

1990 - No. 241

**WATER ACT 1912 - REGULATION**

(Relating to the transfer of rights to lake and use water)

NEW SOUTH WALES



*[Published in Gazette No. 54 of 27 April 1990]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Water Act 1912, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY  
Minister for Natural Resources.

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**Commencement**

1. This Regulation takes effect on 4 May 1990.

**Amendment**

2. The Water (Part 2) Regulations are amended by inserting after Part 3 the following Part:

**PART 4 - TRANSFER OF RIGHTS TO TAKE AND USE  
WATER FROM WATER SOURCE NOT SUBJECT TO  
VOLUMETRIC WATER ALLOCATIONS SCHEME**

**Definitions**

46. In this Part:

"**entitlement**" means a licence, authority or group licence in force under Part 2 of the Act;

"**permanent transfer**" means a transfer (other than a temporary

transfer) of rights to take and use water;

**"temporary transfer"** means a transfer of rights to take and use water:

- (a) for a period of not more than 3 years; or
- (b) for a period which does not, when aggregated with the period or periods for which any other transfer or transfers obtained by the transferee under this Part, exceed 3 years;

**"the Act"** means the Water Act 1912;

**"water source"** means:

- (a) a river, lake or section of a river; or
- (b) a combination of 2 or more of them.

### **Application of Part**

47. (1) This Part applies to transfers between holders of entitlements of rights to take and use water from a water source that is not the subject of a water allocations scheme under Division 4B of Part 2 of the Act.

(2) This Part applies only to a water source that the Ministerial Corporation has determined to be subject to this Part.

### **Transfer of water rights generally**

48. The holder of an entitlement (in this Part referred to as the **"transferor"**) may, subject to the approval of the Ministerial Corporation, transfer the whole or part of the transferor's rights to take and use water under the entitlement to the holder of another entitlement (in this Part referred to as the **"transferee"**).

### **Application for permanent transfer**

49. An application for a permanent transfer of rights to take and use water:

- (a) is to be accompanied by an application by the transferee for a new entitlement (or, if the transferee is the holder of an authority or a group licence, for an amended entitlement) that comprises or includes the rights proposed to be transferred; and
- (b) if approved by the Ministerial Corporation, is to be effected by the issue of a new entitlement to the transferee.

### **Application for temporary transfer**

50. An application for a temporary transfer of rights to take and use water:

- (a) may only be approved by the Ministerial Corporation if the transferee is the holder of an existing entitlement; and
- (b) if approved by the Ministerial Corporation, is to be effected by the alteration of the conditions to which the entitlements of the transferor and transferee are subject.

### **Application for transfer - general**

51. (1) An application for a transfer of rights to take and use water is to be made in a form approved by the Ministerial Corporation and be executed by the transferor and transferee.

(2) The Ministerial Corporation may, in relation to an application for a transfer:

- (a) require the transferor to provide specified information and consents; and
- (b) require the transferee to provide specified information and evidence.

(3) A requirement under clause (2) may be complied with in any manner acceptable to the Ministerial Corporation, but the Ministerial Corporation may decline to proceed with consideration of the application until the requirement is complied with.

### **Application fees**

52. (1) An application for a permanent transfer of rights to take and use water must be accompanied by a fee of \$250.

(2) An application for a temporary transfer of rights to take and use water must be accompanied by a fee of \$75.

(3) The Ministerial Corporation may refund the whole or part of any fee paid in connection with an application under this Part:

- (a) if the application is withdrawn prior to determination or is rejected by the Ministerial Corporation; or
- (b) in such other circumstances as the Ministerial Corporation considers appropriate.

### **Approval of applications**

53. (1) In determining whether or not to approve a transfer of rights to take and use water, the Ministerial Corporation may take into consideration such matters as it thinks fit, including (without limiting the matters that may be considered):

- (a) its opinion as to the social and economic effects that a transfer would have if approved; and
- (b) whether there has been a history of water usage (and, if so, the extent of that usage) under the transferor's entitlement.

(2) The Ministerial Corporation may, as a condition of its approval, require the transferor concerned to surrender permanently part of the transferor's rights to take and use water under the entitlement.

### **Superseded rights to take and use water**

54. (1) The rights of a transferor to take and use water under an entitlement are, on completion of the transfer of the rights, abated to the extent of the transfer and any surrender pursuant to a condition referred to in Regulation 53 (2).

(2) Any such abatement:

- (a) is to be in the form of a reduction of the area in relation to which the entitlement concerned authorises the holder to take and use water, or in the form of a modification of the conditions of the entitlement or in such other form as may be determined by the Ministerial Corporation; and
- (b) has effect for the approved period of the transfer.

(3) The Ministerial Corporation may cancel the entitlement of a transferor if all the rights to take and use water under the entitlement are the subject of a permanent transfer.

### **Transfer zones**

55. (1) The Ministerial Corporation may determine that the particular location in respect of which the holder of an entitlement is authorised to take and use water is within a transfer zone determined by the Ministerial Corporation from time to time.

(2) The Ministerial Corporation may refuse to approve a transfer of rights to take and use water in respect of locations that are within different transfer zones if the Ministerial Corporation is satisfied that:

- (a) the transfer would result in the transferee's transfer zone being subjected to an unacceptable commitment; and
- (b) such other conditions as may be determined by the Ministerial Corporation have not been complied with.

(3) This Regulation does not limit the power of the Ministerial Corporation to refuse to approve of a transfer.

**Purchase of rights to take and use water by the Ministerial Corporation**

56. The Ministerial Corporation is not required to comply with this Part if it acquires, by purchase or surrender, for any public purpose the whole or part of the rights to take and use water under an entitlement.

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**EXPLANATORY NOTE**

The object of this Regulation is to amend the Water (Part 2) Regulations to make provision for transfers between holders of entitlements (e.g. a licence under the Water Act 1912) of rights to take and use water from a water source. The provisions of the Regulation apply only to water sources that are not the subject of a volumetric water allocations scheme (transfers concerning which are already provided for by the Act).

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