

**FARM WATER SUPPLIES (TRANSFER OF FUNCTIONS)  
AMENDMENT ACT 1986 No. 104**

NEW SOUTH WALES



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**FARM WATER SUPPLIES (TRANSFER OF FUNCTIONS)  
AMENDMENT ACT 1986 No. 104**

NEW SOUTH WALES



**Act No. 104, 1986**

An Act to amend the Farm Water Supplies Act 1946 to make provision for the transfer of certain functions under that Act from the Water Resources Commission; and for other purposes. [Assented to 26 November 1986.]

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See also Soil Conservation (Amendment) Act 1986.

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**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 "Farm Water Supplies (Transfer of Functions) Amendment Act 1986".

**Principal Act**

2. The Farm Water Supplies Act 1946 is referred to in this Act as the Principal Act.

**Amendment of Act No. 22, 1946**

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

**Savings and transitional provisions**

4. Schedule 3 has effect.

**Validation**

5. Anything done or purportedly done under the Principal Act between 30 June 1986 and the commencement of this Act which would, if done after that commencement, have been validly done is validated.

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SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 2 (**Interpretation**)—

(a) Definition of "Bore"—

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

After the definition of “Bank”, insert:

“Bore” means any bore or well or any excavation or other work connected or proposed to be connected with sources of sub-surface water and used or proposed to be used or capable of being used to obtain supplies of sub-surface water, whether the water flows naturally at all times or has to be raised either wholly or at times by pumping or other artificial means.

(b) Definition of “Commission”—

Omit the definition.

(c) Definition of “Farming lands”—

Omit the definition, insert instead:

“Farming lands” means—

- (a) lands used for farming, agricultural, horticultural, viticultural, vegetable-growing, market gardening, pastoral, grazing, poultry farming, silvicultural, floricultural or piscicultural purposes; and
- (b) any other lands declared by the regulations made under this Act to be farming lands for the purposes of this Act.

(d) Definition of “Works”—

Omit the definition, insert instead:

“Works” means—

- (a) works necessary for the provision or improvement of the water supply to farming lands for irrigation purposes, or for the preparation of farming lands for irrigation, whether or not involving the construction or improvement of a bore; or
- (b) the construction or improvement of a bore for the provision or improvement of the water supply to farming lands for domestic or stock purposes.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) Section 2A—

After section 2, insert:

**Appropriate Authority for works**

2A. In this Act, a reference to the appropriate Authority, in relation to any works, is a reference—

- (a) to the Director-General of the Department of Agriculture to the extent to which the works do not involve the construction or improvement of a bore; or
- (b) to the Water Resources Commission constituted under section 4 of the Water Resources Commission Act 1976 to the extent to which the works involve the construction or improvement of a bore.

(3) Section 3 (**Application for advance**)—

(a) Section 3—

Omit “Commission” wherever occurring, insert instead “Bank”.

(b) Section 3 (2)—

Omit “in or to the effect of the prescribed form and shall be accompanied by the prescribed deposit”, insert instead “in a form approved by the Bank and shall be accompanied by such deposit as the Bank may require”.

(4) Section 4 (**Bank to determine application**)—

(a) Section 4 (1)—

Omit “Commission”, insert instead “Bank”.

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## (b) Section 4 (2)—

Omit the subsection, insert instead:

(2) Where the Bank decides to make an advance it shall furnish to the applicant a statement setting out a description of the works which the Bank has approved be carried out and specifying—

(a) where the works are to be carried out by any person other than the appropriate Authority—the amount proposed to be advanced, not exceeding 90 per cent of the cost of the works as estimated by the Bank; or

(b) where the works are to be carried out by the appropriate Authority—

(i) the terms and conditions on which the appropriate Authority is prepared to carry out the works;

(ii) the charge which the appropriate Authority requires to be paid for the carrying out of the works by it or the manner in which that charge is to be assessed; and

(iii) the amount, not less than 10 per cent of that charge, to be paid to the appropriate Authority under subsection (3).

## (c) Section 4 (3)—

Omit “Commission to that effect in the prescribed form”, insert instead “Bank in a form approved by the Bank”.

## (d) Section 4 (3)—

Omit “Commission” where secondly and thirdly occurring, insert instead “appropriate Authority”.

(5) Section 5 (**Bank to make advances**)—

## (a) Section 5 (1)—

Omit “Commission”, insert instead “Bank”.

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## (b) Section 5 (1)—

Omit “and prevailing at the time the advance is made”, insert instead “from time to time”.

## (c) Section 5 (2)—

Omit “Irrigation Agency”, insert instead “Rural Industries Agency”.

(6) Section 6 (**Conditions precedent to advances**)—

Omit “Commission”, insert instead “Bank”.

## (7) Section 7—

Omit the section, insert instead:

**Amount of advance where works not carried out by appropriate Authority**

7. (1) The amount of an advance to be made to an owner where the works are to be carried out by any person other than the appropriate Authority shall be finally determined by the Bank upon the completion of the works and shall not exceed 90 per cent of the actual cost incurred by the owner in respect of the carrying out of the works.

(2) A certificate issued by the appropriate Authority certifying—

(a) that works have been completed; and

(b) that a specified amount is the actual cost incurred by an owner in respect of the carrying out of works,

is evidence in favour of the Bank of the matters certified.

(8) Section 8 (**Payment of advance where works not carried out by appropriate Authority**)—

## (a) Section 8 (1)—

Omit “or body, including the owner, other than the Commission”, insert instead “, other than the appropriate Authority”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) Section 8 (1)—  
Omit “Commission” where secondly occurring, insert instead “Bank”.
- (c) Section 8 (1)—  
Omit “Commission” where lastly occurring, insert instead “appropriate Authority”.
- (d) Section 8 (2)—  
Omit “Commission”, insert instead “appropriate Authority or the Bank”.
- (9) Section 9 (**Appropriate Authority may carry out works where advance is made**)—
- (a) Section 9 (1)–(4)—  
Omit “Commission” where firstly occurring, insert instead “appropriate Authority”.
- (b) Section 9 (5)—  
Omit “Commission” where firstly, thirdly and fourthly occurring, insert instead “appropriate Authority”.
- (c) Section 9 (5)—  
Omit “under the hand of one of the Commissioners constituting the Commission”, insert instead “issued by the appropriate Authority”.
- (10) Section 10 (**Appropriate authority may let machinery, etc., on hire**)—  
Omit “Commission” wherever occurring, insert instead “appropriate Authority”.
- (11) Section 11 (**Works of joint water supply**)—  
Section 11 (2)—  
Omit “Commission”, insert instead “Bank”.



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

- (12) Section 12 (**Repayment of advance secured by deed of charge**)—
- (a) Section 12 (2)—  
Omit “or body, including the owner, other than the Commission”, insert instead “, other than the appropriate Authority”.
  - (b) Section 12 (2)—  
Omit “Commission” where secondly and thirdly occurring, insert instead “appropriate Authority”.
  - (c) Section 12 (2)—  
Omit “Commission” where fourthly and fifthly occurring, insert instead “Bank”.
  - (d) Section 12 (3)—  
Omit “Commission” where firstly occurring, insert instead “appropriate Authority”.
  - (e) Section 12 (3)—  
Omit “Commission” where secondly occurring, insert instead “appropriate Authority”.
  - (f) Section 12 (3)—  
Omit “or body, including the owner, other than the Commission”, insert instead “, other than the appropriate Authority”.
- (13) Section 13 (**Appropriate Authority may carry out works where advance not made**)—
- (a) Section 13 (1)—  
Omit “Commission” wherever occurring, insert instead “appropriate Authority”.
  - (b) Section 13 (2)—  
Omit “under the hand of one of the Commissioners constituting the Commission of”, insert instead “issued by the appropriate Authority certifying that a specified amount is”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (c) Section 13 (2)—  
Omit “Commission” where secondly, thirdly and fourthly occurring, insert instead “appropriate Authority”.
- (14) Section 14 (**Appropriate Authority may carry out investigations, prepare estimates, etc.**)—  
Omit “Commission” wherever occurring, insert instead “appropriate Authority”.
- (15) Section 15 (**Entry on land and use of materials**)—  
Omit “Commission” wherever occurring, insert instead “appropriate Authority”.
- (16) Section 16 (**Work to be licensed**)—
- (a) Omit “Part II of the Water Act, 1912, as amended by subsequent Acts,” insert instead “Part II, V or VIII of the Water Act 1912”.
- (b) Omit “a license, permit or authority under the said Part II”, insert instead “the requisite license, permit, authority or approval under that Act”.
- (17) Section 16A (**Loan to Board**)—
- (a) Section 16A (2)—  
Omit “Commission in the prescribed manner”, insert instead “Bank in a form approved by the Bank”.
- (b) Section 16A (3)—  
Omit “the Commission may, with the approval of the Minister,”, insert instead “the Bank may”.
- (c) Section 16A (6) (a)—  
Omit “Irrigation Agency”, insert instead “Rural Industries Agency”.
- (d) Section 16A (6) (c)—  
Omit “Commission”, insert instead “Bank”.

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- (18) Section 16B (**Security for loan**)—  
Omit “Bank may direct”, insert instead “Bank determines”.
- (19) Section 17 (**Offences**)—  
Omit “two hundred and fifty dollars”, insert instead “\$800”.
- (20) Section 18 (**Regulations**)—
- (a) Section 18 (1)—  
Omit “Commission”, insert instead “Governor”.
  - (b) Section 18 (1)—  
Omit “one hundred dollars”, insert instead “\$500”.
  - (c) Section 18 (2)—  
Omit the subsection.

## SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW  
REVISION

- (1) Long title—  
Omit “the Water Resources Commission”, insert instead “certain Government instrumentalities”.
- (2) Section 2, definition of “Bank”—  
Omit “Rural Bank”, insert instead “State Bank”.
- (3) (a) Section 5 (1)—  
Omit “subsection (3) of section 4”, insert instead “section 4 (3)”.
- (b) Section 5 (3)—  
Omit “Division I of Part VIb of the Government Savings Bank Act, 1906, as amended by subsequent Acts.”, insert instead “Division I of Part IV of the State Bank Act 1981”.

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SCHEDULE 2—*continued*

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

- (4) Section 9 (4)—  
Omit “subsection (3) of section 4”, insert instead “section 4 (3)”.
- (5) (a) Section 11 (1)—  
Omit “subsection (2) of section 3 and of section 4”, insert instead “sections 3 (2) and 4”.
- (b) Section 11 (2)—  
Omit “subsection (3) of section 4”, insert instead “section 4 (3)”.
- (6) (a) Section 16A (1)—  
Omit “Private Irrigation Districts and Water (Amendment) Act, 1973”, insert instead “Private Irrigation Districts Act 1973”.
- (b) Section 16A (6) (b)—  
Omit “subsection (1) of section 5”, insert instead “section 5 (1)”.
- (7) Section 16B—  
Omit “subsection (3) of section 16A”, insert instead “section 16A (3)”.
- (8) Section 19—  
Omit “court of petty sessions holden before a stipendiary magistrate”, insert instead “Local Court constituted by a Magistrate”.

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SCHEDULE 3

(Sec. 4)

SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

1. In this Schedule—

“Commission” means the Water Resources Commission constituted under section 4 of the Water Resources Commission Act 1976;

“Minister” means the Minister administering section 9 (appointment of officers and employees of Commission) of the Water Resources Commission Act 1976;

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SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act;

“transferred servant” means a person who is transferred to a position in the Public Service under clause 2.

**Transfer of officers or employees of the Commission**

2. (1) The Governor may, on the recommendation of the Minister, by order published in the Gazette transfer an officer or employee of the Commission who immediately before 1 July 1986 was concerned in the administration of the Principal Act to a position in the Public Service.

(2) An officer or employee of the Commission who is the subject of such an order shall be deemed for all purposes to have become an officer of the Public Service, in accordance with the terms of the order, on 1 July 1986.

(3) An order for the transfer of an officer or employee of the Commission under this clause has no effect unless published before 1 July 1987.

(4) This clause has effect notwithstanding anything in the Public Service Act 1979 or the Water Resources Commission Act 1976 and a transferred servant shall be deemed to have been transferred in accordance with any relevant provisions of those Acts.

**Remuneration and other rights**

3. (1) A transferred servant is entitled to be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the transferred servant immediately before 1 July 1986 as an officer or employee of the Commission.

(2) That entitlement is subject, in the case of salary or wages, to any adjustment necessary to give effect to any fluctuation in the basic wage for adult males, or adult females, as the case may be, for the time being in force within the meaning of Part V of the Industrial Arbitration Act 1940 until the transferred servant's salary is, or the transferred servant's wages or allowances are, varied or altered by an award of a competent tribunal, by an industrial agreement, by or under the Public Service Act 1979 or otherwise in accordance with law.

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SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(3) Except as otherwise provided by this Schedule, where any condition of employment of any transferred servant was regulated, immediately before 1 July 1986, by an award of a competent tribunal or by an industrial agreement applicable to the transferred servant as an officer or employee of the Commission, being a condition which does not conflict with any provision of the Public Service Act 1979 or the regulations under that Act, the condition shall continue to apply to the transferred servant until it is regulated by an award of a competent tribunal, by an industrial agreement, by or under the Public Service Act 1979 or otherwise in accordance with law.

**Superannuation**

4. (1) Subject to subclause (4), where a transferred servant was, immediately before 1 July 1986, a contributor to a superannuation scheme, the transferred servant—

(a) shall retain any rights accrued or accruing to the transferred servant as such a contributor; and

(b) is entitled to continue to contribute to the superannuation scheme and shall be deemed to have been so entitled on and after 1 July 1986,

as if the transferred servant had continued to be an officer or employee of the Commission during the transferred servant's service with the Government of New South Wales.

(2) The transferred servant's service with the Government of New South Wales shall be deemed to be service with the Commission for the purposes of any law under which those rights accrued or were accruing or under which the transferred servant continues to contribute.

(3) The transferred servant shall be deemed to be an officer or employee, as the case requires, of the Commission for the purposes of any superannuation scheme to which, by the operation of this clause, the transferred servant is entitled to contribute.

(4) A person who, but for this subclause, would be entitled under subclause (1) to contribute to a superannuation scheme shall not be so entitled upon the person becoming a contributor to any other superannuation scheme, and the provisions of subclause (3) cease to apply to or in respect of the person in any case where the person becomes a contributor to another superannuation scheme.

(5) Subclause (4) does not prevent the payment to a transferred servant, upon the transferred servant ceasing to be a contributor to a superannuation scheme, of such amount as would have been payable to the transferred servant if the transferred servant had ceased, by reason of resignation, to be a contributor.

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(6) Where, pursuant to subclause (1) (b), a transferred servant continues to contribute to a superannuation scheme, the Government of New South Wales shall contribute to that superannuation scheme the same amount as would have been payable by the Commission if that person had remained an officer or employee of the Commission and been paid salary or wages at the rate paid to the transferred servant by the Government of New South Wales.

(7) Section 12B (deduction factors in relation to certain periods of leave of absence) of the Superannuation Act 1916 does not apply to or in respect of a transferred servant in relation to a period of leave of absence without pay between 30 June 1986 and the date on which an order of the Governor under clause 2 applicable to the transferred servant takes effect.

(8) This clause applies to and in respect of the preservation of rights of those transferred servants who, but for the operation of this clause, would not be entitled to retain those rights.

**Leave**

5. (1) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferred servant with the Commission before 1 July 1986 shall be deemed to be service with the Government of New South Wales.

(2) For the purpose of calculating the entitlement of a transferred servant to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of that leave to which, but for this subclause, the transferred servant would be entitled—

(a) any such leave taken or received by the transferred servant before that time;  
and

(b) the equivalent, in that leave, of any benefit instead of that leave taken or received by the transferred servant before that time.

(3) A transferred servant shall retain any right to annual leave accrued to the transferred servant in respect of the service of the transferred servant with the Commission before 1 July 1986.

(4) In this clause, a reference to service of a transferred servant with the Commission includes a reference to service of the transferred servant with The Water Conservation and Irrigation Commission.

(5) Clause 3 (1) (gratuity instead of extended leave) of Schedule 3 to the Water Resources Commission Act 1976 does not apply to a transferred servant.

*Farm Water Supplies (Transfer of Functions) Amendment 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Application for vacancies in the Commission**

6. (1) A transferred servant who during the period of 3 years commencing on 1 July 1986 applies for appointment or employment, or is appointed or employed, as an officer or employee of the Commission shall, in relation to the application, appointment or employment, be deemed to be—

- (a) an officer of the Commission where the transferred servant was an officer of the Commission immediately before 1 July 1986; or
- (b) an employee of the Commission where the transferred servant was an employee of the Commission immediately before 1 July 1986.

(2) Subclause (1) does not apply to a person who applies for appointment or employment, or is appointed or employed, as an officer or employee of the Commission if the person has, on a previous occasion at any time between the commencement of this Act and the end of that 3 year period, been appointed or employed as an officer or employee of the Commission.

**Redundancy of transferred servants**

7. The employment of a transferred servant may not be terminated on the ground of redundancy arising from the operation of this Schedule.

**Appeals—saving**

8. Where an appeal by a transferred servant to the Government and Related Employees Appeal Tribunal is pending or may be made—

- (a) immediately before 1 July 1986, the appeal may be continued, or made, and heard and determined as if the transferred servant had not been transferred under this Schedule; or
- (b) immediately before the expiration of the period of 3 years commencing on 1 July 1986, the appeal may be continued, or made, and heard and determined as if clause 6 continued to apply to and in respect of the transferred servant.

**Effect of certain other Acts**

9. (1) A transferred servant is not entitled to claim, both under this Act and any other Act, benefits in respect of the same period of service.

(2) Except as provided by this Schedule, nothing in this Schedule affects the operation of the Industrial Arbitration Act 1940.

**Miscellaneous savings**

10. (1) Except to the extent that the Commission otherwise directs either generally or in a particular case, the Principal Act applies as if this Act had not been enacted to and in respect of—



*Farm Water Supplies (Transfer of Functions) Amendment 1986*SCHEDULE 3—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (a) an application for an advance under the Principal Act, the making of the advance and the carrying out of any works to which the application relates, where the application is made before the commencement of this Act;
  - (b) the granting of an application for a loan under section 16A of the Principal Act where the application is made before the commencement of this Act; and
  - (c) anything commenced to be done by the Commission under section 13 or 14 of the Principal Act before the commencement of this Act.
- (2) A direction shall not be given by the Commission under subclause (1) except after consultation with the State Bank and—
- (a) the appropriate Authority (within the meaning of the Principal Act) for the works to which the direction relates; or
  - (b) the Commission of the Soil Conservation Service of New South Wales appointed under the Soil Conservation Act 1938 to the extent that the works to which the direction relates are for domestic or stock purposes not involving the construction or improvement of a bore.
- (3) The enactment of this Act does not affect the rate of interest payable on a loan made under the Principal Act before the commencement of this Act.
- (4) A regulation made by the Commission under the Principal Act and in force immediately before the commencement of this Act shall on that commencement be deemed to have been made by the Governor.
- (5) On the commencement of this Act, a proclamation made by the Governor under section 2 of the Principal Act declaring lands to be farming lands for the purposes of the Principal Act and in force immediately before that commencement is revoked.

**Regulations**

11. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the commencement of this Act or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

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SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

- (b) to impose liabilities on any person (other than the State 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 provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.
-