



New South Wales

Sydney Water Amendment (Water Restrictions) Act 2003 No 55

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Sydney Water Amendment (Water Restrictions) Act 2003 No 55

Act No 55, 2003

An Act to amend the *Sydney Water Act 1994* to make further provision with respect to the enforcement of water restriction offences; and for other purposes.
[Assented to 29 October 2003]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Sydney Water Amendment (Water Restrictions) Act 2003*.

2 Commencement

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

3 Amendment of Sydney Water Act 1994 No 88

The *Sydney Water Act 1994* is amended as set out in Schedule 1.

4 Amendment of other legislation

The Act and regulation specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Sydney Water Act 1994

(Section 3)

[1] Section 48 Illegal diversion of water

Omit the penalty at the end of the section. Insert instead:

Maximum penalty: 200 penalty units (or 400 penalty units in the case of a corporation).

[2] Section 53 Disposal of proceedings for offences

Omit “constituted by a Magistrate sitting alone” from section 53 (1) (a).

[3] Section 53 (1) (b) and (3)

Omit “Supreme Court” wherever occurring.

Insert instead “Land and Environment Court”.

[4] Part 6, Division 6A

Insert after Division 6:

Division 6A Special provisions relating to water restriction offences

53A Definitions

In this Division:

authorised person has the same meaning as in section 50.

occupier of land includes any person occupying the land under a lease.

penalty notice means a penalty notice under section 50.

relevant time, in relation to a water restriction offence, means the time that the offence is committed and the time immediately after the commission of the offence.

water restriction offence means an offence of using water contrary to a notice by the Minister under the regulations regulating or restricting the use of water.

53B Liability for water restriction offences in certain circumstances

(1) **Offence**

If a water restriction offence occurs on any land and the identity of the person who committed the offence cannot be ascertained at the relevant time by an authorised person who witnessed the commission of the offence, the following are, subject to this section, taken to be guilty of the offence:

- (a) each person who was an owner of the land at the relevant time,
- (b) each person who was an occupier of the land at the relevant time.

(2) **Liability of actual offender not affected**

Subsection (1) does not affect the liability of the person who committed the water restriction offence but, if a penalty has been recovered from any person in relation to the offence, no further penalty may be imposed on or recovered from any other person.

(3) **Exception for owner**

Subsection (1) (a) does not apply if a person who was an owner of the land at the relevant time:

- (a) gives notice in accordance with subsection (5) of the name and address of the person who the owner has reasonable grounds to believe:
 - (i) committed the offence, or
 - (ii) was an occupier of the land at the relevant time, or
- (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the owner did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who was an occupier of the land at the relevant time.

(4) Exception for occupier

Subsection (1) (b) does not apply if a person who was an occupier of the land at the relevant time:

- (a) gives notice in accordance with subsection (5) of the name and address of the person who the occupier has reasonable grounds to believe committed the offence, or
- (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the occupier did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who committed the offence.

(5) Notice given by owner or occupier

A notice for the purposes of subsection (3) (a) or (4) (a) must be verified by statutory declaration and:

- (a) if a penalty notice has been given for the water restriction offence—the notice must be given to the person specified in the penalty notice within 21 days after service of the penalty notice, or
- (b) if a court is dealing with the offence—the notice must be given to the informant within 21 days after service of the court attendance notice for the offence.

53C Evidentiary provision

A notice under section 53B (3) (a) or (4) (a), if produced in any proceedings against the person named in the notice for a water restriction offence, is evidence that the named person committed the offence, or was an occupier of the land at the relevant time, as the case may be.

53D Power of authorised persons to enter land to investigate water restriction offences

- (1) If an authorised person reasonably suspects that a water restriction offence is being committed on any land (including any land used for residential purposes), the authorised person may:
 - (a) enter the land for the purposes of investigating the offence, and

- (b) take photographs in connection with the investigation.
- (2) The power conferred by this section to enter any land may not be exercised unless the authorised person:
 - (a) exercises the power at a reasonable time, and
 - (b) produces, if requested to do so by the occupier of the land, the authorised person's identification as an authorised person.
- (3) An authorised person may not, in exercising the power to enter land:
 - (a) enter any dwelling or enclosed structure on the land, or
 - (b) use any force, or
 - (c) remain on the land for a longer period than is reasonably necessary in the circumstances.

Schedule 2 Amendment of other legislation

(Section 4)

2.1 Land and Environment Court Act 1979 No 204

Section 21 Class 5—environmental planning and protection summary enforcement

Insert after section 21 (gb):

- (gc) proceedings under section 53 of the *Sydney Water Act 1994*,

2.2 Sydney Water Regulation 2000

[1] Clause 35

Omit the clause. Insert instead:

35 Penalty notice offences

For the purposes of section 50 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and
- (b) the penalty prescribed for such an offence if dealt with under that section is the amount specified in relation to the offence in Column 2 of that Schedule.

[2] Clause 36 Short description of offence

Omit the clause.

[3] Schedule 1

Insert after clause 37:

Schedule 1 Penalty notice offences

(Clause 35)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 48	\$550
Offences under this Regulation	
Clause 17 (3)	\$220

[Second reading speech made in—
Legislative Assembly on 15 October 2003
Legislative Council on 15 October 2003]

BY AUTHORITY