

# **WATER (AMENDMENT) ACT 1988 No. 108**

**NEW SOUTH WALES**



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**WATER (AMENDMENT) ACT 1988 No. 108**

NEW SOUTH WALES



**Act No. 108, 1988**

An Act to amend the Water Act 1912 to apply volumetric water allocations schemes to certain trusts; to impose charges for water taken by certain trusts; and for other purposes. [Assented to 21 December 1988]

*Water (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Water (Amendment) Act 1988.

**Commencement**

2. This Act commences on the date of assent to this Act.

**Amendment of Water Act 1912 No. 44**

3. The Water Act 1912 is amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

## (1) Section 4H—

After section 4G, insert:

**Savings and transitional provisions**

4H. Schedule 2 has effect.

## (2) Section 20v (Definitions)—

## (a) Section 20v (1)—

Omit the definition of “entitlement”, insert instead:

“entitlement” means—

- (a) a licence, permit, authority or group licence; or
- (b) in relation to a trust, the right to take and use water conferred on the trust by section 38B;

## (b) Section 20v (1)—

After the definition of “scheme”, insert:

“trust” means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this Division applies;

## (c) Section 20v (2)—

Omit the subsection, insert instead:

(2) A reference in this Division to the holder of an entitlement includes—

- (a) if the entitlement is an authority, a reference to each of the holders of the authority; and
- (b) if the entitlement is the right of a trust to take and use water, a reference to the trust.

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 SCHEDULE 1—AMENDMENTS—*continued*

- (3) Section 22C (**Flow of water assured by a work of the Crown**)—
- (a) Section 22C (1), (1A)—  
 Omit section 22C (1), insert instead:
- (1) In this section—  
 “entitlement” means—
- (a) a licence, permit, authority or group licence; or  
 (b) in relation to a trust, the right to take and use water conferred on the trust by section 38B;
- “trust” means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this section applies.
- (1A) In this section—
- (a) a reference to a work of the Crown includes a reference to a work vested in or controlled by the Dumaresq-Barwon Border Rivers Commission; and  
 (b) a reference to the holder of an entitlement includes—
- (i) if the entitlement is an authority, a reference to each of the holders of the authority; and  
 (ii) if the entitlement is the right of a trust to take and use water, a reference to the trust.
- (b) Section 22C (3)—
- (i) Omit “any licence, group licence, permit or authority”, insert instead “an entitlement”.
- (ii) Omit “a licence, group licence or permit or, as the case may be, the holders of the authority”, insert instead “the entitlement”.
- (iii) Omit “payable for the licence, group licence, permit or authority”, insert instead “(if any) payable for the entitlement”.
- (c) Section 22C (4) (a1), (d), (e)—  
 Omit “licence, group licence, permit or authority” wherever occurring, insert instead “entitlement”.
- (d) Section 22C (4) (b)—  
 After “a rate”, insert “which may vary according to the nature of the entitlement but is”.
- (e) Section 22C (5)—  
 Omit “licence, group licence, permit and authority”, insert instead “entitlement”.

*Water (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

- (f) Section 22C (6) (a)—  
Omit “licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority”, insert instead “entitlement (including, in relation to a group licence, each of the group licence occupiers)”.
- (g) Section 22C (6A) (b), (c)—  
Omit “licence, group licence, permit or authority” wherever occurring, insert instead “entitlement”.
- (h) Section 22C (7)—
- (i) Omit “licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority”, insert instead “entitlement (including, in relation to a group licence, any 1 or more of the group licence occupiers)”.
  - (ii) Omit “licence, group licence, permit or authority”, insert instead “entitlement”.
- (i) Section 22C (9)—
- (i) Omit “a licence, group licence or permit fails or, as the case may be, the holders of an authority fail”, insert instead “an entitlement (not being the right of a trust to take and use water) fails”.
  - (ii) Omit “licence, group licence, permit or authority”, insert instead “entitlement”.
- (4) Section 28 (**Definitions**)—
- (a) Before the definition of “Murray Basin”, insert:  
“Member”, in relation to a trust, means a trustee or a ratepayer.
  - (b) Omit the definition of “Trustee”, insert instead:  
“Trustee”, in relation to a trust, means a trustee appointed or elected under Division 4.
- (5) Section 32 (**Contents of proposals**)—
- Section 32 (g)—  
Omit “, if any,”, insert instead “(if any) levied under this Part”.
- (6) Section 38B—  
After section 38A, insert:  
**Right of trust to take and use water**  
38B. Subject to Division 4B of Part 2 and to section 22C, a trust may—
- (a) for the purposes for which it is constituted; and

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 SCHEDULE 1—AMENDMENTS—*continued*

- (b) for any other purpose authorised by this Act in respect of the trust,  
take and use water conserved or obtained by works administered and managed by the trust under this Part.
- (7) Section 54 (**Power of trustees to enter and inspect**)—
- (a) Section 54 (4)—  
Omit “Commission”, insert instead “Ministerial Corporation (otherwise than under Division 4B of Part 2)”.
- (b) Section 54 (4)—  
Omit “as provided in this Act”.
- (8) Section 64A (**Reduction or discontinuance of supply of water**)—  
Section 64A (1A)—  
Before section 64 (1), insert:  
(1A) Subsection (1) does not apply to a trust to which Division 4B of Part 2 applies.
- (9) Sections 70A, 70B—  
After section 70, insert:  
**Trusts not to exceed water allocation**  
70A. (1) If a trust exceeds its water allocation under Division 4B of Part 2, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source subject to the volumetric water allocations scheme concerned.  
(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.  
**Direction to trust to pay certain charges**  
70B. (1) If a trust fails to pay a charge payable under section 22C, or fails to pay such a charge in accordance with the requirements of that section, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source concerned until the charge is duly paid.  
(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

*Water (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued*

## (10) Schedule 2—

After Schedule 1, insert:

**SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 4H)

**PART 1—PRELIMINARY****Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Act:

Water (Amendment) Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.

(3) To the extent to which any such provision takes effect on 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; or

(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.

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE WATER (AMENDMENT) ACT 1988****Definitions**

2. In this Part—

“scheme”, “trust”, “water allocation” and “year” have the same meanings as they have in Division 4B of Part 2.

**Effect of existing schemes on trusts**

3. Where, pursuant to Division 4B of Part 2, a trust becomes subject to a scheme otherwise than at the beginning of a year, the water allocation for the trust shall be taken to be reduced by such proportion as the part of the year that has elapsed bears to the whole of the year.

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[Minister's second reading speech made in—  
Legislative Assembly on 29 November 1988  
Legislative Council on 14 December 1988]

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