

WATER (AMENDMENT) ACT, 1983, No. 142

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 142, 1983.

An Act to amend the Water Act, 1912, in relation to the regulation of certain flood control works, in relation to volumetric water allocations schemes and in relation to other matters. [Assented to, 21st December, 1983.]

Water (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 "Water (Amendment) Act, 1983".

Commencement.

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

(2) Section 5, in its application to Schedule 1, and Schedule 1 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Water Act, 1912, 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 IN RELATION TO THE CONTROL OF WORKS ON RIVER BANKS AND FLOOD PLAINS.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 4.—SAVINGS AND TRANSITIONAL PROVISIONS.

Water (Amendment).

Amendment of Act No. 44, 1912.

5. The Principal Act is amended in the manner set forth in Schedules 1, 2 and 3.

Savings and transitional provisions.

6. Schedule 4 has effect.

Validation.

7. A notice—

- (a) which purports to have been duly served before the date of assent to this Act under section 20x (5) of the Principal Act; and
- (b) which could have been so served only if that Act, as amended by this Act, had been in force when the notice was served,

shall be deemed to have been duly served under that subsection.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF WORKS ON RIVER BANKS AND FLOOD PLAINS.

(1) Section 1—

After the matter relating to Part VII, insert:—

PART VIII.—CONTROL OF CERTAIN WORKS ON RIVER BANKS AND FLOOD PLAINS—ss. 165–186.

(2) Section 5 (1), definition of “Work”—

Omit “levee,”.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(3) Part VIII—

After Part VII, insert:—

PART VIII.

CONTROL OF CERTAIN WORKS ON RIVER BANKS AND FLOOD PLAINS.

Interpretation.

165. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“approval” means an approval under this Part;

“controlled work” means—

(a) an earthwork, embankment or levee, other than—

(i) an earthwork, embankment or levee prescribed for the purposes of this subparagraph; or

(ii) an earthwork, embankment or levee which forms or is intended to form part of, or is or is intended to be ancillary to, a work prescribed for the purposes of this subparagraph; and

(b) any work prescribed for the purposes of this paragraph,

which is situated, or proposed to be constructed, upon land that—

(c) is, or forms part of, the bank of a river or lake; or

(d) is within a flood plain,

but does not include a work or bore which has been constructed or acquired in accordance with, or in respect of which a license, group license, authority, permit, consent or authorisation is in force under, Part II, III, V, VI or VII;

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

“flood plain” means any land which is so designated by an order in force under section 166 (1);

“lake” includes a lagoon, swamp or other collection of still water, whether permanent or temporary, not being water contained in an artificial work;

“local land board” means the land board for the district in which a controlled work is situated or, if the controlled work is situated in more than one land board district, such land board as the Commission may name;

“local occupier”, in relation to an application for an approval, means an occupier of land which is wholly or partly situated within the same proclaimed local area as the land on which the controlled work the subject of the application is situated or is proposed to be constructed, but does not include a statutory authority, statutory instrumentality or government department of any State other than the State of New South Wales or a Minister of the Crown for any State other than the State of New South Wales;

“occupier” means a person in actual occupation of any land whatsoever, and where there is no person in actual occupation the holder under any tenure of the land and in respect of a public road within the meaning of the Local Government Act, 1919, means the council of the area within which the public road is situated, and, in any case where a controlled work is proposed to be or is being constructed under Part XIV of the Local Government Act, 1919, on behalf of any council, or where a council has been charged with the care and management of a controlled work, includes the council;

“prescribed tribunal” means a stipendiary magistrate or a local land board;

“proclaimed local area” means an area declared by the Governor pursuant to section 5 (4) to be a proclaimed local area;

Water (Amendment).

SCHEDULE 1—*continued.***AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.***

“referred determination” means a determination referred to a prescribed tribunal under section 171 (5) or 172 (2) for inquiry and report;

“river” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, a natural channel artificially improved or an artificial channel which has changed the course of the stream of water, and any affluent, confluent, branch or other stream into or from which the river flows;

“statutory authority” means a statutory authority, statutory instrumentality or government department of the State of New South Wales and includes a Minister of the Crown for the State of New South Wales.

(2) A reference in this Part to the occupier of land includes, where more than one person occupies that land, a reference to any one of those persons.

(3) A reference in this Part to the construction of a controlled work includes a reference to the enlargement or extension of the controlled work, but does not include a reference to the removal of the controlled work or the modification, carried out by the Commission under section 179, of the controlled work.

Designation of flood plains.

166. (1) The Commission may, by order published in—

(a) the Gazette; and

(b) at least one newspaper published and circulating generally in the locality of the land to which the order relates,

designate any land specified in the order as a flood plain.

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(2) An order under subsection (1) takes effect—

(a) on the date of its first publication in the Gazette and a newspaper pursuant to subsection (1) or, where it is first published in the Gazette and a newspaper on different dates, the later of those dates; or

(b) a date specified in the order in that regard,

whichever is the later.

(3) While an order under subsection (1) is in force, the Commission shall cause a map depicting the flood plain to which the order relates to be made available for public inspection at each of its offices, free of charge, during the ordinary office hours of the Commission.

Applications.

167. (1) An application for an approval shall—

(a) be made, in the prescribed form, by the occupier of the land, or the occupiers of the lands, upon which the controlled work the subject of the application is situated or proposed to be constructed;

(b) be accompanied by—

(i) the prescribed fee; and

(ii) the prescribed particulars; and

(c) be lodged with the Commission.

(2) A reference in subsection (1) to an occupier of land includes a reference to a person who proposes to obtain the right to occupy the land.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.***Commission may refuse to determine certain applications.**

168. (1) The Commission may refuse to determine an application for an approval—

(a) if, in its opinion—

(i) the application relates to 2 or more controlled works;
and

(ii) a separate application should be made in respect of any one or more of those controlled works; or

(b) if, in its opinion, the application relates to part only of a controlled work.

(2) Where the Commission refuses to determine an application pursuant to subsection (1), it shall refund to the applicant any fee paid under section 167 (1) (b) (i) in relation to the application.

Publication of applications.

169. The Commission shall not determine an application for an approval before the expiration of 28 days after it has caused notice to be published in—

(a) the Gazette; and

(b) at least one newspaper published and circulating generally in the locality of the land upon which the controlled work the subject of the application is situated or proposed to be constructed,

being a notice that—

(c) contains the prescribed particulars; and

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(d) specifies—

- (i) the date on or before which; and
- (ii) the manner in which,

objections may be made to the granting of an approval for the controlled work.

Objections.

170. (1) An objection to the granting of an approval for a controlled work may be made—

(a) where the controlled work was, at the time the application for the approval was made, situated or proposed to be constructed within a proclaimed local area—

- (i) by any statutory authority; or
- (ii) by any local occupier,

whose interests may be affected by the granting of such an approval; or

(b) in any other case—by any person whose interests may be affected by the granting of such an approval.

(2) An objection to the granting of an approval shall—

- (a) be in writing;
- (b) specify the grounds of the objection; and
- (c) be lodged with the Commission on or before the date specified pursuant to section 169 (d) (i) in relation to the making of any such objection.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.***Determinations.**

171. (1) The Commission shall determine an application for an approval (other than an application that has been withdrawn)—

- (a) except as provided by subsection (2), by granting an approval for the controlled work the subject of the application, subject to such conditions (if any) as the Commission thinks fit to impose; or
- (b) by refusing to grant an approval.

(2) The Commission shall not grant an approval to the applicant or applicants therefor if the whole or any part of the land upon which the controlled work the subject of the application is situated or proposed to be constructed is not occupied by the applicant, or by at least one of the applicants, as the case may be.

(3) Notwithstanding subsection (1), the Commission shall not—

- (a) impose any condition upon an approval granted in respect of a controlled work, except where it is satisfied that, unless the controlled work complies with that condition, the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work; or
- (b) refuse to grant an approval in respect of a controlled work, except where it is satisfied that the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work.

(4) The Commission shall, as soon as practicable after it determines an application for an approval, cause notice to be served on the applicant—

- (a) of its determination; and

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

- (b) where an objection to the granting of an approval has been made under section 170 and has not been withdrawn before the application is determined (being an application that the Commission determines by granting an approval)—
- (i) of the fact that such an objection has been so made;
 - (ii) of the grounds of each such objection; and
 - (iii) of the fact that the determination is to be referred to a prescribed tribunal for inquiry and report.

(5) Where—

- (a) an objection to the granting of an approval has been made under section 170 and has not been withdrawn before the application for the approval is determined; and
- (b) the Commission determines that application by granting an approval,

the Commission shall, before the expiration of 28 days after it has caused notice of its determination to be served on the applicant, refer its determination, together with each such objection, to a prescribed tribunal for inquiry and report.

(6) Where the Commission determines an application for an approval by refusing to grant an approval, the applicant may, before the expiration of 90 days after notice of the determination is served on the applicant, appeal against the determination, in accordance with rules of court, to the Land and Environment Court.

Protests against conditions.

172. (1) A protest against a condition imposed by the Commission on an approval granted by it pursuant to a determination under section 171 (1) (a) shall—

- (a) be made by the applicant for the approval;

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

- (b) be in writing;
- (c) specify the grounds of the protest; and
- (d) be lodged with the Commission before the expiration of 21 days after notice of the determination is served on that applicant.

(2) The Commission shall, before the expiration of 28 days after it has caused notice of a determination to be served on an applicant, refer any such determination in respect of which a protest has been made under subsection (1), together with each such protest, to a prescribed tribunal for inquiry and report.

Inquiries.

173. (1) A prescribed tribunal shall not hold an inquiry into a referred determination until after notice has been published in—

- (a) the Gazette; and
- (b) at least one newspaper published and circulating generally in the locality of the controlled work the subject of the determination,

being a notice that—

- (c) identifies that controlled work;
- (d) states that an inquiry is to be held into the granting of an approval for that controlled work; and
- (e) specifies the date on which and the time and place at which the inquiry is proposed to be held.

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(2) At an inquiry held by a prescribed tribunal into a referred determination, being an inquiry into an application for an approval for a controlled work that was, at the time the application was made, situated or proposed to be constructed within a proclaimed local area—

- (a) the Commission;
- (b) the applicant; and
- (c) any statutory authority or local occupier whose interests may be affected by any matter the subject of the inquiry,

shall be entitled to make submissions to the prescribed tribunal in relation to the determination.

(3) At an inquiry held by a prescribed tribunal into a referred determination, not being an inquiry into an application for an approval for a controlled work that was, at the time the application was made, situated or proposed to be constructed within a proclaimed local area—

- (a) the Commission;
- (b) the applicant; and
- (c) any other person whose interests may be affected by any matter the subject of the inquiry,

shall be entitled to make submissions to the prescribed tribunal in relation to the determination.

Decision of prescribed tribunals.

174. (1) A prescribed tribunal shall, after holding an inquiry in relation to a referred determination, decide—

- (a) to confirm the determination;

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

- (b) to vary the approval the subject of the determination—
 - (i) by removing from the approval any condition imposed thereon under section 171 (1) (a); or
 - (ii) by imposing on the approval such conditions (in addition to, or in substitution for, any condition imposed thereon under section 171 (1) (a)) as it thinks fit; or
- (c) where the determination has been referred to it under section 171 (5)—to cancel the approval the subject of the determination.
 - (2) Notwithstanding subsection (1), a prescribed tribunal shall not—
 - (a) impose any condition upon an approval granted in respect of a controlled work, except where it is satisfied that, unless the controlled work complies with that condition, the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work; or
 - (b) cancel an approval granted in respect of a controlled work, except where it is satisfied that the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work.
 - (3) Where a prescribed tribunal makes a decision in relation to a referred determination, it shall—
 - (a) announce its decision in open court; and
 - (b) as soon as practicable thereafter—report in writing upon the decision to the Commission.
 - (4) An appeal may be made to the Land and Environment Court, in accordance with rules of court, against any decision made by a prescribed tribunal in relation to a referred determination—
 - (a) by the Commission;

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(b) by the applicant to whom the determination relates; or

(c) by any other person who has made any submission to the prescribed tribunal in relation to the determination,

before the expiration of 28 days after the announcement of the decision under subsection (3) (a).

(5) Where an appeal has been made by the Commission against a decision made by a prescribed tribunal whereby an approval has been varied or cancelled, the applicant to whom the referred determination the subject of the decision relates, and any person by whom a submission has been made to the prescribed tribunal in relation to that determination, shall be served with notice of the appeal by the Commission and shall, on application made to the Land and Environment Court before the expiration of 28 days after notice is so served, be entitled to be heard at the hearing of the appeal as if they were parties to the appeal.

(6) Where an appeal has been made by an applicant referred to in subsection (4) (b) against a decision made by a prescribed tribunal whereby an approval has been varied or cancelled, the Commission, and any person by whom a submission has been made to the prescribed tribunal in relation to the referred determination the subject of the decision, shall be served with notice of the appeal by the applicant and shall, on application made to the Land and Environment Court before the expiration of 28 days after notice is so served, be entitled to be heard at the hearing of the appeal as if they were parties to the appeal.

(7) Where an appeal has been made by a person referred to in subsection (4) (c) against a decision made by a prescribed tribunal whereby a determination has been confirmed, the Commission, and the applicant to whom the determination relates, shall be served with notice of the appeal by that person and shall, on

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

application made to the Land and Environment Court before the expiration of 28 days after notice is so served, be entitled to be heard at the hearing of the appeal as if they were parties to the appeal.

(8) An appeal made by any person in accordance with this section against a decision made by a prescribed tribunal shall not be heard by the Land and Environment Court before the expiration of the time within which such an appeal may be so made by any other such person.

Approvals.

175. An approval—

- (a) shall take effect, and shall specify that it so takes effect—
 - (i) except as provided by subparagraph (ii)—at the expiration of 28 days after the Commission has caused notice of the determination whereby it has granted the approval to be served on the applicant therefor; or
 - (ii) where the determination whereby the approval is so granted is referred to a prescribed tribunal for inquiry and report—on the announcement of the decision of the prescribed tribunal whereby that determination is confirmed or the approval is varied, as the case may be, under section 174 (1);
- (b) subject to any cancellation thereof under section 178, shall cease to have effect upon the expiration of 5 years after the date on which the Commission made the determination referred to in paragraph (a) (i);
- (c) shall specify the date on which the approval ceases to have effect; and
- (d) shall be in or to the effect of the prescribed form.

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

Renewals of approvals.

176. (1) An application for renewal of an approval shall—

- (a) be made, in the prescribed form, by the occupier of the land, or the occupiers of the lands, to which the approval relates;
- (b) be accompanied by the prescribed fee; and
- (c) be lodged with the Commission before the date on which the approval would, but for subsection (2), cease to have effect.

(2) Where an application for renewal of an approval is made in accordance with subsection (1), the approval shall, notwithstanding subsection (9) (b) or section 175 (b) but subject to any cancellation of the approval under section 178, continue in force until the application is finally disposed of in accordance with this section.

(3) The Commission shall determine an application for renewal of an approval (other than an application that has been withdrawn)—

- (a) except as provided by subsection (4), by renewing the approval, subject to such conditions (if any) as the Commission thinks fit to impose; or
- (b) by refusing to renew the approval.

(4) The Commission shall not renew an approval if the whole or any part of the land to which the approval relates is not occupied by the applicant for the renewal, or by at least one of the applicants for the renewal, as the case may be.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(5) Notwithstanding subsection (3), the Commission shall not—

- (a) impose any condition upon an approval renewed by it in respect of a controlled work, except where it is satisfied that, unless the controlled work complies with that condition, the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work; or
- (b) refuse to renew an approval in respect of a controlled work, except where it is satisfied that the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work.

(6) Nothing in this section operates to prevent the Commission from determining an application for renewal of an approval by reason only that the application was lodged with the Commission on or after the date referred to in subsection (1) (c).

(7) The Commission shall, as soon as practicable after it has determined an application for renewal of an approval, cause notice to be served on the applicant of its determination.

(8) Where the Commission has determined an application for renewal of an approval—

- (a) by refusing to renew the approval; or
- (b) by renewing the approval, subject to conditions other than those to which the approval was subject immediately before it was so renewed,

the applicant may, before the expiration of 28 days after notice of the determination is served on the applicant, appeal against the determination, in accordance with rules of court, to the Land and Environment Court.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

- (9) An approval renewed in accordance with this section—
- (a) shall take effect on the date on which the Commission makes the determination whereby it renews the approval;
 - (b) subject to any cancellation thereof under section 178, shall cease to have effect upon the expiration of 5 years after that date;
 - (c) shall specify the dates between which the approval has effect;
and
 - (d) shall be in or to the effect of the prescribed form.

Benefit of approval.

177. An approval shall, except where it otherwise specifically provides—

- (a) be deemed to be held by; and
- (b) operate and enure for the benefit of,

the occupier for the time being of the land upon which the controlled work the subject of the approval is situated or proposed to be constructed.

Cancellation of approvals.

178. (1) Where the Commission is satisfied that a controlled work in respect of which an approval is in force does not comply with the approval, or with any condition imposed on the approval, the Commission may cause to be served on the occupier of the land upon which the work is situated a notice to the effect that, at the expiration of the period of 28 days next following service of the notice, the approval will be cancelled.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(2) An occupier of land on whom a notice referred to in subsection (1) is served may, before the expiration of the period referred to in that subsection, appeal to the Land and Environment Court, in accordance with rules of court, against the proposed cancellation of the approval to which the notice relates.

(3) At the expiration of the period referred to in subsection (1), an approval in respect of which a notice has been served under that subsection and has not been withdrawn shall, unless the approval is the subject of an appeal under subsection (2), be deemed to be cancelled.

(4) Where an approval is deemed to be cancelled under this section, the Commission may cause notice of the cancellation to be published in the Gazette, and any such notice shall be conclusive evidence of the cancellation.

Removal and modification of unapproved works.

179. (1) Except as provided by subsections (3) and (4), the Commission may remove or modify any controlled work in respect of which an approval is not in force if it is satisfied that, unless the controlled work is so removed or modified, the controlled work is likely to affect, materially and prejudicially, the distribution of flood waters in the vicinity of the work.

(2) For the purpose of exercising its powers under subsection (1), the Commission may, by its officers, employees or agents—

- (a) enter any land;
- (b) inspect any building or work; and
- (c) carry out any work.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(3) The Commission may exercise its powers under this section in relation to a controlled work only after the expiration of 28 days after it has caused to be served on the occupier of the land on which the controlled work is situated a notice to the effect that the Commission intends so to exercise those powers.

(4) The Commission shall not exercise its powers under this section in relation to a controlled work situated on land that is within a flood plain before the expiration of 90 days after the date on which the order designating that land as a flood plain has taken effect.

(5) Subsections (1) and (2)—

- (a) apply to a controlled work constructed before, on or after the commencement of this Part; and
- (b) do not apply to a controlled work in respect of which an application for an approval has been made, other than—
 - (i) an application that has been withdrawn or otherwise finally disposed of; or
 - (ii) an application that was made after the occupier of the land upon which the controlled work is situated was served with a notice referred to in subsection (3) in relation to the work.

(6) An occupier of land on whom a notice referred to in subsection (3) is served may, before the expiration of 28 days after notice is so served, appeal to the Land and Environment Court, in accordance with rules of court, against the proposed removal or modification of the controlled work to which the notice relates.

(7) The Commission is not liable to pay compensation to any person in respect of any loss or damage suffered by that person as a consequence of the removal or modification by the Commission, pursuant to subsection (1), of any controlled work.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.***Offences.**

180. (1) A person shall not construct a controlled work otherwise than—

- (a) pursuant to an approval which is in force in respect of the work; and
- (b) in accordance with such conditions, if any, as are imposed in respect of that approval.

Penalty: \$2,000.

(2) A person shall not hinder or obstruct the Commission, or any of its officers, employees or agents, in the exercise of any power under section 179.

Penalty: \$500.

(3) A person shall not remove, damage or modify any work carried out under section 179.

Penalty: \$500.

Recovery of expenses of removal and modification of certain works.

181. (1) Where the Commission exercises its powers under section 179 in relation to a controlled work before the expiration of 2 years after a person has been convicted of an offence under section 180 (1) in respect of the work, the Commission may recover the expenses incurred in its exercise of those powers from that person as a debt in any court of competent jurisdiction.

(2) Subsection (1) does not enable the Commission to recover any expense incurred in the exercise of its powers under section 179—

- (a) by proceedings commenced after the expiration of 6 months after that expense was incurred; or

Water (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

- (b) otherwise than in respect of such work as has been carried out in contravention of section 180 (1).

Recovery of penalties.

182. Any penalty imposed by or under this Part may be recovered before a stipendiary magistrate.

Consolidated Fund.

183. All fees payable under this Part shall be paid into the Consolidated Fund.

Service of notices.

184. Service of a notice under this Part on an occupier of land may be effected—

- (a) by delivering the notice to the occupier personally;
- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on that land; or
- (c) by letter sent by post and addressed to the occupier at the occupier's address last known to the Commission.

Regulations.

185. (1) The Commission may, with the approval of the Governor, make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part and, in particular, for or with respect to fees payable under this Part.

Water (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE CONTROL OF
WORKS ON RIVER BANKS AND FLOOD PLAINS—*continued.*

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(3) A regulation may impose a penalty not exceeding \$500 for an offence against the regulation.

(4) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under subsection (1) as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

Part to bind Crown.

186. This Part binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Water (Amendment).

SCHEDULE 2.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 5 (1), definition of "Work to which this Part extends"—

Omit the definition, insert instead:—

"Work to which this Part extends" means a work—

- (a) which is connected with, or which affects the quantity or use of water in—
 - (i) any river flowing through or past; or
 - (ii) any lake situated within or adjoining, the land of 2 or more occupiers;
- (b) which affects the quantity of water flowing in, to or from, or contained in, any such river or lake; or
- (c) in or through which flows, or is contained or used, water taken from any such river or lake,

being a work which is used, or is to be used—

- (d) for water conservation, irrigation, water supply or drainage;
- (e) for preventing land from being flooded by water; or
- (f) for changing the course of a river, or preventing the course of a river from changing,

but does not include a prescribed work or a work declared under subsection (3) to be a work for urban drainage.

- (b) Section 5 (3)—

Omit "paragraph (a) or (b) of".

Water (Amendment).

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

(2) (a) Section 7 (1)—

Omit “subsection (2)”, insert instead “subsections (1A) and (2)”.

(b) Section 7 (1A)—

After section 7 (1), insert:—

(1A) The occupier of land which forms the bank of a river or a lake shall not, after the date of assent to the Water (Amendment) Act, 1983, have the right, otherwise than pursuant to a license, group license, authority or permit—

(a) to construct a dam or an excavation in the river or lake or a work which obstructs the flow of water in the river; or

(b) to use any such dam, excavation or work constructed after that date,

unless—

(c) the storage capacity of the dam, excavation or work does not exceed 7 megalitres; and

(d) that occupier so constructs or uses, as the case may be, the dam, excavation or work for one or more of the purposes specified in subsection (1) (a) and for no other purpose.

(3) Section 11 (1A)—

After section 11 (1), insert:—

(1A) Subsection (1) does not require the Commission to cause to be advertised a notice containing particulars of an application unless it is satisfied that the applicant occupies, or will obtain the right to occupy, the site of the work.

Water (Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) (a) Section 16—

Omit “issued under section 13A” wherever occurring, insert instead “for a work constructed or used or proposed to be constructed or used for the purpose of irrigation or water supply”.

(b) Section 16 (2)—

Omit “of the land which is or is to be supplied with water by means of the licensed work.”, insert instead:—

of—

(c) the land which is or is to be supplied with water by means of the licensed work; and

(d) the land on which the licensed work is constructed or used or is proposed to be constructed or used.

(5) Section 20 (3)—

After section 20 (2), insert:—

(3) A reference in subsection (1) to an occupier of land includes a reference to a person who proposes to obtain the right to occupy that land.

(6) Section 20A (1AA)—

After section 20A (1), insert:—

(1AA) Subsection (1) does not require the Commission to cause to be published a notice giving particulars of an application unless it is satisfied that each part of the land to which the application relates is land which one or more of the applicants occupies or occupy or to which one or more of the applicants will obtain the right of occupation.

Water (Amendment).

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

(7) Section 20B (2A)—

After section 20B (2), insert:—

(2A) The Commission shall not issue an authority to the applicants therefor if any part of the land to which the application relates is not occupied by at least one of the applicants.

(8) (a) Section 20v, definition of “entitlement”—

Before the definition of “scheme”, insert:—

“entitlement” means a license, a permit, an authority or a group license;

(b) Sections 20v, 20x, 20z, 20AA, 20AB—

Omit “any license, group license or authority” wherever occurring, insert instead “any entitlement”.

(c) Sections 20v, 20x, 20z, 20AA, 20AB—

Omit “the license, group license or authority” wherever occurring, insert instead “the entitlement”.

(d) Section 20v (2)—

At the end of section 20v, insert:—

(2) A reference in this Division to the holder of an entitlement includes, where the entitlement is an authority, a reference to each of the holders of the authority.

(9) Sections 20w, 20x, 20y, 20z, 20AA—

Omit “licenses, group licenses and authorities” wherever occurring, insert instead “entitlements”.

Water (Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(10) (a) Sections 20x (2) (b)—

Omit “such license, group license and authority”, insert instead “such entitlement”.

(b) Sections 20x, 20z, 20AB, 20AC—

Omit “a license, group license or authority” wherever occurring, insert instead “an entitlement”.

(c) Section 20x (3A)—

After section 20x (3), insert:—

(3A) The Commission may, from time to time, vary any determination made under subsection (3) (c) by increasing the quantity specified by it as being the maximum quantity of water which may be taken from a water source in any year under any entitlement.

(d) Section 20x (4)—

Omit “made under”, insert instead “in force under”.

(e) Section 20x (5)—

Omit “and before the date on which the scheme is to commence”.

(f) Section 20x (5)—

Omit “each license or group license, and on the holders of each authority.”, insert instead “each entitlement”.

Water (Amendment).

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

(11) Sections 20xA, 20xB—

After section 20x, insert:—

Variation of water allocations.

20xA. (1) Subject to any determination in force under section 20x (3) (c), the Commission may, from time to time and by notice in writing served on the holder of an entitlement (being an entitlement which authorises the taking of water from a water source which is subject to a scheme), vary any determination made under section 20x (2) (b) or 20AB (1) (a) in respect of the entitlement.

(2) A notice under subsection (1) may specify that the variation has effect—

- (a) in respect of a year specified in the notice; or
- (b) in respect of a year so specified and in respect of each subsequent year.

(3) Where a notice has been served under subsection (1) on the holder of an entitlement (being an entitlement which authorises the taking of water from a water source which is subject to a scheme), the condition which pursuant to section 20x (5) is attached to, or which pursuant to section 20AB (1) (b) is included in, the entitlement shall be modified according to the tenor of the notice and the water allocation in respect of the entitlement shall be deemed to be varied accordingly.

(4) Service of a notice under subsection (1) on a holder referred to in that subsection may be effected—

- (a) by delivering the notice to the holder personally;
- (b) by leaving the notice with any person apparently of or above the age of 14 years who apparently resides or is employed on the land of the holder; or
- (c) by letter sent by post and addressed to the holder at the holder's address last known to the Commission.

Water (Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Removal of area restrictions on irrigation entitlements.

20XB. Any term, limitation or condition which—

(a) is included in an entitlement which authorises the taking of water, for the purpose of irrigating crops or plantings (other than vineyards, orchards, trees or any other prescribed crops or plantings), from a water source which is subject to a scheme; and

(b) purports to restrict the area of land which may be irrigated pursuant to the entitlement,

does not, while the water source remains subject to the scheme, operate so as to restrict the area of land which may be so irrigated.

(12) (a) Section 20Y (1) (a)—

Omit “except as provided in subsection (2),”.

(b) Section 20Y (1)—

Omit “further applications” wherever occurring, insert instead “applications made after the date on which the notice is so published”.

(c) Section 20Y (1A)—

After section 20Y (1), insert:—

(1A) A notice published under subsection (1) may relate—

(a) to all entitlements authorising the taking of water from a water source which is subject to a scheme; or

(b) to all such entitlements for the purpose only of irrigating a crop or planting of a class specified in the notice,

as the Commission may determine.

Water (Amendment).

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

(13) (a) Section 20z (1A)—

After section 20z (1), insert:—

(1A) A notice published under subsection (1) may relate—

(a) to all entitlements, generally;

(b) to specified entitlements or entitlements of a specified class; or

(c) to all entitlements, other than specified entitlements or entitlements of a specified class,

as the Commission may determine.

(b) Sections 20z (3), 20AC (2) (b)—

Omit “license or group license or, as the case may be, the holders of the authority” wherever occurring, insert instead “entitlement”.

(14) Section 20AA (1)—

Omit “such license, group license or authority”, insert instead “such entitlement”.

(15) (a) Section 20AB (2)—

Omit “Section 20X (3) and section 20X (4)”, insert instead “The provisions of section 20X (3), (3A) and (4)”.

(b) Section 20AB (2)—

Omit “they”, insert instead “those provisions”.

(c) Section 20AB (4)—

Omit “that license, group license or authority”, insert instead “that entitlement”.

Water (Amendment).

SCHEDULE 2—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(16) Section 20AC (3)—

Omit “license or group license or, as the case may be, the holders of the authority,”, insert instead “entitlement”.

(17) (a) Section 22c (3) (a)—

Omit “or for the carrying on of any industrial operation”, insert instead “, for industrial use or for such other use as may be prescribed”.

(b) Section 22c (4) (b)—

Omit “not greater than maximum amounts”, insert instead “calculated at a rate not greater than the maximum rate”.

(c) Section 22c (11), (12)—

Omit the subsections.

(18) Section 26—

Omit “Revenue”.

(19) Section 26A—

After “Local Government Act”, insert “, 1919,”.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Sections 4, 5 (1)—

Omit “and in any regulations made thereunder, unless” wherever occurring, insert instead “except in so far as”.

Water (Amendment).

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(2) Part II, Division 4, heading—

Omit "JOINT WATER SUPPLY SCHEMES", insert instead "*Joint water supply schemes*".

(3) Section 20i—

After "Division", insert ", except in so far as the context or subject-matter otherwise indicates or requires".

(4) Section 20v—

Omit "unless", insert instead "except in so far as".

(5) Sections 28, 130, 150—

After "In this Part" wherever occurring, insert ", except in so far as the context or subject-matter otherwise indicates or requires".

(6) Section 105—

Omit "unless the context or subject-matter otherwise indicates or requires," insert instead "except in so far as the context or subject-matter otherwise indicates or requires".

(7) Sections 130, 131, 132, 133, 133A, 133AA, 133AB, 133B, 133C, 134, 136, 137, 147, 147AC, 147A, 147B, 148, 148A, 148B, 149—

Omit the italicized headings appearing immediately above the respective sections.

Water (Amendment).

SCHEDULE 4.

(Sec. 6.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“date of assent” means the date of assent to this Act.

Notices under section 5 (3) of the Principal Act.

2. Any notice which was, immediately before the date of assent, in force under section 5 (3) of the Principal Act shall, on that date, be deemed to be a notice in force under section 5 (3) of the Principal Act, as amended by this Act.

Application of section 20Y of the Principal Act.

3. Section 20Y of the Principal Act, as amended by this Act, applies to and in respect of an application for a license, group license or authority made under Part II of the Principal Act before the date of assent (being an application that has not, before that date, been withdrawn, granted or refused) in the same manner as that section, as so amended, applies to and in respect of any such application made on or after that date.

Regulations under section 22c (4) (b) of the Principal Act.

4. Any regulation which, immediately before the date of assent, prescribed a maximum amount for the purposes of section 22c (4) (b) of the Principal Act shall, on that date, be deemed to be a regulation prescribing a maximum rate for the purposes of section 22c (4) (b) of the Principal Act, as amended by this Act.

Applications.

5. (1) Where, immediately before the appointed day, an application, in respect of a levee, for a license or a permit under Part II of the Principal Act has not been finally determined, the provisions of that Part shall continue to apply to and in respect of the application until the application is finally determined in the same manner as those provisions would have applied had this Act not been enacted.

Water (Amendment).

SCHEDULE 4—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(2) For the purposes of subsection (1) of this clause, an application is finally determined—

- (a) in the case of an application for a license—
 - (i) when the application is withdrawn;
 - (ii) when the license is granted;
 - (iii) at the expiry of 90 days from the date on which the applicant is notified of the decision of the Water Resources Commission that the application shall be refused;
 - (iv) where within 90 days from that date the applicant appeals to the Land and Environment Court against that decision—when that appeal is finally disposed of;
 - (v) at the expiry of 28 days from the announcement of the decision by a local land board or a stipendiary magistrate pursuant to an inquiry held in relation to the application, being a decision that the application should not be granted; or
 - (vi) where within 28 days from that announcement the applicant appeals to the Land and Environment Court against that decision—when that appeal is finally disposed of; and
- (b) in the case of an application for a permit—when the permit is granted or refused, as the case may be.

Licenses and permits.

6. Any license or permit—

- (a) which was, immediately before the appointed day, in force under Part II of the Principal Act in respect of a levee; or
- (b) which is, pursuant to clause 5, granted in respect of a levee,

shall, on that day or upon being so granted, as the case may be, be deemed to be an approval granted in respect of a controlled work under Part VIII of the Principal Act, as amended by this Act, and shall, subject to Part VIII of the Principal Act, as so amended, cease to have effect when it would, but for the enactment of this Act, cease to have effect.
