

**HUNTER DISTRICT WATER, SEWERAGE AND DRAINAGE
(AMENDMENT) ACT, 1982, No. 163**

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 163, 1982.

An Act to amend the Hunter District Water, Sewerage and Drainage Act, 1938, in relation to the imposition of rates and charges under that Act and the appropriation or resumption of land required for the purposes of that Act. [Assented to, 24th December, 1982.]

Hunter District Water, Sewerage and Drainage (Amendment).

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

Short title.

1. This Act may be cited as the "Hunter District Water, Sewerage and Drainage (Amendment) Act, 1982".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedule 1, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced, as the case may require.

(3) Schedule 1 (2), (3) and (4) shall be deemed to have commenced on 1st July, 1982.

Principal Act.

3. The Hunter District Water, Sewerage and Drainage Act, 1938, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—TRANSITIONAL AND OTHER PROVISIONS.

Hunter District Water, Sewerage and Drainage (Amendment).

Amendment of Act No. 11, 1938.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Transitional and other provisions.

6. Schedule 2 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

After the matter relating to the Third Schedule, insert:—

FOURTH SCHEDULE.—Modification of the Public Works Act, 1912.

(2) Section 91 (1) (h1)—

After section 91 (1) (h), insert:—

(h1) land which is unoccupied and which is liable to flooding and on which, pursuant to an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act, 1979, development for the purpose of a dwelling is prohibited;

(3) Section 100 (1) (c) (ii)—

Omit “upon the assessed annual value”, insert instead “partly upon the assessed annual value and partly upon the land value”.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 104AAA—

After section 104A, insert:—

Reduction of charges payable by certain classes of pensioners.

104AAA. (1) In this section—

“charge” means a charge determined by the board in respect of the consumption of water;

“charge contribution”, in relation to a flat, means the contribution to a charge which, under the articles of association of the company which is the ratable person in respect of the land on which the residential flat building containing that flat is situated, is required to be paid under those articles of association by the person entitled to possession of that flat.

(2) Expressions used in this section have the same meanings as in section 104A.

(3) Where, in relation to a rate levied in a rating year, a person is entitled, under section 104A, to a reduction of the rate, any charges payable in relation to that year by the person to the board shall be reduced by the difference, if any, between the amount by which the rate is reduced in respect of the person in accordance with that section and the maximum amount by which the rate might, in relation to that year, be reduced in respect of any person in accordance with that section.

(4) Subsections (7)–(13) of section 104A apply to and in respect of a charge and a charge contribution in the same way as those subsections apply to or in respect of a rate and a rating contribution, respectively.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(5) Section 110 (3)—

After section 110 (2), insert:—

(3) Without limiting the power of the board to establish any other account within the general fund, the board may establish, as an account within the general fund, a revenue fluctuation reserve for the purpose of enabling the board to make such arrangements as it thinks fit to minimise the effect caused to the revenues of the board by fluctuations in water consumption.

(6) Section 119—

Omit the section, insert instead:—

Resumption.

119. (1) The board may, for any of the purposes of this Act, acquire land by appropriation or resumption in accordance with this section.

(2) An appropriation or resumption for the purposes of this Act shall be effected by the Governor under the Public Works Act, 1912, and, without affecting the generality of the foregoing, appropriation under that Act may be effected in respect of any land vested in Her Majesty or any person in trust for Her Majesty.

(3) Such an appropriation or resumption shall be deemed to be for an authorised work and the board shall be deemed to be the Constructing Authority.

(4) Nothing in this section affects the operation of section 30 (3).

(5) For the purposes of this section and not otherwise, the Fourth Schedule has effect.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.****(7) Fourth Schedule—**

After the Third Schedule, insert:—

FOURTH SCHEDULE.

(Sec. 119.)

Modification of the Public Works Act, 1912.

The Public Works Act, 1912, shall, for the purposes referred to in section 119, be deemed to be amended—

- (a) (i) by omitting from section 53 the words "so seised, possessed or entitled as aforesaid";
- (ii) by omitting from section 53 the words "as in the preceding section mentioned" and by inserting instead the words "and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of such compensation";
- (iii) by inserting in section 53 (3) after the word "release" the words "and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation";
- (iv) by omitting section 53 (5);

(b) by omitting Division 7 of Part VI;

(c) by omitting section 124 and by inserting instead the following section:—

124. (1) For the purpose of ascertaining the compensation to be paid, regard shall in every case be had by the Land and Environment Court not only to the value of the land taken but also to the damage (if any) caused by the severing of the land taken from other lands or by the exercise of any statutory powers of the Constructing Authority otherwise injuriously affecting such other lands and that Court shall assess the compensation according to what it finds to have been the value of such lands, estate or interest at the time the notification was published in the Gazette and without being bound in any way by the amount of the valuation notified to such claimant and without reference to any alteration in such value arising from the construction of any works upon the land taken.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDEULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Notwithstanding subsection (1), the Land and Environment Court, in ascertaining such compensation, shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of any works upon the land taken, but in no case does this subsection operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement in value as aforesaid.

(3) Notwithstanding subsection (1), in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed;
- (b) the support of such surface is destroyed or injuriously affected by the construction of such tunnel; or
- (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
- (d) by omitting section 126 (3);
- (e) (i) by omitting from section 135 (1) the words "such conveyances" and by inserting instead the words "conveyances or assurances of lands taken";
- (ii) by omitting from section 135 (2) the words "incurred on the part as well of the vendor as of the purchaser,".

SCHEDEULE 2.

(Sec. 6.)

TRANSITIONAL AND OTHER PROVISIONS.

Interpretation: Sch. 2.

1. Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Schedule have the same meanings as in the Principal Act.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDE 2—*continued.*TRANSITIONAL AND OTHER PROVISIONS—*continued.***Adjustment of certain rates.**

2. (1) Where a person rateable in respect of non-residential land which is unoccupied land has, before the date of assent to this Act, paid any rate levied by the board in respect of that land for the year commencing on 1st July, 1982—

(a) the board shall pay to the person the amount, if any, by which the amount paid exceeds the amount that would have been payable if the rate had been levied under the Principal Act, as amended by this Act, on the land value of the land at the ordinary rate fixed for residential land under By-law No. 1 made by the board and published in Gazette No. 74 of 28th May, 1982, and—

- (i) the minimum amount levied for water rates was \$100;
- (ii) the minimum amount levied for sewerage rates was \$100; and
- (iii) the minimum amount levied for stormwater drainage rates was \$15; and

(b) the person shall pay to the board, as rates, the amount, if any, by which the amount paid is less than the amount that would have been payable if the rate had been levied under the Principal Act, as amended by this Act, on the land value of the land at the ordinary rate fixed for residential land under By-law No. 1 made by the board and published in Gazette No. 74 of 28th May, 1982, and—

- (i) the minimum amount levied for water rates was \$100;
- (ii) the minimum amount levied for sewerage rates was \$100; and
- (iii) the minimum amount levied for stormwater drainage rates was \$15.

(2) Where a person rateable in respect of non-residential land which is unoccupied land has not, before the date of assent to this Act, paid any rate levied by the board in respect of that land for the year commencing on 1st July, 1982, the person shall pay to the board, as rates, the amount that would have been payable if the rate had been levied under the Principal Act, as amended by this Act, on the land value of the land at the ordinary rate fixed for residential land under By-law No. 1 made by the board and published in Gazette No. 74 of 28th May, 1982, and—

- (a) the minimum amount levied for water rates was \$100;
- (b) the minimum amount levied for sewerage rates was \$100; and
- (c) the minimum amount levied for stormwater drainage rates was \$15.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDULE 2—continued.**TRANSITIONAL AND OTHER PROVISIONS—continued.**

(3) An amount payable to a person by the board under subclause (1) (a) may be recovered by the person from the board as a debt in any court of competent jurisdiction.

The hardship fund.

3. (1) The board shall, in addition to the funds established under section 106 of the Principal Act, establish, for the year commencing on 1st July, 1982, and for such subsequent years, if any, as the Minister may approve, a hardship fund.

(2) The hardship fund shall consist of money voted from the other funds of the board for the purpose of enabling the provision of assistance to persons who suffer hardship as a consequence of the increase, on and from 1st July, 1982, of charges determined by the board in respect of the consumption of water.

(3) The hardship fund may, subject to the by-laws, be applied in payment to the other funds of the board of amounts the payment of which is exempted in accordance with clause 4.

(4) The provisions of the Principal Act apply to the hardship fund in the same way as they apply to each of the other funds of the board.

Arrangements as to payment of certain charges.

4. (1) Nothing in the Principal Act prevents the board, in relation to a person who suffers hardship as a consequence of the increase, on and from 1st July, 1982, of charges determined by the board in respect of the consumption of water, from, in accordance with the by-laws—

- (a) exempting the person from the payment of the whole or any part of any such charge; or
- (b) deferring, upon such terms and conditions as may be determined by the board, the payment of the whole or any part of any such charge by the person.

(2) A by-law made for the purposes of subclause (1) may take effect as from 1st July, 1982, or a later day.

Hunter District Water, Sewerage and Drainage (Amendment).

SCHEDULE 2—*continued.*

TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(3) To the extent to which a by-law made for the purposes of subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the by-law does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State, the board or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State, the board or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A by-law made for the purposes of subclause (1) shall not operate so as to enable any exemption or deferral of a payment to be made in respect of a charge determined by the board in respect of the consumption of water, being a charge determined in relation to the year commencing on 1st July, 1983, or any subsequent year, unless there is, in relation to that year, an approval of the Minister referred to in clause 3 (1).

Appropriations or resumptions.

5. (1) The provisions of section 119 (5) of, and the Fourth Schedule to, the Principal Act, as amended by this Act, do not apply to or in respect of an appropriation or resumption effected in accordance with section 119 of the Principal Act at any time before the date of assent to this Act.

(2) For the purposes of the Public Works Act, 1912, an appropriation or resumption referred to in subclause (1) shall be deemed to be for an authorised work and the board shall be deemed to be the Constructing Authority.
