) forbid the registration of—

- (a) a transfer of a relevant entitlement; or
- (b) a variation of a relevant entitlement; or
- (c) a security interest that relates to a relevant entitlement; or
- (d) a surrender of a relevant entitlement,

unless—

- (e) the caveator consents to the registration; or
- (f) the relevant dealing is expressly stated to be subject to the interest claimed by the caveator; or
- (g) the relevant dealing is a dealing, or is a dealing of a class, specified in the caveat.

- (2) The registration of a caveat under this Part—

- (a) does not warrant or confirm the validity of any interest to which the caveat relates; and
- (b) does not limit or affect any action that the Minister may take in relation to a water licence or a water access entitlement under the Act, any regulations or a water allocation plan, or in the exercise of any other statutory function or power; and
- (c) does not have the effect of requiring the consent of the caveator to any transfer of a water allocation during a particular water use year; and
- (d) does not affect or prevent any transfer, variation, or surrender of a water licence, or any water access entitlement, required by law or by an order of a court or tribunal constituted by law; and
- (e) does not affect or prevent the registration of any security interest required by law or by an order of a court or tribunal constituted by law; and
- (f) does not prevent the expiry of a water licence or water access entitlement, or any associated water allocation or other authorisation under the Act; and

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- (g) does not prevent or affect the exercise of a power of sale under Schedule 4 clause 13 of the Act (as provided by these regulations).

23—Lapsing of registration

- (1) A caveat registered under this Part will lapse—
- (a) on the withdrawal of the caveat by the caveator; or
 - (b) on the expiration of the caveat—
 - (i) on a date of expiry; or
 - (ii) at the end of a period; or
 - (iii) on the occurrence of an event,as specified by the caveator in the application to register the caveat under this Part; or
 - (c) if the Minister receives a copy of an order of the ERD Court, or of any other court or tribunal constituted by law, that provides for the lapsing of the caveat; or
 - (d) if the caveat lapses under subregulation (2).
- (2) If—
- (a) a caveat is registered without the express consent of the holder of the relevant water licence; and
 - (b) the holder of the relevant water licence, within 28 days after receiving the notification required under regulation 20(6), applies to the Minister for the lapsing of the caveat under this subregulation,
- then—
- (c) the Minister must give notice of the application to the caveator; and
 - (d) the caveat will lapse at the expiry of 21 days after service of the notice on the caveator unless the caveator, within that period—
 - (i) obtains an order of the ERD Court under regulation 25 that provides that the caveat should continue to be registered; and
 - (ii) provides the order to the Minister in accordance with any requirements determined by the Minister for the purposes of this regulation.

24—Application to ERD Court to lapse caveat or obtain compensation

- (1) A person who—
- (a) has an interest in a relevant entitlement that is subject to a caveat registered under this Part; or
 - (b) has an interest that is directly affected by a caveat registered under this Part,
- may apply to the ERD Court under this regulation.
- (2) An application may be made for 1 or more of the following:
- (a) a declaration that—

- (i) an interest claimed by the caveator is not a valid interest for the registration of a caveat; or
 - (ii) a caveat should not have been registered under this Part for any other reason;
 - (b) an order that a caveat lapse;
 - (c) an order that a transfer, variation or surrender relating to a relevant entitlement be registered despite the registration of a caveat under this Part;
 - (d) an order that a security interest relating to a relevant entitlement be registered despite the registration of a caveat under this Part;
 - (e) an order that a caveator pay compensation for any loss or damage suffered because a caveat registered under this Part does not relate to a valid interest for the registration of a caveat.
- (3) Any compensation payable under an order under subregulation (2)(e) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.

25—Application to ERD Court to preserve caveat

- (1) A caveator who has received a notice from the Minister under regulation 23(2) may apply to the ERD Court under this regulation.
- (2) The ERD Court may, on application under this regulation, if it considers that there are reasonable grounds to do so, make an order that the caveat should continue to be registered.
- (3) An order under subregulation (2) may provide that the caveat should continue—
 - (a) for a further period specified by the Court; or
 - (b) until a further order of the Court; or
 - (c) until the occurrence of an event specified by the Court; or
 - (d) until the caveat lapses under another provision of these regulations.
- (4) The ERD Court may make an order under this regulation subject to such conditions as the Court thinks fit.
- (5) The ERD Court should only make an order under subregulation (2) if the caveator has made application under this regulation in sufficient time for the Court to make an order that can be provided to the Minister under regulation 23(2).
- (6) The ERD Court has jurisdiction to make any further order in connection with the operation of this Part as the Court thinks fit.

26—Limit on applications for second or subsequent caveats

If—

- (a) a caveat is registered in respect of a relevant entitlement; and
- (b) the caveat lapses,

the caveator or any related body corporate may not apply to register a second or subsequent caveat relating to the same interest in the relevant entitlement without the approval of the ERD Court, or unless the second or subsequent caveat is being registered with the express consent of the holder of the relevant entitlement.

Part 6—Notice of prescribed events

27—Notice of prescribed events

- (1) A person with a registered interest in a water licence may apply to the Minister to participate in a scheme under which the person will be notified of the occurrence of a prescribed event at the relevant time under subregulation (4).
- (2) An application under subregulation (1)—
 - (a) must be made with the consent of the holder of the water licence; and
 - (b) must be in a form determined by the Minister; and
 - (c) must be accompanied by the prescribed fee.
- (3) The Minister may cease to provide notifications to a person under the scheme if—
 - (a) the holder of the water licence withdraws their consent under the scheme; or
 - (b) the person ceases to have a registered interest in the water licence.
- (4) For the purposes of this regulation, the following are prescribed events (with the relevant times that apply to those events):
 - (a) the service of a notice on the holder of the relevant water licence under section 80(1) or (2) of the Act, with the relevant time being when the notice is provided to the holder of the licence;
 - (b) the receipt of an application to vary the relevant water licence under section 124(1)(a) of the Act, with the relevant time being when the application is received by the Minister;
 - (c) the receipt of an application to vary the conditions as to the volume of water that may be taken, collected, diverted, extracted or used under the licence, or under a water resource works approval or site use approval associated with the licence, with the relevant time being when the application is received by the Minister;
 - (d) the service of a notice on the holder of the relevant water licence under section 157(1) or (3) of the Act, with the relevant time being when the notice is provided to the holder of the licence;
 - (e) the registration of a security interest or caveat under these regulations, with the relevant time being when registration occurs;
 - (f) a correction to the register that has a material impact on the person's registered interest, with the relevant time being when the correction is made.

Part 7—Electronic lodgment network

28—Minister may establish an electronic lodgement network

- (1) In this regulation—

registration includes recording.

- (2) The Minister may establish and maintain an electronic lodgment network for the purpose of lodging electronic documents for registration on the register.
- (3) The Minister may, from time to time, make specifications as to the requirements for the electronic lodgment network or otherwise in relation to its administration, which may include—
 - (a) conditions of access to the electronic lodgment network; and
 - (b) requirements for eligible users of the network to comply with specifications relating to the verification of identity or authority, and for the authentication of information or documents including requirements as to the certification, or electronic certification, of documents or relevant matters; and
 - (c) requirements for the retention of documents supporting or authenticating electronic documents, including periods of retention; and
 - (d) insurance requirements; and
 - (e) provision for the audit of eligible users in connection with the use of the electronic lodgment network, including as to whether they have met specifications relating to the electronic lodgment network and for restricting access in relevant circumstances.

29—Notification scheme

- (1) The Minister may establish a scheme under which a person with an interest in a water licence, or who has some other interest in connection with the operation of the register, or their authorised agent, is notified of the occurrence of a transaction using an electronic lodgment network established under this Part.
- (2) A scheme under subregulation (1) may—
 - (a) apply to the extent determined by the Minister; and
 - (b) include conditions of access to the scheme; and
 - (c) require a person to apply to the Minister, in a manner and form determined by the Minister, in order to participate in the scheme.

30—Evidence of transactions

- (1) On the application of any person, the Minister may produce a document in writing recording—
 - (a) information that has been registered or recorded on the register as a result of an electronic document; or
 - (b) information contained in an electronic document that has been lodged for registration or recording on the register.
- (2) The Minister may determine that a class of information registered or recorded on the register will only be provided to—
 - (a) the holder or holders of interests of that class; or
 - (b) some other limited class of persons.

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- (3) A document produced under subregulation (1) may be certified by the Minister in such manner as the Minister may determine.
 - (4) An application under this regulation—
 - (a) must be made in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.

31—Electronic certification of electronic documents

- (1) The Minister may produce in an electronic form a representation of any electronic document lodged in the electronic lodgment network.
- (2) The Minister may certify the electronic representation in any manner determined by the Minister.

Part 8—Related initiatives to facilitate administration of entitlements or related processes

Division 1—Subdivision and consolidation of water licences

32—Subdivision of water licences

- (1) The holder of a water licence may apply to the Minister for the subdivision of the water licence by cancelling the licence and granting 2 or more licences in its place.
- (2) An application under subregulation (1)—
 - (a) must be made in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (3) If—
 - (a) a water licence is held by 2 or more persons; and
 - (b) 1 or more of those persons are unwilling to make an application under this regulation,an application may nevertheless be made under this regulation with the approval of the ERD Court.
- (4) The ERD Court may, on an application made for the purposes of subregulation (3)—
 - (a) give its approval if satisfied that it is just and equitable to do so; and
 - (b) if an approval is given—make any consequential or ancillary order or direction, or impose any condition, that the court considers necessary or expedient.
- (5) Water licences arising from a subdivision of a water licence may only be granted—
 - (a) with combined water access entitlements or quantities of water under allocations no greater than the corresponding entitlements or allocations of the cancelled water licence; and
 - (b) subject to the same conditions as those to which the cancelled water licence was subject, subject to any consequential alterations (if any) made by the Minister; and

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Part 8—Related initiatives to facilitate administration of entitlements or related processes

Division 1—Subdivision and consolidation of water licences

- (c) if relevant, for a period no greater than the residue of the period for which the cancelled water licence would have had effect if it had not been cancelled.
- (6) Subject to subregulation (5)—
 - (a) the holder, or holders, of each of the water licences arising from the subdivision will be—
 - (i) the holder of the cancelled water licence; or
 - (ii) if there were 2 or more holders of the cancelled licence—those holders, or those holders in any combination in relation to any of the water licences; and
 - (b) any water access entitlement or volume of water to apply in relation to the water licences arising from the subdivision will be,
as determined or allocated in accordance with—
 - (c) the request of the applicant or applicants in the application under subregulation (1) (unless an application has been made under subregulation (3)); or
 - (d) an order of the ERD Court under subregulation (4).
- (7) If a security interest is registered in relation to a water licence that is sought to be subdivided under this regulation, an application under this regulation may only be made with the consent of the person who has the benefit of the security interest.
- (8) Any registered security interest or caveat applying in relation to a water licence cancelled under this regulation will apply (and be registered) in relation to the new licences granted under this regulation unless the person who has the benefit of the security interest or caveat (as the case may be) has consented to the discharge of the security interest or the withdrawal of the caveat with respect to 1 or more of the licences to be created under this regulation.

33—Consolidation of water licences

- (1) The holder of a water licence may apply to the Minister for the consolidation of 2 or more water licences by cancelling the licences and granting a single licence in their place.
- (2) An application under subregulation (1)—
 - (a) must be made in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (3) An application may only be granted if—
 - (a) the water licences to be consolidated relate to the same prescribed water resource and, if relevant, the same consumptive pool, and that the classification of water access entitlements (if relevant) are compatible; and
 - (b) the water licence arising from a consolidation of the water licences will be consistent with the relevant water allocation plan; and
 - (c) the Minister is satisfied as to any other matter determined to be relevant by the Minister.

- (4) The water licence arising from a consolidation of water licences—
 - (a) will be subject to the same conditions as those to which the cancelled water licences were subject, subject to any consequential alterations (if any) made by the Minister; and
 - (c) if relevant, will be for a period no greater than the residue of the earliest expiring period for which the cancelled water licences would have had effect if they had not been cancelled, subject to any alternative period determined by the Minister, after consultation with the holder of the licences, if not all licences are for a fixed period.
- (5) If a security interest is registered in relation to a water licence that is sought to be part of the consolidation of licences under this regulation, an application under this regulation may only be made with the consent of the person who has the benefit of the security interest.
- (6) Any registered security interest or caveat applying in relation to a water licence cancelled under this regulation will apply (and be registered) in relation to the new licence granted under this regulation unless the person who has the benefit of the security interest or caveat (as the case may be) has consented to the discharge of the security interest or the withdrawal of the caveat with respect to the licence to be created under this regulation.
- (7) The order of priority between 2 or more security interests registered with respect to the new licence will be an order specified by the person or persons who have provided their consent under subregulation (5) (and if an agreement cannot be reached between those persons who have the benefit of the security interests then a consolidation cannot proceed under this regulation).

Division 2—Verification information

34—Verification information

- (1) The Minister may require any person who—
 - (a) makes an application that will result in any matter to be recorded, registered or altered on the register; or
 - (b) is required to give or provide any consent or information in connection with a matter associated with the register; or
 - (c) applies to access information on the register,to provide prescribed verification information in a manner (and to an extent) determined by the Minister.
- (2) The Minister is not required to record or register any matter on the register, or to take other action associated with the register, if the Minister is not satisfied as to 1 or both of the following:
 - (a) the identity of any person by or on behalf of whom a document relevant to the matter has been executed;
 - (b) the authority of a particular person to act in relation to the matter.

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Part 8—Related initiatives to facilitate administration of entitlements or related processes

Division 2—Verification information

- (3) The Minister may require or permit the identity or authority of a person to be verified by a person, or a person of a class, determined or approved by the Minister for the purposes of this regulation.
- (4) In this regulation—
- prescribed verification information*** means information for the purpose of verifying—
- (a) proof of identity of any person; or
 - (b) proof of authority to enter into any dealing, to take any step or to undertake any action associated with the operation of the Act or the register.

Division 3—Agent trading**35—Agent trading**

- (1) The holder of the licence may appoint another person (the holder of the licence's ***agent***) to act on their behalf in relation to any trading of—
- (a) a water access entitlement, or part of a water access entitlement, under the licence; or
 - (b) a water allocation associated with the licence.
- (2) An application under subregulation (1)—
- (a) must be made in a manner and form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (3) An appointment under this regulation—
- (a) may be made for—
 - (i) an indefinite period; or
 - (ii) a specified period; and
 - (b) is revocable at will by the person who made the appointment (including in a case where a specified period under paragraph (a)(ii) is still running); and
 - (c) may be made subject to conditions; and
 - (d) does not derogate from the ability of the person who made the appointment to act in any matter.
- (4) While an appointment is in place under this regulation, an act of an agent in relation to the transfer of a water access entitlement (or part of a water access entitlement), or water allocation, on behalf of the person who made the appointment will be taken to be an act of the relevant person.
- (5) An appointment under this regulation takes effect when recorded by the Minister on the register.

Part 9—Miscellaneous

36—Joint ownership—general provisions

- (1) If a water licence is to be held by 2 or more persons, they must specify in the relevant application to the Minister—
 - (a) whether they are to hold the licence as joint tenants or tenants in common; and
 - (b) if they are to be tenants in common—the proportions to be held by each person.
- (2) In the case of a water licence held by 2 or more persons in existence immediately before the day determined by the Minister under subregulation (9), they may apply to the Minister, in a form determined by the Minister, to have a record made on the register indicating whether they hold the licence as joint tenants or tenants in common.
- (3) No fee will apply in relation to an application under subregulation (2) if it is made within 2 years after the day determined by the Minister under subregulation (9).
- (4) The proportions applying in relation to tenants in common must be specified—
 - (a) as a specified number of shares that form part of a water access entitlement; or
 - (b) as a specified share of water that may be available for allocation; or
 - (c) in some other way approved by the Minister.
- (5) Even if a water licence is held by tenants in common, the consent of all holders of the licence will be required in respect of any application or dealing relating to the allocation.
- (6) If a Schedule 4 entitlement is held by 2 or more persons, a holder of the licence may appoint another holder of the entitlement (the holder of the licence's *nominee*) to act on their behalf (and the same person may be the nominee of more than 1 other holder of the entitlement).
- (7) An appointment under subregulation (4)—
 - (a) must be made in a manner and form determined by the Minister; and
 - (b) may be revoked by the person who made the appointment by complying with any requirement determined by the Minister.
- (8) While an appointment is in place under subregulation (4), a consent of a nominee given on behalf of the person who made the appointment will be taken to be a consent of the relevant person.
- (9) This regulation applies from a day determined by the Minister.
- (10) A determination under subregulation (9)—
 - (a) may only be made when the Minister is satisfied that systems are in place to support the operation of this regulation; and
 - (b) must be published in the Gazette.

37—Changes in tenancy arrangements between joint owners

- (1) If a water licence is held by 2 or more persons (whether as joint tenants or tenants in common), a holder of the licence may apply to the Minister to record an alteration in a way in which the licence is held by those persons (the *co-holders tenancy arrangement*) in the register.
- (2) An application under subregulation (1)—
 - (a) must be made in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (3) The alteration to the co-holders tenancy arrangement takes effect when the Minister records the alteration in the register.
- (4) The Minister must not record the alteration unless—
 - (a) each holder of the water licence whose interest is affected by the alteration has consented to it being recorded; and
 - (b) any holder of a security interest over the water licence or a holding in the water licence whose interest is affected by the alteration has consented to it being recorded.
- (5) In the case of an alteration from joint tenants to tenants in common, the application must specify the proportions to be held by each person.
- (6) The Minister may require that an applicant verify any information provided for the purposes of this regulation.
- (7) This regulation applies from a day determined by the Minister.
- (8) A determination under subregulation (7)—
 - (a) may only be made when the Minister is satisfied that systems are in place to support the operation of this regulation; and
 - (b) must be published in the Gazette.

38—Details for service of notices

For the purposes of Schedule 4 clause 19 of the Act—

- (a) the Minister may serve or give a notice to a person in connection with the operation or administration of the register by using the contact details supplied by the person and recorded on the register (and without being required to determine whether those details are up-to-date); and
- (b) if a notice is sent by post or email to an address recorded on the register and the relevant letter or email is returned with a notification that it has not been delivered, the Minister may, as the Minister thinks fit—
 - (i) direct any further notice to be given; or
 - (ii) direct substituted service; or
 - (iii) proceed without notice under these regulations.

39—Devolution

- (1) A person to whom an interest in a designated entitlement has devolved by operation of law may apply to the Minister to be recorded in the register as the holder of the relevant interest.
- (2) On the death of a person recorded on the register with another person as joint owners of an interest in a designated entitlement, the survivor may apply to the Minister for a record of the transmission to the survivor to be made in the register.
- (3) The transmission of an interest in a prescribed entitlement by devolution does not have any force or effect for the purposes of the Act until it is registered, on application made to the Minister, on the register.
- (4) Without limiting any other provision, a legal personal representative may apply to the Minister for the recording of the transmission—
 - (a) to the legal personal representative of—
 - (i) the ownership of a prescribed entitlement; or
 - (ii) the ownership of an interest in a prescribed entitlement; or
 - (b) to the beneficiary of the relevant estate of—
 - (i) the ownership of a prescribed entitlement; or
 - (ii) the ownership of an interest in a prescribed entitlement.
- (5) On the making of a recording in a case where subregulation (4)(a)(i) applies—
 - (a) the legal personal representative becomes the owner of the prescribed entitlement in respect of the interest of the deceased owner of the prescribed entitlement; and
 - (b) the legal personal representative holds the prescribed entitlement subject to all interests to which deceased owner was subject in relation to the prescribed entitlement, but for the purposes of any dealing with the prescribed entitlement under the Act, is the owner of the prescribed entitlement; and
 - (c) the status of the legal personal representative as owner of the prescribed entitlement relates back to, and is taken to have arisen on, the death of the owner of the prescribed entitlement as if there has been no interval of time between the death and the recording.
- (6) On the making of a recording in a case where subregulation (4)(a)(ii) applies—
 - (a) the legal personal representative becomes the owner of the interest of the deceased owner in the prescribed entitlement; and
 - (b) the status of the legal personal representative as owner of the interest in the prescribed entitlement relates back to, and is taken to have arisen on, the death of the owner of the interest as if there has been no interval of time between the death and the recording.
- (7) On the making of a recording in a case where subregulation (4)(b)(i) applies—
 - (a) the beneficiary becomes the owner of the prescribed entitlement in respect of the interest to which the application relates; and

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- (b) the beneficiary holds the prescribed entitlement subject to all interests in relation to the prescribed entitlement applying at the time of the transmission.
 - (8) On the making of a recording in a case where subregulation (4)(b)(ii) applies, the beneficiary becomes the owner of the interest in the prescribed entitlement to which the application relates.
 - (9) An application under this regulation—
 - (a) must be in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
 - (10) The Minister may require a person to provide evidence or other information, in a manner determined by the Minister, that relates to any interest or other matter that is relevant to an application under this regulation.
 - (11) In this regulation—

designated entitlement means—

 - (a) a water access entitlement; or
 - (b) a water allocation attached to a forest water licence; or
 - (c) a delivery capacity entitlement;

prescribed entitlement means—

 - (a) a water licence; or
 - (b) a water allocation; or
 - (c) a designated entitlement.

40—Recording of trustee of bankruptcy

- (1) The trustee in bankruptcy of an owner of—
 - (a) a prescribed entitlement; or
 - (b) an interest in a prescribed entitlement,
 may apply to the Minister for the recording of the transmission to the trustee of the prescribed entitlement or interest, as the case may be.
- (2) On the making of a recording in a case where subregulation (1)(a) applies—
 - (a) the trustee in bankruptcy becomes the owner of the prescribed entitlement in respect of the interest of the owner of the prescribed entitlement; and
 - (b) the trustee in bankruptcy holds the prescribed entitlement subject to all interests to which owner was subject in relation to the prescribed entitlement, but for the purposes of any dealing with the prescribed entitlement under the Act, is the owner of the prescribed entitlement.
- (3) On the making of a recording in a case where subregulation (1)(b) applies, the trustee in bankruptcy becomes the owner of the interest in the prescribed entitlement.
- (4) An application under this regulation—
 - (a) must be in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.

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- (5) The Minister may require a person to provide evidence or other information, in a manner determined by the Minister, that relates to any interest or other matter that is relevant to an application under this regulation.
 - (6) This regulation applies subject to any law of the Commonwealth of Australia relating to bankruptcy.
 - (7) In this regulation—
prescribed entitlement means—
 - (a) a water licence; or
 - (b) a water access entitlement; or
 - (c) a water allocation; or
 - (d) a delivery capacity entitlement.

41—Recording of administrator of a body corporate

- (1) This regulation applies in relation to a body corporate that is the owner of—
 - (a) a prescribed entitlement; or
 - (b) an interest in a prescribed entitlement.
- (2) The administrator of a body corporate may apply to the Minister for the recording of the vesting of a prescribed entitlement, or an interest in a prescribed entitlement, in the administrator.
- (3) On the making of recording in a case where subregulation (1)(a) applies—
 - (a) the administrator becomes the owner of the prescribed entitlement in respect of the interest of the owner of the prescribed entitlement; and
 - (b) the administrator holds the prescribed entitlement subject to all interests to which owner was subject in relation to the prescribed entitlement, but for the purposes of any dealing with the prescribed entitlement under the Act, is the owner of the prescribed entitlement.
- (4) On the making of a recording in a case where subregulation (1)(b) applies, the administrator becomes the owner of the interest in the prescribed entitlement.
- (5) An application under this regulation—
 - (a) must be in a form determined by the Minister; and
 - (b) must be accompanied by the prescribed fee.
- (6) The Minister may require a person to provide evidence or other information, in a manner determined by the Minister, that relates to any interest or other matter that is relevant to an application under this regulation.
- (7) This regulation applies subject to any law of the Commonwealth of Australia relating to the administration or liquidation of corporations.
- (8) In this regulation—
administrator includes a liquidator of a corporation;
prescribed entitlement means—
 - (a) a water licence; or

- (b) a water access entitlement; or
- (c) a water allocation; or
- (d) a delivery capacity entitlement.

42—Statutory declarations

Without limiting any other regulation, the Minister may require that any information to be provided for the purposes of the register be given by statutory declaration.

43—Amendments or corrections

The Minister may amend or correct the register if required to do so by virtue of an order of a court or tribunal constituted by law.

44—Transition of bills of sale

- (1) A prescribed bill of sale will, on the designated date, be taken to be a security interest registered under Schedule 4 clause 8 of the Act.
- (2) The term of a security interest under subregulation (1) will be equal to the balance of the term of the bill of sale, as determined on the designated date.
- (3) The order of priority between 2 or more bills of sale that relate to the same water licence and that are to be registered under this regulation will be an order that corresponds to their order of priority under the *Bills of Sale Act 1886*.
- (4) In this regulation—

designated date means the date on which Schedule 4 Part 3 of the Act comes into operation;

expiration date, in relation to a bill of sale, means the date that is 5 years after the last registration or renewal of registration (as the case may be) of the bill of sale under the *Bills of Sale Act 1886*;

prescribed bill of sale means a bill of sale over a water licence registered under the *Bills of Sale Act 1886* immediately before the designated date with an expiration date under the *Bills of Sale Act 1886* that is on or after the designated date.

45—Transition of interests recorded under repealed Act

- (1) An interest noted on The Water Register against a water licence will, on the designated date, be taken to be a security interest registered under Schedule 4 clause 8 of the Act if—
 - (a) the holder of the interest has confirmed to the Minister that the interest is current and should be registered on The Water Register under Schedule 4 clause 8 of the Act; or
 - (b) the Minister determines that the interest should be registered on The Water Register despite not having received confirmation that the interest is current.
- (2) If 2 or more interests are to be registered under this regulation on the designated date in relation to the same water licence, the order of priority of registration will be—
 - (a) unless paragraph (b) applies—an order that corresponds to the order of notation of the relevant interests on The Water Register immediately before the designated date; or

- (b) on application to the Minister—an order agreed between the holder of the water licence and the holder or holders of the interests noted on The Water Register.
- (3) A confirmation provided under subregulation (1) or an application under subregulation (2)—
 - (a) must be made in response to an invitation from the Minister for the purposes of this regulation to confirm that an interest noted against a water licence should continue as a security interest registered under the Act (effective from the designated date); and
 - (b) must be in a form approved by the Minister.
- (4) If—
 - (a) 1 or more interests are taken to be registered on the designated date in relation to a water licence under this regulation; and
 - (b) 1 or more bills of sale are also taken to be registered on the designated date in relation to the same water licence under regulation 44,
the bill of sale or bills of sale will be registered ahead of the corresponding security interest or security interests.
- (5) In this regulation—
designated date means the date on which Schedule 4 Part 3 of the Act comes into operation.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on

No of 2020