



New South Wales

Water Amendment (Flood Control Works) Act 1999 No 87

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New South Wales

Water Amendment (Flood Control Works) Act 1999 No 87

Act No 87, 1999

An Act to amend the *Water Act 1912* to make further provision with respect to the approval of certain works that may affect or prevent flooding; to make consequential amendments to the *Land and Environment Court Act 1979*; and for other purposes. [Assented to 3 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water Amendment (Flood Control Works) Act 1999*.

2 Commencement

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

3 Amendment of Water Act 1912 No 44

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

4 Amendment of Land and Environment Court Act 1979 No 204

The *Land and Environment Court Act 1979* is amended as set out in Schedule 2.

Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4:

exercise a function includes perform a duty.

function includes a power, authority or duty.

[2] Section 4L Objectors rights of appeal

Omit “, section 114, section 172 (2) or section 173 (2) or (3)” from section 4L (2) (b).

Insert instead “or section 114”.

[3] Section 4L (2) (c)

Omit “section 174 (4) (b) or (5)”. Insert instead “section 171AA (2)”.

[4] Section 5 Definitions

Insert “or” at the end of paragraph (d) of the definition of *Work to which this Part extends* in section 5 (1).

[5] Section 5 (1), definition of “Work to which this Part extends”

Omit paragraph (e) of the definition.

[6] Section 10 Application for licences

Omit section 10 (1) (b).

[7] Section 18F Permits

Omit section 18F (b).

[8] Section 22 Power of entry

Omit “or any unlawful levee for the prevention of the overflow of water from a river or lake” from section 22 (3) (a).

[9] Part 8, heading

Omit the heading. Insert instead “**Part 8 Flood control works**”.

[10] Part 8, Division 1, heading

Insert “**Division 1 Preliminary**” before section 165.

[11] Section 165 Definitions

Insert in alphabetical order in section 165 (1):

complying controlled work means a controlled work that is assessed as a complying controlled work under section 168B.

floodplain management committee means a committee established under section 166B.

floodplain management plan means a floodplain management plan adopted by the Ministerial Corporation under section 166A.

non-complying controlled work means a controlled work that is assessed as a non-complying controlled work under section 168B.

objection means an objection made under section 170 to the granting of an approval for a non-complying controlled work.

[12] Section 165 (1), definition of “controlled work”

Omit the definition. Insert instead:

controlled work—see section 165A.

[13] Section 165 (1), definition of “flood plain”

Omit “*flood plain*”. Insert instead “*floodplain*”.

[14] Section 165 (1), definitions of “local land board”, “prescribed tribunal” and “referred determination”

Omit the definitions.

[15] Section 165 (3)

Omit the subsection. Insert instead:

- (3) A reference in this Part to the construction of a controlled work includes a reference to the enlargement, extension or modification of the controlled work, but does not include a reference to any work carried out by or on behalf of the Ministerial Corporation under section 180D.

[16] Section 165A

Insert after section 165:

165A Controlled work—meaning

- (1) In this Part, a *controlled work* means:
- (a) an earthwork, embankment or levee that is situated, or proposed to be constructed, on land that:
 - (i) is, or forms part of, the bank of a river or lake, or
 - (ii) is within a floodplain, or
 - (b) any work that is situated, or proposed to be constructed, on land that:
 - (i) is, or forms part of, the bank of a river or lake, or
 - (ii) is within a floodplain,and that is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work, or
 - (c) an earthwork, embankment or levee, wherever situated or proposed to be constructed, that:
 - (i) affects or is reasonably likely to affect the flow of water to or from a river or lake, and
 - (ii) is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, or
 - (d) any work, wherever situated or proposed to be constructed, that:
 - (i) affects or is reasonably likely to affect the flow of water to or from a river or lake, and
 - (ii) is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, and
 - (iii) is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work.

- (2) However, a controlled work does not include:
- (a) a work declared, by order of the Ministerial Corporation published in the Gazette, not to be a controlled work, and any work that forms or is intended to form part of, or is or is intended to be ancillary to, such a declared work, or
 - (b) a work or bore in respect of which a licence, group licence, authority, permit, consent or authorisation is in force under Part 2, 3, 5, 6, 7 or 9.

[17] Part 8, Division 2, heading

Insert “**Division 2 Floodplains**” before section 166.

[18] Section 166 Designation of floodplains

Omit “flood plain” wherever occurring. Insert instead “floodplain”.

[19] Section 166A

Insert after section 166:

166A Floodplain management plans

- (1) The Ministerial Corporation may prepare and adopt a floodplain management plan for a floodplain or proposed floodplain.
- (2) A floodplain management plan is to set out a scheme for the management of flood waters within the floodplain.
- (3) A floodplain management plan is to accord with the general principles and policies set out in the relevant floodplain development manual.
- (4) Before adopting a floodplain management plan, the Ministerial Corporation:
 - (a) is to give the public an opportunity to make submissions on the proposed plan in accordance with the procedure provided for by the relevant floodplain development manual, and
 - (b) is to take those submissions into account.

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- (5) The Ministerial Corporation is to consider the matters set out in section 166C before adopting a floodplain management plan.
 - (6) After adopting a floodplain management plan, the Ministerial Corporation is required:
 - (a) to give notice of the adoption of the plan in the Gazette and in a newspaper circulating in the area to which the plan relates, and
 - (b) to ensure that copies of the floodplain management plan are available for public inspection, free of charge, at the office of the Ministerial Corporation for the region in which the floodplain is situated.
 - (7) A floodplain management plan may be amended or revoked by the adoption of a new plan in accordance with this section.
 - (8) In this section:

relevant floodplain development manual means the most recent manual relating to the management of flood liable land (being the manual most recently notified under section 733 (5) (a) of the *Local Government Act 1993*).

166B Establishment of floodplain management committees

- (1) The Ministerial Corporation may establish a floodplain management committee in respect of a floodplain or proposed floodplain.
- (2) A floodplain management committee has the following functions:
 - (a) assisting the Ministerial Corporation in the preparation of a floodplain management plan for the floodplain for which the committee is established,
 - (b) monitoring and reviewing the floodplain management plan after it is adopted,
 - (c) such other functions as may be conferred or imposed on it by the Ministerial Corporation.
- (3) The membership and procedure of a floodplain management committee are to be determined by the Ministerial Corporation.
- (4) The Ministerial Corporation is to ensure that appropriate stakeholders are represented on a floodplain management committee.

[20] Part 8, Division 3, heading and section 166C

Insert before section 167:

Division 3 Approval of controlled works

166C Matters for general consideration

- (1) The Ministerial Corporation, in exercising its functions under this Division with respect to approvals, must have regard to the following matters, and any other matters that it considers relevant:
 - (a) the contents of any relevant floodplain management plan or any other relevant Government policy,
 - (b) the need to maintain the natural flood regimes in wetlands and related ecosystems and the preservation of any habitat, animals (including fish) or plants that benefit from periodic flooding,
 - (c) the effect or likely effect on water flows in downstream river sections,
 - (d) any geographical features, or other matters, of Aboriginal interest that may be affected by a controlled work,
 - (e) the effect or likely effect of a controlled work on the passage, flow and distribution of any flood waters,
 - (f) the effect or likely effect of a controlled work on existing dominant flood ways or exits from flood ways, rates of flow, flood water levels and the duration of inundation,
 - (g) the protection of the environment,
 - (h) any other matter relating to the desirability or otherwise of a controlled work.
- (2) The Ministerial Corporation is to ensure that the notice of its determination to grant or refuse to grant an approval, renew or refuse to renew an approval, impose conditions on an approval or vary or revoke the conditions of an approval includes a statement of the reasons for the determination and of the extent to which the Ministerial Corporation took into account the matters set out in subsection (1) in making that determination.

[21] Section 167 Applications for approval

Omit “prescribed form” from section 167 (1) (a).

Insert instead “form approved by the Ministerial Corporation”.

[22] Section 167 (1) (b)

Omit the paragraph. Insert instead:

- (b) be accompanied by:
 - (i) the application fee approved by the Ministerial Corporation, and
 - (ii) an assessment of the likely impact of the controlled work, and
 - (iii) such other information as may be required by the application form, and

[23] Section 168 Ministerial Corporation may refuse to determine certain applications

Insert at the end of section 168 (1) (b):

- , or
- (c) if the applicant has failed to comply with section 167.

[24] Sections 168A and 168B

Insert after section 168:

168A Ministerial Corporation may request further information

- (1) The Ministerial Corporation may, by notice in writing served on an applicant for approval, request the applicant to give to it any additional information about a controlled work that the Ministerial Corporation considers necessary for its assessment of the application.
- (2) The information that the Ministerial Corporation may request includes, but is not limited to, the following:
 - (a) information relating to any matter referred to in section 166C or in any relevant floodplain management plan,
 - (b) information that is necessary for the purpose of assessing whether the controlled work is a complying or a non-complying controlled work under section 168B,

(c) hydrological calculations and projections in relation to the controlled work.

- (3) The information is to be provided by the applicant within the time specified in the request.
- (4) The Ministerial Corporation may refuse to determine an application if the applicant fails to comply with the request.

168B Preliminary assessment of whether controlled work complies with floodplain management plan

- (1) After receiving an application for an approval, and before determining the application under section 171, the Ministerial Corporation is to make an assessment of whether the controlled work the subject of the application is a complying or a non-complying controlled work.
- (2) A controlled work is to be assessed as a complying controlled work if the Ministerial Corporation is satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed.
- (3) A controlled work is to be assessed as a non-complying controlled work if:
 - (a) the Ministerial Corporation is not satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed, or
 - (b) the controlled work is situated or proposed to be constructed in an area that is not the subject of a floodplain management plan.
- (4) If the controlled work concerned is a complying controlled work, the Ministerial Corporation may determine the application in accordance with section 171.
- (5) If the controlled work concerned is a non-complying controlled work, the Ministerial Corporation is to publicise the application in accordance with section 169 before determining the application.

- (6) The Ministerial Corporation may refuse to make an assessment under this section if any information required or requested to be provided in relation to the application has not been provided to the Ministerial Corporation.

[25] Section 169

Omit the section. Insert instead:

169 Publication of applications relating to non-complying controlled works

- (1) The Ministerial Corporation is to cause notice of an application for approval of a non-complying controlled work to be published in:
- (a) the Gazette, and
 - (b) at least one newspaper circulating generally in the area in which the controlled work the subject of the application is situated or proposed to be constructed.
- (2) The notice:
- (a) is to contain the particulars approved by the Ministerial Corporation, and
 - (b) is to specify:
 - (i) the manner in which objections may be made to the granting of an approval for the controlled work, and
 - (ii) the closing date for such objections (being no sooner than 28 days after the date of publication of the notice).
- (3) The Ministerial Corporation must not determine under section 171 an application for approval of a non-complying controlled work before the closing date referred to in subsection (2) (b) (ii).

[26] Section 170 Objections to non-complying controlled works

Omit “a controlled work” from section 170 (1).

Insert instead “a non-complying controlled work”.

[27] Section 170 (2) (c)

Omit “the date specified pursuant to section 169 (d) (i)”.

Insert instead “the closing date specified under section 169 (2) (b) (ii)”.

[28] Sections 170A and 170B

Insert after section 170:

170A Ministerial Corporation may require further information about objection

- (1) The Ministerial Corporation may require a person who has made an objection to provide such additional information as the Ministerial Corporation may reasonably require to assess the objection.
- (2) Such a requirement is to be made by notice in writing to the person who made the objection and is to specify a time in which it must be complied with by the person.
- (3) If the information is not provided by the person, within the time specified by the Ministerial Corporation in the notice, the Ministerial Corporation may reject the objection.

170B Compulsory mediation session

- (1) If the Ministerial Corporation is satisfied that a person who has made an objection to the grant of an approval has provided sufficient information to demonstrate reasonable concerns about the grant of an approval, the Ministerial Corporation must, by notice in writing, require the applicant for approval and the person who made the objection to attend a conference (a *mediation session*) for the purpose of resolving the objection by mediation.
- (2) A mediation session is to be conducted, by a person appointed by the Ministerial Corporation as chairperson of the mediation session, in accordance with the procedures determined by the Ministerial Corporation.
- (3) The Ministerial Corporation may refuse to determine an application for approval if the applicant for approval fails to take part in a mediation session as required by the Ministerial Corporation.

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- (4) The Ministerial Corporation may reject an objection if the person who made the objection fails to take part in a mediation session as required by the Ministerial Corporation.
 - (5) A person is taken to have failed to take part in a mediation session if, in the opinion of the Ministerial Corporation, the person:
 - (a) has unreasonably failed to attend, or unreasonably delayed attending, a mediation session, or
 - (b) has not taken part in a mediation session in good faith.
 - (6) Any statement or admission made in the course of a mediation session is not admissible in any legal proceedings.
 - (7) The Ministerial Corporation is to have regard to the outcome of a mediation session, and any findings or recommendations made by the person appointed to conduct the mediation session, in determining whether to grant an approval, and in imposing any conditions on the grant of an approval.

[29] Sections 171 and 171AA

Omit section 171. Insert instead:

171 Determination of applications

- (1) The Ministerial Corporation is to determine an application for an approval:
 - (a) by granting an approval for the controlled work the subject of the application, or
 - (b) by refusing to grant an approval.
- (2) The Ministerial Corporation must, as soon as practicable after it determines an application for an approval, cause notice of its determination to be served on the applicant.
- (3) The Ministerial Corporation is not to grant an approval to the applicant or applicants if the whole or any part of the land on 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.
- (4) This section does not apply in respect of any application for approval that is withdrawn before the application is determined.

171AA Notice of determination to be given to objector

- (1) If the Ministerial Corporation determines an application for an approval by granting the approval and an objection was made to the granting of an approval under section 170, the Ministerial Corporation is to cause notice of its determination to be served on the person who made the objection.
- (2) The person who made the objection may appeal against the determination to the Land and Environment Court.
- (3) Such an appeal may be made:
 - (a) no later than 28 days after notice of the determination of the application is served on the person, and
 - (b) in accordance with the rules of the Land and Environment Court.
- (4) This section does not apply in respect of an objection that:
 - (a) is withdrawn before the application for the approval concerned is determined, or
 - (b) is rejected by the Ministerial Corporation because of a failure to comply with a requirement under this Division.
- (5) This section is subject to section 171A.

[30] Section 171A Determination of application affected by public inquiry under the Environmental Planning and Assessment Act 1979

Omit “particulars prescribed for the purposes of” from section 171A (2) (a) (i).

Insert instead “information required under”.

[31] Section 171A (4)

Omit the subsection. Insert instead:

- (4) The Ministerial Corporation’s determination under section 171 (1) on the application is final, and the provisions of sections 171AA (2) and 178A do not have effect in relation to that determination.

[32] Sections 172, 173 and 174

Omit the sections.

[33] Section 175 Approvals

Omit section 175 (a). Insert instead:

- (a) takes effect, and is to specify that it takes effect, at the expiration of 28 days after the Ministerial Corporation has caused notice of its determination to grant the approval to be served on the applicant, and

[34] Section 175 (b), (c) and (d)

Omit the paragraphs. Insert instead:

- (b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and
- (c) is to be in a form approved by the Ministerial Corporation.

[35] Section 176 Renewal of approvals

Omit “prescribed form” from section 176 (1) (a).

Insert instead “form approved by the Ministerial Corporation”.

[36] Section 176 (1) (b)

Omit “prescribed fee”.

Insert instead “application fee approved by the Ministerial Corporation”.

[37] Section 176 (5)

Omit the subsection.

[38] Section 176 (8)

Omit the subsection.

[39] Section 176 (9) (b), (c) and (d)

Omit the paragraphs. Insert instead:

- (b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and
- (c) is to be in a form approved by the Ministerial Corporation.

[40] Section 176A

Omit the section. Insert instead:

176A Conditions of approval

- (1) An approval is subject to such conditions as may be imposed by the Ministerial Corporation, by notice served on the affected person:
 - (a) on the grant or renewal of the approval, or
 - (b) at any time during the currency of the approval.
- (2) The Ministerial Corporation may, by notice served on an affected person, vary or revoke any conditions of an approval.
- (3) If the Ministerial Corporation intends to impose a condition on an approval, or to vary or revoke a condition, the Ministerial Corporation:
 - (a) must cause notice of its intention to be served on the affected person, and
 - (b) must give that person a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the condition concerned, and
 - (c) must have regard to any submission that is made.
- (4) Without limiting section 166C, the conditions to which an approval is subject may include conditions relating to the protection of the environment.
- (5) This section does not affect section 93 of the *Environmental Planning and Assessment Act 1979* (which relates to integrated development).

(6) In this section:

affected person means:

- (a) in the case of a condition imposed on the grant or renewal of an approval—the person who applied for the grant or renewal, or
- (b) in any other case—the occupier of the land on which the controlled work that is the subject of the approval is situated.

[41] Section 178 Cancellation of approvals

Omit subsection (2).

[42] Section 178 (3)

Omit “under subsection (2)”. Insert instead “under section 178A”.

[43] Section 178A

Insert after section 178:

178A Appeals to Land and Environment Court

- (1) A person who applies for the grant or renewal of an approval may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:
 - (a) to refuse to grant the approval under section 171, or
 - (b) to grant the approval subject to any condition, or
 - (c) to refuse to renew the approval under section 176, or
 - (d) to renew the approval subject to any condition other than a condition to which the approval was subject immediately before it was renewed.
- (2) An occupier of any land on which a controlled work that is the subject of an approval is situated may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:
 - (a) to impose a condition on the approval, or to vary or revoke a condition of the approval, during the currency of the approval, or
 - (b) to cancel the approval.

(3) An appeal under this section may be made:

- (a) no later than 28 days after the notice of the determination of the Ministerial Corporation is served on the person concerned, and
- (b) in accordance with the rules of the Land and Environment Court.

[44] Section 179 Removal and modification of unapproved works

Omit the section.

[45] Part 8, Division 4, heading

Insert “**Division 4 Offences and enforcement**” before section 180.

[46] Section 180

Omit the section. Insert instead:

180 Construction of unauthorised works

A person must not construct a controlled work otherwise than in accordance with an approval that is in force in respect of the work.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,200 penalty units in the case of an individual.

[47] Sections 180A–180K

Insert after section 180:

180A Compliance with conditions of approval

- (1) The occupier of land on which a controlled work is situated, being a controlled work in respect of which an approval is in force, must comply with the conditions (if any) of that approval.

- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction:
 - (a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.

180B Stop work orders

- (1) If the Ministerial Corporation is of the opinion that a person is engaging in or about to engage in any activity in contravention of section 180 or 180A, the Ministerial Corporation may, by notice in writing served on the person, order the person not to engage in that activity.
- (2) The order:
 - (a) takes effect immediately (or from a later date specified in the notice), and
 - (b) is subject to such conditions as the Ministerial Corporation may specify in the notice.
- (3) The Ministerial Corporation may vary or revoke the order or the conditions of the order by further notice in writing served on the person subject to the order.
- (4) An order under this section remains in force until whichever of the following happens first:
 - (a) the order is revoked by the Ministerial Corporation,
 - (b) the period (if any) for which the order is expressed in the notice to be in force ends,
 - (c) the period of 2 years from the day on which the order took effect ends.

- (5) A person who fails to comply with an order in force under this section is guilty of an offence and is liable on conviction:
- (a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.

180C Injunctions

- (1) On application by the Ministerial Corporation, the Land and Environment Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of section 180 or 180A.
- (2) An injunction may be granted without the Ministerial Corporation's being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Ministerial Corporation makes an application for the grant of an injunction under this section, the Court is not to require the Ministerial Corporation or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

180D Directions for remedial work

- (1) If the Ministerial Corporation is satisfied that:
 - (a) there is no approval in force with respect to a controlled work, or
 - (b) a controlled work has been constructed in contravention of an approval, or

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- (c) a controlled work does not comply with the conditions to which an approval is subject,

the Ministerial Corporation may, by notice in writing served on the occupier of the land on which the controlled work is situated, direct the occupier to carry out specified work in a specified manner and within a specified time.

- (2) Any one or more of the following types of work may be directed to be carried out by a notice under this section:
- (a) work to remove, modify, repair or restore the controlled work or to render the work ineffectual,
 - (b) work to repair any damage caused by the controlled work (including any damage caused to any specified land, structure, river, lake or vegetation, or to the environment),
 - (c) work to ensure that any specified land, structure, river, lake or vegetation, or the environment, will not be damaged or adversely affected or further damaged or adversely affected, by the controlled work,
 - (d) without limiting paragraphs (a)–(c), work to correct or restore any alteration caused by the controlled work to the flow of water in, to or from, or the quantity of water contained in, any specified river or lake.
- (3) A direction under this section may be varied or revoked by a further notice in writing served on the person the subject of the direction.
- (4) A person who fails to comply with a direction under this section is guilty of an offence and is liable on conviction:
- (a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.

- (5) If a person fails to comply with a direction under this section, the Ministerial Corporation may authorise any other person to enter the land and carry out the specified work.
- (6) The Ministerial Corporation must not exercise its powers under this section in relation to a controlled work that is within a floodplain before the expiration of 28 days after the date on which the order designating that land as a floodplain has taken effect.

180E Obstruction of persons

A person must not hinder or obstruct the Ministerial Corporation, or any of its officers, employees or agents, in the exercise of any function under section 180D.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in the case of an individual.

180F Interference with work done by Ministerial Corporation

- (1) A person must not remove, damage or modify any work carried out by or on behalf of the Ministerial Corporation under section 180D.

Maximum penalty: 2,500 penalty units in the case of a corporation or 1,200 penalty units in the case of an individual.

- (2) It is a defence to any proceedings against a person for an offence under this section if the person establishes that the person was acting with the approval of the Ministerial Corporation.

180G Recovery of cost of work done by Ministerial Corporation

- (1) The Ministerial Corporation may recover the cost of any work carried out by or on behalf of the Ministerial Corporation under section 180D from:
 - (a) the occupier of the land on which the work is carried out, or
 - (b) a person who caused the controlled work concerned to be constructed in contravention of section 180.

- (2) The occupier of the land on which work is carried out under section 180D may recover:
 - (a) the cost of any work carried out by the occupier in compliance with a notice under section 180D, or
 - (b) any amount that is recovered by the Ministerial Corporation from the occupier under subsection (1),
from any person who, without the consent of the occupier, caused the controlled work concerned to be constructed in contravention of section 180.
- (3) An amount recoverable under this section may be recovered as a debt in any court of competent jurisdiction.
- (4) The recovery of an amount payable under this section is not dependent on any person having been convicted of an offence for contravening section 180 or 180A.

180H Prior notification not required

The Ministerial Corporation is not required, before making an order or giving a direction or taking any other action under this Division, to notify any person who may be affected by the order, direction or action.

180I Power to require information

- (1) The Ministerial Corporation may, by notice in writing served on a person, require the person:
 - (a) to give an authorised officer orally or in writing signed by the person (or, if the person is a corporation, by a competent officer) and within the time and in the manner specified in the notice, any information about a possible offence under this Division, or
 - (b) to produce to an authorised officer, in accordance with the notice, any document containing information about a possible offence under this Division.
- (2) An authorised officer may inspect a document produced in response to such a notice and may take copies of, or take extracts or notes from, the document.

- (3) A person must not:
- (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

- (4) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (5) Any information or document obtained from a person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.
- (6) An authorised officer exercising any power under this section must, if requested to do so, produce the authorised officer's identification card to a person served with a notice under this section.
- (7) In this section:
- authorised officer* means a person authorised by the Ministerial Corporation to exercise the functions of an authorised officer under this section.

180J Appeals

- (1) A person aggrieved by a decision of the Ministerial Corporation under this Division may appeal against the decision to the Land and Environment Court in accordance with the rules of that court.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the decision appealed against.

180K Restraint of contravention of Division

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention, or a threatened or apprehended contravention, of this Division.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporated association (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

[48] Part 8, Division 5, heading

Insert "**Division 5 Miscellaneous**" before section 181.

[49] Section 181 Recovery of expenses of removal and modification of certain works

Omit the section.

[50] Section 182

Insert before section 183:

182 Exclusion of liability

- (1) The Ministerial Corporation does not incur any liability for any advice furnished, or anything done or omitted to be done, in good faith by the Ministerial Corporation in the exercise of its functions under this Part.
- (2) Without limiting subsection (1), that subsection applies to the following:
 - (a) the preparation or adoption of a floodplain management plan,
 - (b) the granting of or refusal to grant an approval,
 - (c) the renewal of or refusal to renew an approval,

- (d) the imposition of any condition on an approval, or the variation or revocation of a condition of an approval,
 - (e) the cancellation of an approval,
 - (f) anything done or omitted to be done under Division 4.
- (3) Without limiting any other circumstances in which the Ministerial Corporation may have acted in good faith, the Ministerial Corporation is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant floodplain development manual.
- (4) This section applies to and in respect of:
- (a) the Crown, and
 - (b) a public servant, and
 - (c) a person acting under the direction of the Ministerial Corporation, and
 - (d) a floodplain management committee or a member of a floodplain management committee,
- in the same way as it applies to and in respect of the Ministerial Corporation.
- (5) In this section:
- relevant floodplain development manual* means the most recent manual relating to the management of flood liable land (being the manual most recently notified under section 733 (5) (a) of the *Local Government Act 1993*).

[51] Section 184

Omit the section. Insert instead:

184 Service of notices

Any notice under this Part that is required to be served on or given to a person may be served or given:

- (a) by delivering it personally to the person, or

- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it with any person apparently of or above the age of 14 years who apparently resides or is employed there, or
- (c) by letter sent by post and addressed to the person at the person's address last known to the Ministerial Corporation.

[52] Section 184A

Insert after section 184:

184A Proceedings for offences

- (1) Proceedings for an offence under this Part or the regulations under this Part may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) This section has effect despite:
 - (a) section 4G (5) of this Act, and
 - (b) the *Justices Act 1902* or any other Act.

[53] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Water Amendment (Flood Control Works) Act 1999

[54] Schedule 2, Part 6

Insert after Part 5 of Schedule 2:

**Part 6 Provisions consequent on enactment of
Water Amendment (Flood Control Works) Act
1999**

14 Definitions

In this Part:

amending Act means the *Water Amendment (Flood Control Works) Act 1999*.

approval means an approval under Part 8.

15 Existing floodplain management plans

- (1) The Ministerial Corporation may adopt as a floodplain management plan a plan that was prepared before the commencement of section 166A, which relates to the management of flood waters within a floodplain.
- (2) If the plan was exhibited, and public comment was sought and taken into account before the plan was finalised, as required by the relevant floodplain development manual, the Ministerial Corporation may adopt the plan under section 166A without complying with section 166A (4).
- (3) In this clause:

relevant floodplain development manual means the manual relating to the management of flood liable land which, at the time of the preparation of the plan, was the most recently notified manual under section 733 (5) (a) of the *Local Government Act 1993*.

16 Existing controlled works

The amendments made to this Act by the amending Act apply to controlled works constructed before or after the commencement of those amendments.

17 Effect on pending applications

- (1) The amendments made to this Act by the amending Act extend to pending applications, except as provided by subclause (2).
- (2) Section 168B, section 169 (as substituted by the amending Act) and the amendments made to section 170 by the amending Act do not apply to pending applications.
- (3) In this clause:

pending application means an application for approval that was made, but not determined by the Ministerial Corporation, before the commencement of Schedule 1 [29] to the amending Act.

18 Continuation of certain provisions

- (1) The former provisions continue to have effect, as if the amending Act had not been enacted, with respect to any determination made by the Ministerial Corporation, before the relevant commencement date:
 - (a) to grant an approval under section 171 (including with respect to any objection that was made to the grant of that approval), or
 - (b) to refuse to grant an approval under section 171, or
 - (c) to grant an approval under section 171 subject to conditions, or
 - (d) to renew or refuse to renew an approval under section 176, or
 - (e) to renew an approval under section 176 subject to conditions other than those to which the approval was subject immediately before it was renewed.
- (2) Accordingly:
 - (a) such a determination is to be dealt with by the Ministerial Corporation in accordance with the former provisions (including by referring the determination to a prescribed tribunal for inquiry and report, if that is required under the former provisions), and
 - (b) the former provisions have effect with respect to any determination that is referred to a prescribed tribunal for inquiry and report (whether before or after the relevant commencement date), and
 - (c) the former provisions have effect with respect to the decision of the prescribed tribunal in relation to such a referred determination.
- (3) In this clause:

former provisions means the provisions of this Act, as in force immediately before the relevant commencement date.

prescribed tribunal means a Magistrate or a local land board.

relevant commencement date means the date of commencement of Schedule 1 [29] to the amending Act.

19 Conditions of approvals

Section 176A, as substituted by the amending Act, extends to approvals granted or renewed before the substitution of that section.

20 Recovery of costs of removal or modification of works

Section 181, as in force immediately before the commencement of Schedule 1 [49] to the amending Act, continues to apply in respect of any expenses incurred by the Ministerial Corporation in the exercise of its powers under section 179 (as in force immediately before the commencement of Schedule 1 [44] to the amending Act), as if section 181 had not been repealed.

21 Extension of time limit for prosecution of offences

Section 184A applies only to an offence under Part 8 or the regulations under Part 8 that is alleged to have been committed after the commencement of that section.

22 Saving of existing entitlements under Part 2

(1) An entitlement with respect to a work to which Part 2 applied because of paragraph (e) of the definition of *Work to which this Part extends* in section 5 (1) (as in force immediately before the relevant commencement date), being a work to which Part 2 no longer extends because of the repeal of that paragraph by the amending Act, continues in force, subject to Part 2, as if the amending Act had not been enacted.

(2) However, the entitlement cannot be renewed under that Part.

(3) In this clause:

entitlement means a licence, permit, authority or group licence issued under Part 2, and in force immediately before the relevant commencement date.

relevant commencement date means the date of commencement of Schedule 1 [5] to the amending Act.

Schedule 2 Amendment of Land and Environment Court Act 1979

(Section 4)

[1] Section 17 Class 1—environmental planning and protection appeals

Insert after section 17 (cb):

(cc) appeals under section 180J of the *Water Act 1912*,

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert after section 20 (1) (de):

(df) proceedings under section 180C or 180K of the *Water Act 1912*,

[Minister's second reading speech made in—
Legislative Assembly on 26 October 1999
Legislative Council on 24 November 1999]