

**HUNTER DISTRICT WATER, SEWERAGE AND DRAINAGE  
(AMENDMENT) ACT, 1985, No. 23**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

**Act No. 23, 1985.**

An Act to amend the Hunter District Water, Sewerage and Drainage Act, 1938, with respect to rates, the functions of the Hunter District Water Board and other matters. [Assented to, 22nd April, 1985.]

*Hunter District Water, Sewerage and Drainage (Amendment) 1985*

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, 1985".

**Principal Act.**

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

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RATES.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—VALIDATION AND SAVINGS PROVISIONS.

**Amendment of Act No. 11, 1938.**

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

**Validation, savings, etc., provisions.**

5. Schedule 3 has effect.

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SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RATES.

(1) (a) Section 89A (1), definition of "commercial land"—

Before the definition of "flat", insert:—

"commercial land" means land occupied or used as the site of a building used for commercial or business purposes;

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

(b) Section 89A (1), definitions of “industrial land A”, “industrial land B”—

After the definition of “flat”, insert:—

“industrial land A” means land occupied or used for heavy or secondary industry that is development of a class or description declared to be designated development under section 29 or 158 of the Environmental Planning and Assessment Act, 1979;

“industrial land B” means land, other than industrial land A, occupied or used for industrial purposes;

(2) (a) Section 100 (1) (c) (ii)—

Omit the subparagraph, insert instead:—

(ii) in the case of non-residential land, being ratable land—  
(A) upon the assessed annual value;  
(B) upon the land value;  
(C) according to the nominal size of the water service pipe supplying water to the land; or  
(D) partly in pursuance of sub subparagraph (A), partly in pursuance of sub subparagraph (B) and partly in pursuance of sub subparagraph (C) or partly in pursuance of any two of those sub subparagraphs; and

(b) Section 100 (1A), (2), (2A), (3)—

Omit section 100 (2), insert instead:—

(1A) For the purposes of—  
(a) subsection (1) (c) (ii), the nominal size of a water service pipe supplying water to land is—  
(i) the nominal size of the pipe at the point where the pipe joins the water meter registering water supply to the land; or

*Hunter District Water, Sewerage and Drainage (Amendment) 1985***SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RATES—continued.**

- (ii) where no water meter registering water supply to the land is installed, the nominal size of the pipe at the point where the pipe joins the board's water main; and
- (b) subsection (1) (c) (ii) and paragraph (a), "nominal size" has the meaning ascribed to it in the Australian Standard Specification numbered AS1355-1979 of the Standards Association of Australia.
- (2) Without affecting the generality of subsection (1) (c) (ii) (D), the board may make a determination in pursuance of that sub subparagraph that has the effect of providing that different bases, or a combination of different bases, for levying rates shall apply to different parcels of land or to different classes of land.
- (2A) For the purposes of subsection (2) but without affecting the generality of that subsection, land may be classified as commercial land, industrial land A or industrial land B.
- (3) The board shall, before levying a rate in pursuance of subsection (1) (b), furnish the Government Statistician with the details of the proposed rate.
- (3) (a) Section 104A (2) (a)—  
Omit "and" where lastly occurring.
- (b) Section 104A (2) (c)—(e)—  
After section 104A (2) (b), insert:—
  - (c) to an instalment of a rate is a reference to an instalment of a rate payable in accordance with section 104D;
  - (d) other than in paragraph (c), to a rate includes a reference to an instalment of a rate; and
  - (e) to the time at which a rate is levied is, where the rate is an instalment of a rate, a reference to the time at which the instalment is due and payable.
- (c) Section 104A (3)—  
After "subsection (4)", insert "or (6A)".

*Hunter District Water, Sewerage and Drainage (Amendment) 1985***SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RATES—continued.****(d) Section 104A (4)—**

After “rate” where firstly occurring, insert “, other than an instalment of a rate.”.

**(e) Section 104A (5)—**

After “subsection (6)”, insert “or (6A)”.

**(f) Section 104A (6)—**

After “rate” where firstly occurring, insert “, other than an instalment of a rate.”.

**(g) Section 104A (6A), (6B)—**

After section 104A (6), insert:—

(6A) The amount by which an instalment of a rate is required to be reduced by subsection (3) or (5) is an amount that is (subject to any necessary adjustments in the case of unequal instalments) equivalent to one-third of the amount of the reduction which would have been authorised under this section had the person liable to pay the rate of which the instalment is a part been eligible for a reduction of the rate under this section at the time the rate was levied and had the rate not been paid by instalments.

(6B) Where a person has paid a rate in full in respect of a rating year and would have been entitled to a reduction in the rate under this section had that rate been paid by instalments in accordance with section 104D, the board shall, on the application of the person, refund to the person an amount equivalent to the amount of that reduction.

**(4) Sections 104D, 104E—**

After section 104C, insert:—

**Payment of current rates by 3 instalments.**

104D. (1) Notwithstanding anything in this Act, the person liable to pay any rates levied for the year commencing 1st July, 1985, or for any subsequent year may pay those rates by 3 instalments in accordance with this section if—

(a) the first instalment is paid on or before the day provided for the payment of that instalment; and

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

(b) where, on the day immediately preceding the day on which those rates are levied, rates are owing to the board by that person in respect of the land referred to in the rate notice for the rates so levied—the rates so owing are paid before or at the same time as the first instalment is paid.

(2) For the purposes of subsection (1), each instalment shall—

- (a) be of an amount equal to one-third of the rates, disregarding any remainder, together, in the case of the first instalment, with that remainder; and
- (b) be due and payable on the date for payment of the instalment specified in the rate notice or notices served in respect of the rates.

(3) Where a person pays rates by instalments in accordance with this section—

- (a) the board shall accept those payments; and
- (b) any instalments of those rates which are not due for payment—
  - (i) shall not be recoverable by the board; and
  - (ii) shall not be liable to interest chargeable pursuant to regulations made under section 104E.

(4) Where a person fails to pay any instalment of rates (other than the first) on or before the day provided for payment of that instalment—

- (a) the total amount of the instalments unpaid on that day shall become due and payable to, and recoverable by, the board; and
- (b) the provisions of this Act and the regulations relating to overdue rates shall apply in respect of the unpaid balance of the rates,

as if that person were not paying the rates by instalments in accordance with this section.

*Hunter District Water, Sewerage and Drainage (Amendment) 1985***SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RATES—continued.****(5) Where, in the opinion of the Board—**

- (a) a refusal to accept payment of an instalment of rates which is made after the day provided for its payment would cause a hardship to the person who is liable to pay; or
- (b) that person was unable for reasons beyond the control of the person to pay the instalment on or before the day provided for its payment,

the board may accept the payment of the instalment and, for the purposes of this section, the instalment shall be deemed to have been paid on the day provided for its payment.

**Interest on overdue rates.**

104E. (1) The Governor may make regulations providing for the charging by the board of interest on overdue rates.

(2) The rate of interest that may be charged by the board under a regulation made pursuant to subsection (1) shall not exceed the rate prescribed by that regulation for the purposes of this subsection.

**(5) Third Schedule, clause 4—**

Omit the clause, insert instead:—

**4. Rates shall—**

- (a) be payable annually in advance on 1st July or in accordance with section 104D; or
- (b) with the approval of the board given in any particular case, be payable by such instalments as the board may determine.

**SCHEDULE 2.**

(Sec. 4.)

**MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.****(1) Section 14 (1) (b)—**

Omit the paragraph.

**(2) Section 15—**

Omit the section.

**SCHEDULE 2—*continued.*****MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*****(3) Section 30 (5)—**

After section 30 (4), insert:—

(5) The board may provide, administer and manage for the purpose of public recreation or an ancillary purpose any land or building vested in or belonging to it to the extent that the provision, administration and management are not inconsistent with the board's functions set out in subsection (1).

**(4) Sections 30A, 30B—**

After section 30, insert:—

**Donations.**

30A. The board may make donations of money out of the general fund for community recreation, welfare or education purposes.

**Delegation.**

30B. (1) The board may, by instrument in writing, delegate to—

- (a) the president of the board;
- (b) a committee comprised of members of the board including the president or a member nominated by the president;
- (c) an officer of the board; or
- (d) a person for the time being holding or acting in a specified position in the staff establishment of the board,

the exercise of such of the functions of the board (other than this power of delegation) as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time by the delegate in accordance with the terms of the delegation.

(3) Without limiting the operation of subsection (2), a function the exercise of which has been delegated under this section to the

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president may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by—

- (a) an officer of the board; or
- (b) a person for the time being holding or acting in a specified position in the staff establishment of the board,

as authorised by instrument in writing by the president in that behalf either generally or in a particular case or class of cases.

(4) A delegation or authorisation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation or authorisation.

(5) Notwithstanding any delegation under this section, the board may continue to exercise any function delegated.

(6) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section, or by a person duly authorised in that behalf by the president under this section, has the same force and effect as it would have if it had been done or suffered by the board and shall be deemed to have been done or suffered by the board.

(7) The board may, by instrument in writing, revoke wholly or in part any delegation under this section, and the president may, by instrument in writing, revoke wholly or in part any authorisation under this section.

(8) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the board, or as a person authorised under this section, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the board and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the board or by a person duly authorised under this section, as the case may be.

(9) In subsection (8), a reference to a delegate includes a reference to the chairman of a committee to which the exercise of a function has been delegated under subsection (1).

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(10) Nothing in this section prevents a function of the board from being exercised in any manner in which it could have been exercised had this section not been enacted.

(11) In this section, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the discharge of the duty.

(5) Section 62 (1)—

Omit “forty dollars, and, in case of a continuing offence, to a further penalty not exceeding two dollars for each day during which the offence continues after notice to abate or cease the interference or obstruction has been given”, insert instead “\$40”.

(6) Section 110 (1) (a)—

After “management”, insert “and any other expenditure from the general fund authorised by or under this Act”.

(7) Section 125 (5)—(11)—

After section 125 (4), insert:—

(5) Without affecting the generality of subsection (3), the board may, under that subsection, lease any land vested in or belonging to it which is or is to be used for the purpose of public recreation or an ancillary purpose.

(6) The board may, for purposes ancillary to the use of land for the purpose of public recreation, grant licences to occupy or use any land or building vested in or belonging to it.

(7) A lease or licence under this section shall be subject to such covenants, terms or conditions as may be agreed upon between the board and the lessee or licensee.

(8) Without affecting the generality of subsection (7), a lease or licence under this section of land or a building used for the purpose of public recreation or an ancillary purpose may be subject to

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covenants, terms and conditions, agreed upon between the board and the lessee or licensee, that have the effect of making provision for or with respect to—

- (a) maintaining the use of the land or building for purposes consistent with the board's functions under section 30 (1);
- (b) sub-leasing and granting of licences by lessees or sub-lessees;
- (c) public access to the land or building;
- (d) defining liability for any civil actions arising from the use of the land or building for the purpose of public recreation or an ancillary purpose; and
- (e) the enforcement of any by-laws applicable to the land or building.

(9) To the extent that a public authority is not authorised to agree to or comply with a covenant, term or condition of a kind referred to in subsection (8), the public authority is, by this subsection, authorised to agree to and comply with that covenant, term or condition and to take any other action incidental to the agreement to, or compliance with, that covenant, term or condition.

(10) If any question arises under this section as to whether or not a particular purpose is a purpose of public recreation, or a particular purpose is an ancillary purpose, the Minister may determine the question.

(11) Where the Minister has, under subsection (10), determined that a particular purpose is a purpose of public recreation or an ancillary purpose, that particular purpose shall, upon notification of the Minister's determination in the Gazette, be deemed to be a purpose of public recreation or an ancillary purpose, as the case may be, for the purposes of this section.

**(8) Section 129 (e)–(g)—**

Omit section 129 (e), insert instead:—

- (e) the provision for the purpose of public recreation or an ancillary purpose of land or buildings vested in or belonging to the board and the leasing, or the granting of licences in respect of, any such land or building;

**SCHEDULE 2—*continued.*****MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.***

- (f) the regulation, administration and management of land or buildings provided by the board for the purpose of public recreation or an ancillary purpose whether or not that land is or those buildings are the subject of a lease or licence from the board; and
- (g) enforcing and securing the observance of the provisions of this Act or of any by-law.

(9) Section 130 (1) (b)—

Omit the paragraph.

(10) Section 135A (2)—

Omit “(including any daily penalty)”.  
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(11) Section 141—

Omit “and, where the offence continues, to a further penalty, in the case of a corporation, not exceeding \$5,000 and, in any other case, not exceeding \$500, for each day during which the offence continues”.

(12) Section 142—

Omit “, for each day during which any such offence continues”.

(13) Section 143—

Omit “, for each day during which the offence continues”.

(14) (a) Section 147 (1)—

Omit “\$2,000”, insert instead “\$5,000”.

(b) Section 147 (1)—

Omit “\$200”, insert instead “\$500”.

(c) Section 147 (2)—

Omit “, for every day during the whole or any part of which the said supply of water is diverted or diminished by reason of any act done by or by the direction of that person”.

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**SCHEDULE 2—continued.****MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—continued.****(15) Section 151—**

After section 150, insert:—

**Compensation for interference or damage.**

151. (1) Subject to this section, where—

- (a) a person does work (whether by himself or herself or by his or her servants or agents) in circumstances in which the person, servant or agent has reasonable cause to believe that the doing of the work is likely to interfere with or damage property of the board; and
- (b) in the course of doing that work, the person, a servant of the person acting in the course of the servant's employment with the person or an agent interferes with or damages (whether by negligent act, omission or otherwise) the property referred to in paragraph (a),

the person is liable to pay to the board compensation for that interference or damage.

(2) It is a defence in any proceedings under subsection (1) for the recovery of compensation if the person proves that—

- (a) before commencing the work—
  - (i) the person had given notice in writing to the board that the person proposed to do the work; and
  - (ii) the person had given the board a reasonable opportunity for an officer or employee authorised by the board to confer with the person as to the manner of carrying out the work; and
- (b) if the board so required, the person had permitted an officer or employee authorised by the board to be present and to observe the carrying out of the work.

(3) This section does not affect the liability under any other provision of this Act or any other law of any person in respect of any interference or damage to which this section relates but the board is not entitled to be compensated both under this section and under another provision of this Act or under any other law in respect of the same interference or damage.

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## SCHEDULE 3.

(Sec. 5.)

## VALIDATION AND SAVINGS PROVISIONS.

**Validation, etc.**

1. Any act, matter or thing done or necessary to be done in relation to the payment or recovery of rates, the payment by instalments of which was approved by the Hunter District Water Board before the commencement of this Act, is hereby validated or authorised, as the case may require, to the extent that the doing of that act, matter or thing would not, but for this clause, be in accordance with the Principal Act.

**By-laws.**

2. A by-law made under the Principal Act and in force immediately before the commencement of this Act shall be deemed to be a by-law made under the Principal Act as amended by this Act.

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