



New South Wales

South-west Tablelands Water Supply Administration (Repeal) Act 1997 No 114

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New South Wales

South-west Tablelands Water Supply Administration (Repeal) Act 1997 No 114

Act No 114, 1997

An Act to repeal the *South-west Tablelands Water Supply Act 1924*, the *South-west Tablelands Water Supply Administration Act 1941* and regulations under the latter Act; to provide for the transfer of the assets, rights and liabilities of the Administrator of the South-west Tablelands Water Supply; to provide for the transfer of staff to Goldenfields Water County Council; to amend the *Capital Debt Charges Act 1957* consequentially; and for other purposes. [Assented to 9 December 1997]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *South-west Tablelands Water Supply Administration (Repeal) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents. In particular, it includes any entitlement of the Water Supply Administrator to use water under the *Water Act 1912*.

County Council means Goldenfields Water County Council established by proclamation under the *Local Government Act 1993*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

liabilities means any liabilities, debts and obligations (whether present or future and whether vested or contingent).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

State includes the Crown.

Water Supply Administrator means the Administrator of the South-west Tablelands Water Supply referred to in the *South-west Tablelands Water Supply Administration Act 1941*.

4 Transfer of assets, rights and liabilities of Water Supply Administrator

- (1) The Minister may, by order in writing, transfer such assets, rights and liabilities of the Water Supply Administrator as are specified or referred to in the order to the County Council.
- (2) On the commencement of section 6, any remaining assets, rights and liabilities of the Water Supply Administrator not specified or referred to in an order under subsection (1) are transferred to the State.
- (3) The Minister may, by order in writing, transfer any of the remaining assets, rights and liabilities referred to in subsection (2) to the County Council, but only during the period of 6 months after the commencement of section 6.
- (4) Schedule 1 applies to an order under this section.

5 Transfer of Water Supply staff to County Council

Schedule 2 has effect.

6 Repeals

- (1) The *South-west Tablelands Water Supply Act 1924* is repealed.
- (2) The *South-west Tablelands Water Supply Administration Act 1941* is repealed.
- (3) The *South-west Tablelands Water Supply Administration (Price of Water) Regulation 1994* is repealed.

7 Savings and transitional provisions

Schedule 3 has effect.

8 Consequential amendment of Capital Debt Charges Act 1957 No 1

The *Capital Debt Charges Act 1957* is amended by omitting the matter relating to the Administrator of the South-west Tablelands Water Supply and the *South-west Tablelands Water Supply Administration Act 1941* from the First, Second and Third Columns of the Schedule to the former Act.

Schedule 1 Transfer of assets, rights and liabilities

(Section 4)

1 Definition

In this Schedule, *instrument* means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

2 Application and interpretation

- (1) This Schedule applies to the following orders:
 - (a) an order under section 4 (1) transferring assets, rights and liabilities of the Water Supply Administrator to the County Council,
 - (b) an order under section 4 (3) transferring assets, rights and liabilities of the State to the County Council.
- (2) This Schedule also applies to the transfer of assets, rights and liabilities to the State by the operation of section 4 (2) and so applies as if that subsection were an order to which this Schedule applies taking effect when that subsection takes effect.
- (3) In this Schedule, the body from whom assets, rights or liabilities are so transferred is called the *transferor* and the body to whom they are being so transferred is called the *transferee*.

3 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order to which this Schedule applies, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance,
- (b) those rights or liabilities of the transferor become by virtue of this Schedule the rights or liabilities of the transferee,

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- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or other provisions under Schedule 3), to be read as, or as including, a reference to the transferee.

4 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) No compensation is payable to any person in connection with a transfer to which this Schedule refers.

- (5) In this clause, a reference to the operation of this Schedule includes a reference to the making of an order to which this Schedule applies.

5 Date of vesting

An order to which this Schedule applies takes effect on the date specified in the order.

6 Consideration for vesting

An order to which this Schedule applies may specify the consideration on which the order is made and the value or values at which the assets, rights or liabilities are transferred.

7 Stamp duty

Stamp duty is not chargeable in respect of

- (a) the transfer of assets, rights and liabilities to which this Schedule applies, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

8 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by the operation of this Act.
- (2) Such a notice is conclusive of that transfer.

Schedule 2 Transfer of staff

(Section 5)

1 Definition

In this Schedule, *former Water Supply staff* means (unless otherwise expressly provided):

- (a) officers of the Department of Public Works and Services employed under Part 2 of the *Public Sector Management Act 1988*, and
- (b) persons employed in the Department of Public Works and Services to whom the Crown Employees (Department of Public Works and Services Wages Staff) Award 1996 applies,

who, immediately before the commencement of this Schedule, were employed for the purposes of the *South-west Tablelands Water Supply Administration Act 1941*.

2 Transfer of former Water Supply staff to County Council

On the date of commencement of this Schedule, the former Water Supply staff are transferred to the County Council and are to be regarded for all purposes as having become employees of the County Council on and from that date.

3 General saving of conditions of employment

A person who is transferred under this Schedule is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not been transferred but had instead remained an officer employed (as appropriate) under Part 2 of the *Public Sector Management Act 1988* or subject to the provisions of the Crown Employees (Department of Public Works and Services Wages Staff) Award 1996.

4 Saving of leave

A person who is transferred under this Schedule retains any rights to annual leave, extended service leave, sick leave, and other forms of leave, accrued or accruing in the person's employment by law.

5 Payment of accrued value of leave entitlements to County Council

- (1) On the commencement of this Schedule, the Department of Public Works and Services is to pay to the County Council a sum equivalent to the accrued value, as at 30 June 1997, of the leave entitlements, referred to in clause 4, of the former Water Supply staff.
- (2) On or before the commencement of this Schedule, the Department of Public Works and Services is to provide each of the former Water Supply staff with a statement setting out details of the individual leave entitlements of the staff.

6 Preservation of superannuation entitlements

- (1) The superannuation entitlements of the former Water Supply staff are preserved in accordance with clause 11 (2) (c) and associated provisions of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997*.
- (2) This clause has effect despite the fact that the former Water Supply staff is transferred to a superannuation scheme under clause 11 of the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997* after 1 October 1997.

7 Filling of vacant positions in Public Service by certain former Water Supply staff

- (1) This clause applies only to those former Water Supply staff who were employed under Part 2 of the *Public Sector Management Act 1988* immediately before the commencement of this Schedule.

- (2) This clause applies, in the period of 3 years after the commencement of this Schedule, to the filling of any vacant position in the Public Service whether or not the vacancy is limited to officers of the Public Service.
- (3) Any former Water Supply staff to whom this clause applies are eligible to apply for a vacancy to which this clause applies as if they were officers of the Public Service.
- (4) This clause does not apply to former Water Supply staff who are no longer employed by the County Council.
- (5) Any former Water Supply staff to whom this clause applies who are employed by the County Council and who apply for any vacant position to which this clause applies in the Public Service have the same rights of appeal against the filling of the position as they would have if they were officers of the Public Service.
- (6) If any former Water Supply staff to whom this clause applies is successful in obtaining a position in the Public Service in circumstances to which this clause applies, any period of service with the County Council is to be treated for all purposes as if it were a period of service in the Public Service.

8 No payment of dual benefits

- (1) This clause applies to a person who becomes, because of this Schedule, a member of the staff of the County Council.
- (2) A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (3) A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

9 Voluntary redundancy in hardship cases

- (1) This clause applies to former Water Supply staff who, as the result of the transfer of their employment by the operation of this Schedule, suffer hardship because they are required:

- (a) to perform duties that are significantly different in nature from those performed before the transfer, or
 - (b) to work permanently in a local government area (within the meaning of Chapter 9 of the *Local Government Act 1993*) that is different from that in which they usually worked before the transfer.
- (2) The County Council is to notify former Water Supply staff, for the purposes of this clause, of any intended change in their duties within 3 months after the commencement of this Schedule.
- (3) The County Council, in conjunction with the Department of Land and Water Conservation, is to consider any application for voluntary redundancy that is made to the County Council by any former Water Supply staff to whom this clause applies within 6 months after the commencement of this Schedule.

10 Guaranteed employment

Each member of the former Water Supply staff who performs the duties assigned to him or her by the County Council following a review of its overall organisational structure is guaranteed employment with the County Council in the period of 3 years after the commencement of this Schedule.

Schedule 3 Savings and transitional provisions

(Section 7)

1 Definitions

- (1) In this Schedule:

repealed Act means the *South-west Tablelands Water Supply Administration Act 1941*.

repealed Regulation means the *South-west Tablelands Water Supply Administration (Price of Water) Regulation 1994*.

- (2) In this Schedule, a reference to the Water Supply Administrator includes a reference to the Director-General of the Department of Land and Water Conservation.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect on the date of assent to this Act or a later date.
- (3) To the extent to which any such provision 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, 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.

3 Saving of operation of certain provisions of repealed Act and repealed Regulation as to fixing of price of water

Despite the repeal of the repealed Act and the repealed Regulation, section 8A of the repealed Act, and clauses 3–5 of the repealed Regulation, continue to have effect until 30 June 1998.

4 Final annual report of Water Supply

- (1) An annual report relating to the South-west Tablelands Water Supply is to be prepared, submitted, presented, and made publicly available, in accordance with the *Annual Reports (Statutory Bodies) Act 1984* by the Water Supply Administrator and is to cover the period from 1 January 1997 to 30 June 1997.
- (2) It does not matter that the financial year for the purposes of the report is therefore less than 12 months long.
- (3) Despite the *Annual Reports (Statutory Bodies) Act 1984*, the final annual report for the South-west Tablelands Water Supply need not contain any information (for example, a budget) that would have related to the next financial year of the South-west Tablelands Water Supply if the repealed Act had not been repealed.

5 First annual report of County Council

The first annual report (including financial statements) of the County Council, in so far as it relates to the exercise of functions formerly exercised by the Water Supply Administrator, is to apply to the period commencing on 1 July 1997.

[Minister's second reading speech made in—
Legislative Assembly on 12 November 1997
Legislative Council on 26 November 1997]