



New South Wales

# Water and Environmental Planning Legislation Amendment Act 1997 No 63

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New South Wales

# **Water and Environmental Planning Legislation Amendment Act 1997 No 63**

Act No 63, 1997

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An Act to amend the *Water Act 1912* and the *Water Administration Act 1986* to make further provision with respect to licence conditions, charges and other miscellaneous matters; to amend the *Environmental Planning and Assessment Act 1979* to provide for a Commission of Inquiry to inquire into matters concerning approvals for certain water related works; and for other purposes. [Assented to 2 July 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Water and Environmental Planning Legislation Amendment Act 1997*.

**2 Commencement**

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
  - (a) Schedule 1 [10]–[12],
  - (b) Schedule 3.

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

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

**4 Amendment of Water Administration Act 1986 No 195**

The *Water Administration Act 1986* is amended as set out in Schedule 2.

**5 Amendment of Environmental Planning and Assessment Act 1979 No 203**

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 3.

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## Schedule 1 Amendment of Water Act 1912

(Section 3)

### [1] Section 4 Definitions

Insert in alphabetical order:

*environment* includes any one or more of the following:

- (a) land, air and water,
- (b) any organic or inorganic matter and any living organism,
- (c) human-made or modified structures and areas,
- (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b).

### [2] Section 4A

Insert after section 4:

#### **4A Inquiries and appeals—requirement to take certain matters into account**

- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters:
  - (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body,
  - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body,
  - (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body,

- (d) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body,
  - (e) the impact that the judicial body's determination or recommendation could or might have:
    - (i) on the allocation of water resources at a local, regional and State-wide level, and
    - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and
    - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and
    - (iv) in relation to the management, protection and enhancement of the State's water resources.
- (2) In this section:
- judicial body* means the Land and Environment Court, a local land board or a Magistrate.
- relevant policy* means any governmental policy relating to the management, protection and enhancement of the State's water resources.
- (3) The Minister may certify, in writing, that a particular policy is, or was, a relevant policy in relation to a particular matter. The certificate is evidence of the relevant policy concerned.

**[3] Section 16 Benefit of licence**

Insert after section 16 (2):

- (3) This section is subject to section 22D.

**[4] Section 18Q Permit to pass with land**

Insert “and to section 22D,” after “Subject to the provisions of this Division”.

**[5] Section 20F Benefit of authority**

Insert at the end of the section:

- (2) This section is subject to section 22D.

**[6] Section 22D**

Insert after section 22C:

**22D Effect of land being sold before transfer of water allocation (or water rights) is completed**

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under Part 8 of the *Water (Part 2) Regulations*) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or in accordance with Part 8 of those Regulations), the sale of the land does not:
  - (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
  - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and

(c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or in accordance with Part 8 of those Regulations.

(2) In this section, *entitlement* and *water allocation* have the same meanings as in section 20V.

**[7] Section 25**

Insert after section 24:

**25 Conditions relating to environmental protection**

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection of the environment.

**[8] Section 116AA**

Insert before section 116A:

**116AA Conditions relating to environmental protection**

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment.

**[9] Section 117B Charges**

Omit section 117B (5) (e). Insert instead:

(e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and

**[10] Section 171 Determinations**

Insert after section 171 (6):

- (7) This section is subject to section 171A.

**[11] Section 171A**

Insert after section 171:

**171A Determinations of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979**

- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171.
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars prescribed for the purposes of section 167 (1) (b)), and
- (ii) any objection to the granting of an approval that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and
- (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report.
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.



- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171 (5) and (6), 172, 173 and 174 do not have effect in relation to that determination.
- (5) This section extends to applications made (but not determined) before the commencement of this section.
- (6) In this section:
- Commission of Inquiry* means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.
- section 119 report* means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.
- section 120A notice* means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*.

**[12] Section 172 Protests against conditions**

Insert after section 172 (2):

- (3) This section is subject to section 171A.

**[13] Section 176A**

Insert after section 176:

**176A Conditions relating to environmental protection**

The conditions subject to which an approval is issued or renewed under this Part may include conditions relating to the protection of the environment.

**[14] Schedule 2 Savings and transitional provisions**

Omit "following Act" from clause 1 (1).  
Insert instead "following Acts".

**[15] Schedule 2, clause 1 (1)**

Insert at the end of clause 1 (1):

*Water and Environmental Planning Legislation  
Amendment Act 1997*

**[16] Schedule 2, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
Water and Environmental Planning  
Legislation Amendment Act 1997**

**4 Definition**

In this Part:

*amending Act* means the *Water and Environmental  
Planning Legislation Amendment Act 1997*.

**5 Pending inquiries and appeals**

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

**6 Transfer of water allocations and rights**

(1) Section 22D of this Act, as inserted by Schedule 1 [6] to the amending Act, extends to any application:

- (a) to transfer a water allocation under Part 2 of this Act, and
- (b) to transfer water rights under Part 8 of the *Water (Part 2) Regulations*,

that was made, but not completed, before the date of assent to the amending Act.

- (2) Any thing done under:
- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act, or
  - (b) Part 8 of the *Water (Part 2) Regulations* with respect to the transfer of water rights under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated.

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## **Schedule 2    Amendment of Water Administration Act 1986**

(Section 4)

### **Section 15A**

Insert after section 15:

#### **15A Water management charges payable by metropolitan water corporations**

- (1) Sydney Water Corporation and Hunter Water Corporation are each liable to pay water management charges to the Ministerial Corporation in accordance with this section.
- (2) The charges payable by Sydney Water Corporation and Hunter Water Corporation:
  - (a) are payable in respect of the financial year that began on 1 July 1996, and in respect of each subsequent financial year, and
  - (b) are to be fixed by the Independent Pricing and Regulatory Tribunal in accordance with such pricing policies as may be determined by the Tribunal, and
  - (c) relate to the Ministerial Corporation's costs for or in connection with:
    - (i) monitoring the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the operations of Sydney Water Corporation or Hunter Water Corporation, and
    - (ii) exercising any other water resource management function in relation to Sydney Water Corporation or Hunter Water Corporation.

### **Schedule 3 Amendment of Environmental Planning and Assessment Act 1979**

(Section 5)

**[1] Section 120A Additional procedural requirements where water licence or water approval is involved**

Insert “or a work that may require a water approval” after “water licence” in section 120A (1).

**[2] Section 120A (3) and (7) (a)**

Insert “or for a water approval” after “water licence” wherever occurring.

**[3] Section 120A (4) and (5)**

Omit the subsections. Insert instead:

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent:
  - (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*, or
  - (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act.
- (5) As soon as practicable after the applicant’s or proponent’s:
  - (a) application for a water licence is referred to it under section 11A of the *Water Act 1912*, or
  - (b) application for a water approval is referred to it under section 171A of that Act,

the Commission of Inquiry must give at least 28 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held.

**[4] Section 120A (7) (b)**

Omit the paragraph. Insert instead:

- (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the *Water Act 1912*.

**[5] Section 120A (8) (a) and (11)**

Insert “or a water approval” after “water licence” wherever occurring.

**[6] Section 120A (8) (b)**

Insert “or approval” after “licence”.

**[7] Section 120A (12)**

Omit the subsection. Insert instead:

- (12) In this section:

*water approval* means an approval under Part 8 of the *Water Act 1912*.

*water licence* means a licence under Division 3 of Part 2 of the *Water Act 1912*.

[Minister's second reading speech made in—  
Legislative Assembly on 17 June 1997  
Legislative Council on 26 June 1997]