



New South Wales

Water Management Amendment Act 2005 No 118

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Management Act 2000 No 92	2
4 Amendment of Protection of the Environment Operations (General) Regulation 1998	2
Schedule 1 Amendment of Water Management Act 2000	3
Schedule 2 Amendment of Water Management Act 2000 relating to irrigation corporations	31
Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 1998	33



New South Wales

Water Management Amendment Act 2005 No 118

Act No 118, 2005

An Act to amend the *Water Management Act 2000* in relation to plans of management, environmental water and compensation and to amend other legislation consequentially; and for other purposes. [Assented to 7 December 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water Management Amendment Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) The provisions of Schedule 1 [48]–[57] commence on the date of assent to this Act.

3 Amendment of Water Management Act 2000 No 92

The *Water Management Act 2000* is amended as set out in Schedules 1 and 2.

4 Amendment of Protection of the Environment Operations (General) Regulation 1998

The *Protection of the Environment Operations (General) Regulation 1998* is amended as set out in Schedule 3.

Schedule 1 Amendment of Water Management Act 2000

(Section 3)

[1] Section 8 Environmental water

Insert after section 8 (1):

- (1A) A management plan is to commit water as planned environmental water in at least 2 of the following ways (whether by 2 separate ways or a combination of 2 ways):
- (a) by reference to the commitment of the physical presence of water in the water source,
 - (b) by reference to the long-term average annual commitment of water as planned environmental water,
 - (c) by reference to the water that is not committed after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.

[2] Sections 8A–8E

Insert after section 8:

8A Planned environmental water

- (1) If the relevant management plan so provides, the Minister may cancel any supplementary access licence, and any other category or subcategory of licence prescribed by the regulations, that is held by the Minister and commit an equivalent amount of water as determined in accordance with the management plan as planned environmental water for the water source to which the licence related.
- (2) Planned environmental water committed under this section is to be used for only those purposes specified in the relevant management plan.
- (3) Sections 78, 78A and 87 do not apply to the cancellation of an access licence under this section.

8B Adaptive environmental water through dedication of existing water entitlements

- (1) If the relevant management plan so provides, the holder of an access licence may request that the Minister impose an adaptive environmental water condition in respect of the whole or a part of the access licence.

- (2) A condition imposed under this section may be amended, and is to be revoked, by the Minister at the request in writing of the holder of the access licence.

8C Adaptive environmental water through system improvements

- (1) If the relevant management plan so provides, the Minister may grant an access licence of a category or subcategory determined by the Minister to the Minister, a catchment management authority or other public body, without the need for an application to be made for the licence in accordance with Part 2 of Chapter 3, so long as:
- (a) works or other actions result in water savings in the system being made in the water source in respect of which the licence is granted, and
 - (b) the share component of the licence is equivalent to the value of water savings in the system made, and
 - (c) an adaptive environmental water condition is imposed on the licence.
- (2) In this section, *system* means that part of a water source to which a management plan applies that is not identified by the plan for commitments to basic landholder rights and for sharing and extraction under any other rights.

8D Adaptive environmental water through water savings

If the relevant management plan so provides, the Minister may keep an access licence surrendered by the holder of the licence or transfer it to a catchment management authority or other public body, and may change the licence to a different category or subcategory, if:

- (a) the licence has been surrendered as a result of water savings made by any means (for example, works or other improvements or recycling), and
- (b) the share component of the licence is equivalent to the value of the savings made, and
- (c) an adaptive environmental water condition is imposed on the licence.

8E General provisions relating to access licences with adaptive environmental water conditions

- (1) This section applies to access licences that are subject to an adaptive environmental water condition.

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- (2) For the purposes of this Act (but subject to section 8B (2)), an adaptive environmental water condition is a mandatory condition.
 - (3) The terms of an adaptive environmental water condition imposed in respect of an access licence are to further the objectives of the relevant management plan.
 - (4) If the adaptive environmental water condition on an access licence requires the water to be left in the water source for environmental purposes, then the water allocation account is to be debited when the water is available in accordance with the condition.
 - (5) If the adaptive environmental water condition requires the environmental water to be taken from the water source then the water allocation account is to be debited when it is taken.
 - (6) For the purposes of auditing compliance with the long-term extraction limit under the relevant management plan, the delivery of water pursuant to an access licence to which this section applies:
 - (a) in the case of a licence to which section 8C relates—is not to be accounted for as extraction, and
 - (b) in the case of a licence to which section 8B or 8D relates—is to be accounted for as extraction.
 - (7) Before imposing an adaptive environmental water condition on an access licence, the Minister is to approve a plan for the implementation of the condition.
 - (8) The Minister is to ensure that the plan referred to in subsection (7), and a requirement to comply with the plan, forms part of the adaptive environmental water condition.
 - (9) An access licence to which this section applies, or a part of such a licence to which the adaptive environmental water condition concerned is expressed to relate, may be the subject of a dealing in accordance with this Act if the plan approved under subsection (7) so provides.

[3] Section 20 Core provisions

Insert “and provisions relating to adaptive environmental water” after “rules” in section 20 (1) (a).

[4] Section 20 (4) (b) and (c)

Omit section 20 (4) (b). Insert instead:

- (b) must not deal with any matter for which the access licence dealing principles may make provision under section 71Z (2), and
- (c) subject to paragraph (b) and the access licence dealing principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.

[5] Section 41 Making of management plan

Insert “, by order published in the Gazette,” after “may” wherever occurring in section 41 (1) (a) and (b).

[6] Section 42 Amendment of management plans

Insert after section 42 (2):

- (3) Each management plan specified in Schedule 12 is amended as set out in that Schedule.
- (4) The amendment of a management plan by this or any other Act does not prevent its later amendment or repeal in accordance with this Act.

[7] Section 43A Extension of duration of management plan dealing with water sharing

Omit “were” from section 43A (3) (b). Insert instead “are”.

[8] Section 43A (3A)

Insert after section 43A (3):

- (3A) If a report of the Natural Resources Commission under subsection (3) recommends changes to a management plan that will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Commission is to state in the report whether the purpose of the proposed changes is:
 - (a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or
 - (b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.

[9] Section 45 Minister may amend or repeal management plan

Omit section 45 (2).

[10] Section 46

Insert before section 47:

46 Making or amendment of management plan

- (1) If the Minister makes a replacement management plan or amends a management plan and the replacement plan or amendment will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Minister is to include in the order in which the replacement plan or amendment is made, or in another order, a statement as to whether:
 - (a) the purpose of the reduction to water allocations is to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or
 - (b) the purpose of the reduction to water allocations is to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate, or
 - (c) the reduction to water allocations results from a change in government policy.
- (2) A statement referred to in subsection (1):
 - (a) need not be made if the reduction concerned arises from circumstances referred to in section 87AA (3) (a) or (c), and
 - (b) in a case where the reduction is made for more than one of the purposes referred to in subsection (1), is to specify each of the relevant purposes and the extent to which the reduction relates to each of those relevant purposes.

[11] Section 47 Validity of management plans and exercise of plan-making functions

Omit the definition of *plan-making function* in section 47 (8). Insert instead:

plan-making function means:

- (a) a function under this Act relating to the making of a management plan (including relating to the amendment, replacement or repeal of a management plan or the extension of the duration of a management plan), or
- (b) a function under section 46 of this Act relating to the statement of the purpose for which any provision of a management plan has been made.

[12] Section 56 Access licences

Insert after section 56 (4):

- (4A) Without limiting subsection (1) (b), the extraction component of an access licence may authorise the taking of water from a water source specified in the share component of the licence and from another water source not so specified if those water sources are vertically abutting (either wholly or partly) water sources.
- (4B) In the circumstances referred to in subsection (4A), the water source specified in the share component of the access licence is to be the water source that is the main source for the extraction of water by the holder of the licence.

[13] Section 58 Priorities between different categories of licence

Insert after section 58 (2):

- (3) In relation to the water management area or water source to which it applies, a management plan may provide for different rules of priority to those established by subsection (1).
- (4) If a management plan so provides for different rules of priority, those different rules are taken to have been established by this section.

[14] Section 59 Available water determinations

Insert after section 59 (2):

- (3) If the extraction component of an access licence authorises the taking of water from a water source specified in the share component of the licence and from another water source not so specified and those water sources are vertically abutting (either wholly or partly) water sources, the available water

determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.

- (4) If the Minister consents to the amendment of an access licence to enable water to be taken by a specified water supply work or group of water supply works in circumstances referred to in section 71W (2) (b) or (c), the available water determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.

[15] Section 65 Controlled allocation of access licences

Omit section 65 (3) and (4) and the note to subsection (4).

[16] Section 67 Imposition of conditions after access licence is granted

Insert “to conditions imposed on an access licence as a result of action taken under section 66 (3)” after “the access licence,” in section 67 (2).

[17] Section 68A Amendment of share or extraction components of access licences by Minister

Insert “this Act or” after “with” in section 68A (1).

[18] Section 68A (1A) and (1B)

Insert after section 68A (1):

- (1A) The Minister may amend the share component or extraction component (or both) of an access licence so as to alter the water management area or water source to which the share component of the licence relates, or the locations from which water may be taken in accordance with the extraction component of the licence.
- (1B) An amendment may only be made under subsection (1A) if:
- (a) the amendment is for the purpose of enabling the holder of the licence to take water from a different water source to that authorised by the licence because erroneous location data has resulted in the holder taking water from that different source, and
 - (b) at the time at which the granting of the access licence was recorded in the register, an access licence could have been granted to the holder authorising the taking of water from that different water source.

[19] Section 71B When matters required to be recorded in General Division of Access Register have effect

Omit “Any” from section 71B (1).

Insert instead “Subject to this section, any”.

[20] Section 71B (3)

Insert after section 71B (2):

- (3) If an application for the extension of a term transfer under section 71N is received before the expiry of the term transfer, the extension is to be recorded in the Register as taking effect from the end of the current term of the term transfer.

[21] Section 71N Term transfers of entitlements under access licences

Insert “in relation to any water entitlements” after “concerned” in section 71N (5).

[22] Section 71N (7A)

Insert after section 71N (7):

- (7A) The period for which a term transfer has effect may be extended, with the consent of the transferee, while the term transfer remains in force.

[23] Section 71S Amendment of extraction component of access licence

Insert after section 71S (3):

- (4) The Minister may, by order published in the Gazette, declare that the right to apply for an amendment of the extraction component of an access licence for a specified water management area or water source is to be acquired by auction, tender or other means specified in the order.

[24] Section 71W Access licence may nominate water supply works

Omit section 71W (2). Insert instead:

- (2) The water supply work or group of water supply works nominated must be in one or more of the following:
 - (a) the same water management area or water source as the access licence concerned,
 - (b) a NSW water tagging zone,

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- (c) an interstate water tagging zone in another State or Territory if the operation of the work or works is lawful in that zone and an arrangement is in place (as referred to in section 391A) between the Minister and a Minister of the other State or Territory.
- (3) For the avoidance of doubt, a water supply work or group of water supply works may be nominated under this section even though no approval is required to be held in relation to the work or works under this Act.
- (4) In this section:
interstate water tagging zone means an interstate water tagging zone established by the access licence dealing principles.
NSW water tagging zone means a NSW water tagging zone established by the access licence dealing principles.

[25] Section 71Y General

Omit “or dealing on default” from section 71Y (1).

Insert instead “, dealing on default or assignment under section 71T or 71V”.

[26] Section 71Z Access licence dealing principles

Omit “subject to any such rules,” wherever occurring.

[27] Section 71Z (2) and (3)

Insert at the end of section 71Z:

- (2) The access licence dealing principles may include provisions relating to any or all of the following:
- (a) the establishment of interstate water tagging zones for the purposes of section 71W,
 - (b) the establishment of NSW water tagging zones for the purposes of section 71W,
 - (c) the criteria to be considered for the granting of an application in circumstances referred to in section 71W (2) (b) or (c).
- (3) The access licence dealing principles prevail over the access licence dealing rules to the extent of any inconsistency.

[28] Section 72A

Insert after section 72:

72A Special provisions relating to co-holdings in access licences

- (1) Except as provided by subsection (2) and section 74, any dealing in relation to an access licence that is held by co-holders requires the consent of all of the co-holders and is taken to be a dealing with respect to the whole of the licence (rather than to a holding in the licence).
- (2) A holding in an access licence may only be the subject of a dealing under section 71M (8) or 71N (11).

[29] Section 74

Insert after section 73:

74 Exit from co-held access licence

- (1) On the application of one or more of the co-holders of an access licence (*the original access licence*), the Minister may consent to the extinguishment of the holdings of one or more co-holders in the licence and the granting of a new access licence in accordance with Schedule 1B.
- (2) If the Minister extinguishes holdings in the original licence and grants a new access licence under subsection (1), the Minister is to reduce the entitlements under the original access licence to the extent necessary to reflect the entitlements conferred by the new licence.
- (3) An application may not be made under subsection (1) without the consent in writing of all of the co-holders of the access licence concerned or of co-holders who hold a majority share of the holdings under the licence.
- (4) On the application of one or more co-holders of an access licence, the Supreme Court may, if it considers it just and equitable to do so, order that the consent referred to in subsection (3) need not be obtained and may make ancillary orders for the purposes of this section.
- (5) When determining such an application where the water supply work nominated by the access licence concerned is shared by some or all of the co-holders of the licence, the Supreme Court is to take into consideration the likely effect that the taking of action under subsection (1) would have on the use of that work and the co-holders who have the benefit of it.

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- (6) This section does not apply to an access licence if:
- (a) there is any money due under this Act in respect of the access licence, including any civil penalties imposed under this Act, or
 - (b) the co-holders hold the licence as joint tenants, or
 - (c) the access licence dealing principles or the access licence dealing rules prevent an application being made under this section.
- (7) Schedule 1B has effect.

[30] Section 77A Cancellation of access licences that can no longer be used or are no longer required

Insert after section 77A (2):

- (2A) Subsection (2) does not apply to an access licence in relation to which action is taken by the Minister under section 8D.

[31] Section 78 Suspension and cancellation of access licences

Omit section 78 (2). Insert instead:

- (2) Instead of or in addition to suspending or cancelling an access licence, the Minister may order a major utility or local water utility to pay to the Minister a civil penalty of an amount not exceeding \$500,000 and a further civil penalty of an amount not exceeding \$20,000 for each day that the circumstances giving rise to the initial civil penalty continue to exist.

[32] Section 86

Insert before section 87:

86 Definitions

In this Division:

compensation includes damages or any other form of monetary compensation.

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any officer, employee or agent of the Crown.

[33] Section 87 Compensation payable in certain circumstances for reductions in water allocations arising during initial period for which management plan is in force

Omit section 87 (2) (a).

[34] Section 87 (2)

Insert at the end of section 87 (2) (c):

, or

- (d) an amendment made by an Act to a management plan.

[35] Section 87 (9)

Insert after section 87 (8):

- (9) Despite the other provisions of this section, compensation may be claimed under this section only in respect of a reduction in water allocations occurring during the period for which the first management plan that established the bulk access regime concerned is in force (excluding any period for which that plan is extended under section 43A (1)).

[36] Sections 87AA and 87AB

Insert after section 87:

87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force

- (1) This section applies to the following categories and subcategories of access licence:
- (a) regulated river (high security) access licences,
 - (b) regulated river (general security) access licences,
 - (c) Murrumbidgee Irrigation (conveyance) access licences,
 - (d) Coleambally Irrigation (conveyance) access licences,
 - (e) unregulated river access licences,
 - (f) aquifer access licences,
 - (g) any other category or subcategory of access licence that is prescribed by the regulations (other than supplementary access licences or specific purpose access licences).
- (2) A holder of an access licence to which this section applies whose water allocations are reduced because of a change to provisions of the relevant management plan dealing with water sharing is entitled to compensation as assessed by the Minister in accordance with subsections (5) and (6).

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- (3) Despite subsection (2), the holder of an access licence is not entitled to compensation under this section if:
- (a) the reduction in water allocations occurred while the first management plan (excluding any period for which that plan was extended under section 43A (1)) was in force, or
 - (b) the reduction in water allocations occurred as a result of an amendment of a management plan by the Minister under section 45 that is authorised by the plan or that is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan, or
 - (c) the reduction in water allocations is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source, including but not limited to changes resulting from climate change, drought or bushfires.
- (4) A reference in subsection (2) to a change in the provisions of a management plan includes a change between the provisions of the management plan concerned and provisions of the management plan that it replaced.
- (5) Compensation is payable to the holder of an access licence whose water allocations are reduced because of a change in the provisions of a management plan as a result of an amendment that is specified under section 46 by the Minister as due to a change in government policy.
- (6) Compensation is payable as follows for a reduction in water allocations for the purpose of providing additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate:
- (a) no compensation is payable for reductions of 3% or less,
 - (b) compensation is payable for reductions of more than 3% over any 10-year period commencing on or after the expiration of the period for which the first management plan for the relevant area was in force (including any period for which that plan was extended under section 43A (1)),
 - (c) only one third of the compensation payable for a reduction of more than 3% but not more than 6% over any applicable 10-year period is liable to be paid under this section,
 - (d) only one half of the compensation payable for a reduction of more than 6% over any applicable 10-year period is liable to be paid under this section.

- (7) The regulations may make provision for or with respect to the following:
 - (a) the basis on which reductions in water allocations are to be calculated or the method of determining such reductions for the purposes of this section,
 - (b) the basis on which compensation is to be calculated or the method for calculating the payment of compensation for the purposes of this section,
 - (c) the manner and time of payment of compensation.
- (8) This section has effect only while there is in force an agreement entered into by, or on behalf of, the State and the Commonwealth for or with respect to supplementing the payment of compensation under this section.
- (9) Despite any other provision of this section, no compensation is payable under this section in respect of a reduction in water allocations of a kind referred to in subsection (6) if the Commonwealth has not provided funding in respect of that reduction to meet its obligations under the agreement referred to in subsection (8).
- (10) A person may appeal to the Land and Environment Court on the ground that the person is entitled to the payment of compensation under this section but has not been determined as being entitled to any compensation.

87AB Compensation is not payable in relation to certain conduct

- (1) Compensation is not payable by or on behalf of the Crown in respect of any relevant conduct in relation to a management plan.
- (2) In this section, *relevant conduct*, in relation to a management plan, means an act or omission occurring before the commencement of the management plan in respect of the content, effect or government policy concerning the management plan, including the following:
 - (a) any act or omission, whether unconscionable, misleading, deceptive or otherwise,
 - (b) a representation of any kind, whether made verbally or in writing and whether negligent, false, misleading or otherwise.
- (3) This section has effect despite section 87.
- (4) In this section, a reference to a management plan includes a reference to an amendment of a management plan.

[37] Section 100 Conditions of approval generally

Insert after section 100 (2) (and before the note to the section):

- (3) Without limiting the types of conditions relating to the protection of the environment that the Minister may impose under this section on a water management work approval, those conditions may include conditions relating to any or all of the following matters:
- (a) the undertaking of an investigation of the environmental impact of cold water releases and the options for mitigation of that impact,
 - (b) the preparation of a program to mitigate the impact of cold water releases and the obtaining of approval to the program from the Minister,
 - (c) the implementation of the program,
 - (d) the monitoring and reporting on actions taken to implement the program and the impact of those actions on the environment,
 - (e) the carrying out of new works or the making of alterations to existing works, or both,
 - (f) the method of operation of water management works.

[38] Section 102 Imposition or variation of conditions after approval is granted

Insert “or with the consent of” after “at the request of” in section 102 (2).

[39] Section 107 Amendment of approvals

Insert after section 107 (5):

- (6) In considering any application under this section, the Minister is to have regard to any order of the Supreme Court under section 74 that affects the matters covered by the application.

[40] Section 341 Unlawful taking of water

Insert after section 341 (1):

- (1A) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (1) and the water supply work is nominated under section 71W in relation to an access licence that is not held by that person, the person who is the holder of the access licence is also taken to have contravened subsection (1).

- (1B) A person may be proceeded against and convicted under subsection (1) pursuant to subsection (1A) whether or not the person who has the control or management of the water supply work concerned has been proceeded against or been convicted under subsection (1).

[41] Section 341 (6) and (7)

Insert after section 341 (5):

- (6) A person is not guilty of an offence under this section by reason only of taking water under an access licence from a water management area or water source that is different to that specified in the extraction component for the licence if the person does so in accordance with the consent of the Minister given in circumstances referred to in section 71W (2) (b) or (c).
- (7) A person who has the management or control of a water supply work that is nominated under section 71W for an access licence and who takes water by means of that water supply work is not guilty of an offence under this section by reason only of not being the holder of the access licence.

[42] Section 368 Appeals to Land and Environment Court

Insert “or local water utility” after “major utility” in section 368 (1) (m).

[43] Section 372 Functions of Ministerial Corporation

Insert after section 372 (1) (a):

- (a1) to construct, maintain and operate gauging stations and other monitoring equipment,

[44] Schedule 1A Access Register

Insert after clause 1 (1) (d):

- (e) any adaptive environmental water condition to which the licence, or a part of the licence, is subject.

[45] Schedule 1A, clause 2 (3) (a)

Omit “and a description of the dealing, and”.

Insert instead “, a description of the dealing and the time and date of the recording.”.

[46] Schedule 1A, clause 2 (3) (b)

Omit the paragraph.

[47] **Schedule 1B**

Insert after Schedule 1A:

**Schedule 1B Provisions relating to exit from
co-held access licence**

(Section 74 (7))

1 Definitions

In this Schedule:

extinguished holdings means the holdings in an access licence extinguished by the Minister under section 74.

new access licence means an access licence granted by the Minister under section 74 (1).

original access licence has the meaning given by section 74 (1).

2 Share component of new access licence

The share component of the new access licence:

- (a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or
- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the share component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

3 Extraction component of new access licence

- (1) If the extraction component of the original access licence did not specify a volume limit or some other kind of restriction on the amount of water to be extracted, the new access licence is to have the same extraction component as applied to the original access licence.
- (2) If the extraction component of the original access licence specified a volume limit or some other kind of restriction on the amount of water to be extracted, the extraction component of the new access licence:
 - (a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or
 - (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or
 - (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the extraction component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74.

4 Water allocation account for new access licence

The water allocations for a water allocation account for an original access licence and new access licence are to be adjusted as follows:

- (a) in a case where all the co-holders consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with the directions in the application,

- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence,
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with an order of the Supreme Court under section 74 (4).

5 Conditions of new licence

A new access licence, at the time at which it is granted, is subject to the same mandatory conditions to which the original access licence was subject at that time.

6 Nominated water supply work for new access licence

A water supply work nominated in relation to an original access licence is taken to be nominated in relation to the new access licence unless a different water supply work is nominated in accordance with this Act or an order of the Supreme Court made under section 74 provides otherwise.

7 Security interests relating to new access licences

- (1) A dealing under section 74 is not to be recorded in the register unless the consent of any holder of a security interest in the extinguished holdings of the original access licence has been obtained.
- (2) Any security interests that subsisted in the extinguished holdings, as in force immediately before they were extinguished, become equivalent interests in the new access licence.

[48] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Water Management Amendment Act 2005

[49] Schedule 9, Part 5

Insert after Part 4 of Schedule 9:

**Part 5 Provisions consequent on enactment of
Water Management Amendment Act 2005**

70 Definition

In this Part, *amending Act* means the *Water Management Amendment Act 2005*.

71 Management plans

- (1) Any management plan (and any amendment of a management plan) that was published in the Gazette before the commencement of this clause is taken to have been validly made and to be valid on and from the date that it was so published.
- (2) Anything done or omitted to be done before the commencement of this clause pursuant to a management plan or amendment of a management plan referred to in subclause (1) (or done or omitted purportedly in pursuance of such a plan or amendment) is taken on and from the time at which it was done or omitted to be done to have been validly done or validly omitted to be done.
- (3) In this clause, a reference to a management plan, or an amendment of a management plan, includes a reference to a purported management plan or a purported amendment of a management plan.

[50] Schedule 10 Conversion of former entitlements to access licences and approvals

Omit clause 3 (1) (a). Insert instead:

- (a) to the extent to which it entitles any person or body to take a specified quantity of water, by an access licence held by that person or body (subject to such of the conditions of the entitlement as are applicable to an access licence):
 - (i) for the quantity of water so specified, or
 - (ii) if the relevant management plan, and regulations made for the purposes of this paragraph, indicate that a different quantity of water calculated in

accordance with a specified methodology may be taken under an access licence issued in relation to the water management area or water source to which the management plan applies—for a different quantity of water calculated in accordance with that methodology, and

[51] Schedule 10, clause 3 (3)

Insert after clause 3 (2):

- (3) An access licence that replaces an entitlement may provide for a specified reduction over a specified period of the quantity of water that the holder of the licence is entitled to take or of the share component of the licence if the relevant management plan and any regulations made for the purposes of this subclause allow the licence to provide for those matters.

[52] Schedule 10, clause 4 (3) and (4)

Insert after clause 4 (2):

- (3) The regulations may amend Schedule 11 so as to insert, amend or omit matter in Column 1, 2, 3 or 4 of that Schedule to make provision for categories and subcategories of access licence prescribed by the regulations (as referred to in section 57 (1) and (2)).
- (4) Despite subclause (3), if an entitlement has been replaced in accordance with this Act before the commencement of an amendment to Schedule 11 made pursuant to that subclause, Schedule 11 as in force at the time the entitlement was replaced continues to apply in relation to that entitlement.

[53] Schedule 10, clause 9A

Insert after clause 9:

9A Conditions relating to food safety and essential dairy care

- (1) If an entitlement authorised water to be extracted for the purposes of food safety or essential dairy care at times of low flows when extraction of the water would not otherwise be allowed, an access licence that replaces that entitlement is taken to contain the same authorisation.
- (2) An access licence referred to in subclause (1) is also subject to a mandatory condition that the authorisation ceases to have effect if the activity for which the extraction of water is permitted ceases to be conducted at the same location or is not carried out

in the same manner as it was carried out immediately before the entitlement concerned was replaced by the access licence.

[54] Schedule 10, clause 13 (3) (b)

Omit “the licence relates”.

Insert instead “all the former entitlements related”.

[55] Schedule 10, clause 13 (3) (c)

Omit the paragraph. Insert instead:

- (c) a quantity of water calculated on the basis of the current yield of the water management works controlled or managed under all the former entitlements by the local water utility by which the licence is taken to be held.

[56] Schedule 10, clause 16 Entitlements relating to bores

Insert at the end of clause 16:

- (2) If the holder of a licence under Part 5 of the 1912 Act has been taking water from a different water source to that authorised by the licence because of erroneous location data, an access licence that is taken to replace that licence may be issued with a share component or extraction component (or both) that refers to the different water source rather than to the water source referred to in the replaced licence.
- (3) A licence under Part 5 of the 1912 Act which, immediately before the appointed day, related to a bore that intersects two water sources that vertically abut each other is taken to have been replaced by:
 - (a) an access licence that specifies in its share component the water source that is the main source of extraction of water, and
 - (b) a water supply work approval.

[57] Schedule 10, clause 19

Omit “24” from clause 19 (11). Insert instead “36”.

[58] Schedule 12

Insert after Schedule 11:

Schedule 12 Amendment of management plans

(Section 42 (3))

Part 1 Amendment relating to adaptive environmental water

1 Management plans to be amended

The management plans to which this Part applies are all management plans made before the commencement of this Part.

2 Amendment of management plans relating to adaptive environmental water

Each management plan to which this Part applies is amended by omitting subclause (2) of the clause titled “Adaptive environmental water” and by inserting instead the following subclauses:

- (2) The Minister may grant an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition and arises through water savings in the system made in that water source as referred to in section 8C (1) of the Act.
- (2A) The Minister may change the category or subcategory of an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition that arises through water savings as referred to in section 8D of the Act.

Part 2 Amendment relating to planned environmental water

3 Management plans to be amended

The management plans to which this Part applies are all management plans made before the commencement of this Part.

4 Amendment of management plans relating to planned environmental water

Each management plan to which this Part applies (other than the *Water Sharing Plan for the Toorumbree Creek Water Source 2003*) is amended by inserting after the last clause (with appropriate numbering) in the Part titled “Amendment of this Plan” the following clause:

Amendment relating to planned environmental water

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
 - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
 - (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
 - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

5 Amendment of Water Sharing Plan for the Toorumbree Creek Water Source 2003

The *Water Sharing Plan for the Toorumbree Creek Water Source 2003* is amended by inserting as the final Part (with appropriate Part and clause numbering) the following Part:

Part Amendment of this Plan

Amendment relating to planned environmental water

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
 - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,

-
- (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
 - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

Part 3 Amendment of management plans relating to floodplain harvesting

6 Management plans to be amended

The management plans to which this Part applies are the following:

- (a) *Water Sharing Plan for the Adelong Creek Water Source 2003,*
- (b) *Water Sharing Plan for the Apsley River Water Source 2003,*
- (c) *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003,*
- (d) *Water Sharing Plan for the Commissioners Waters Water Source 2003,*
- (e) *Water Sharing Plan for the Coopers Creek Water Source 2003,*
- (f) *Water Sharing Plan for the Dorrigo Plateau Surface Water Source and Dorrigo Basalt Groundwater Source 2003,*
- (g) *Water Sharing Plan for the Gwydir Regulated River Water Source 2002,*
- (h) *Water Sharing Plan for the Hunter Regulated River Water Source 2003,*
- (i) *Water Sharing Plan for the Jilliby Jilliby Creek Water Source 2003,*
- (j) *Water Sharing Plan for the Kangaroo River Water Source 2003,*

- (k) *Water Sharing Plan for the Karuah River Water Source 2003,*
- (l) *Water Sharing Plan for the Lachlan Regulated River Water Source 2003,*
- (m) *Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2003,*
- (n) *Water Sharing Plan for the Mandagery Creek Water Source 2003,*
- (o) *Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003,*
- (p) *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003,*
- (q) *Water Sharing Plan for the Ourimbah Creek Water Source 2003,*
- (r) *Water Sharing Plan for the Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003,*
- (s) *Water Sharing Plan for the Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003,*
- (t) *Water Sharing Plan for the Tarcutta Creek Water Source 2003,*
- (u) *Water Sharing Plan for the Tenterfield Creek Water Source 2003,*
- (v) *Water Sharing Plan for the Toorumbbee Creek Water Source 2003,*
- (w) *Water Sharing Plan for the Upper Billabong Water Source 2003,*
- (x) *Water Sharing Plan for the Upper Brunswick River Water Source 2003,*
- (y) *Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003,*
- (z) *Water Sharing Plan for the Wandella Creek Water Source 2003,*
- (aa) *Water Sharing Plan for the Wybong Creek Water Source 2003.*

7 Amendment of management plans relating to floodplain harvesting

Each management plan to which this Part applies (other than the Plan referred to in clause 6 (v)) is amended by inserting as the

final clause (with appropriate numbering) in the Part titled “Amendment of this Plan” the following clause:

Amendment of Plan relating to floodplain harvesting

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:

- (a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the Plan, or
- (b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray-Darling Basin Act 1992*.

8 Amendment of Water Sharing Plan for the Toorumbree Creek Water Source 2003

The *Water Sharing Plan for the Toorumbree Creek Water Source 2003* is amended by inserting as the final clause (with appropriate numbering) the following clause:

Amendment of Plan relating to floodplain harvesting

The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:

- (a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the plan, or
- (b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the *Murray-Darling Basin Act 1992*.

[59] Dictionary

Omit “section 71L” from the definition of *access licence dealing principles*.
Insert instead “section 71Z”.

[60] Dictionary

Insert in alphabetical order:

adaptive environmental water condition means a condition imposed on an access licence of a type referred to in section 8 (1) (b).

[61] Dictionary

Omit “Land and Water Conservation” from the definition of *Department*.
Insert instead “Natural Resources”.

[62] Dictionary

Insert after paragraph (d) of the definition of *general dealing*:

(da) the grant of an access licence on an application under section 74,

[63] Dictionary

Insert after paragraph (c) of the definition of *Ministerial action*:

(ca) the grant of an access licence under section 8C or the imposition, revocation or amendment of an adaptive environmental water condition under section 8B, 8C or 8D,

Schedule 2 Amendment of Water Management Act 2000 relating to irrigation corporations

(Section 3)

[1] Section 71ZA

Insert after section 71Z:

71ZA Removal of certain restrictions on dealings relating to irrigation corporations

- (1) This section applies only in respect of regulated river (high security) access licences and regulated river (general security) access licences held by an irrigation corporation, but does not apply to any subcategory of those categories of access licence.
- (2) The Minister may order an irrigation corporation to pay a civil penalty under this section if:
 - (a) any provision of its constitution, of any contract entered into by it with a member of the corporation or of any other document associated with the operation of the corporation (such as transfer rules of the corporation) prevents, or
 - (b) the irrigation corporation conducts its operations so as to prevent,
arrangements being made for the reduction in the share component of an access licence held by it for the purpose of permanently transferring a member's entitlement to water under the access licence to another access licence that is not held by the irrigation corporation.
- (3) Subsection (2) does not apply to a provision referred to in subsection (2) (a), or to the conduct of the operations of an irrigation corporation in a manner, that prevents a transfer that would result in the share component of an access licence held by the irrigation corporation being reduced, in any period commencing on 1 July in any year and ending on 30 June (inclusive) in the following year, by an amount of more than 4% of the share component that applied to the access licence at the beginning of that period.
- (4) If an irrigation corporation holds more than one access licence to which this section applies, the percentage referred to in subsection (3) is to be calculated on the basis of the combined share component of all of those access licences held by the corporation.

Water Management Amendment Act 2005 No 118

Schedule 2 Amendment of Water Management Act 2000 relating to irrigation corporations

- (5) The regulations may alter the percentage of share component referred to in subsection (3).
- (6) A regulation that increases the percentage of the share component applying under subsection (3) is to provide for the increase to take effect no earlier than 6 months after the regulation commences.
- (7) The Minister may order a civil penalty to be paid under this section of an amount not exceeding \$500,000 and a further civil penalty of an amount not exceeding \$20,000 to be paid for each day that the circumstances giving rise to the initial civil penalty continue to exist.
- (8) For the purpose of enabling compliance with subsection (2), an irrigation corporation may amend any water supply contract to which it is a party.
- (9) Any amendment of a water supply contract under subsection (8) is to be notified by the irrigation corporation to the member of the corporation who is a party to the contract and is taken to have been accepted by the member when notification is served on the member.
- (10) No claim, action or demand may be made, asserted or taken against an irrigation corporation for anything done by the corporation in accordance with this section.
- (11) In this section, *water supply contract* means a contract entered into by an irrigation corporation with a member of the corporation relating to the supply of water to the member by the corporation.

[2] Section 368 Appeals to Land and Environment Court

Insert after section 368 (1) (l):

- (la) a decision ordering an irrigation corporation to pay a civil penalty to the Minister,

Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 1998

(Section 4)

Clause 56A

Insert after clause 56:

56A Exemption from water pollution offence in relation to cold water releases

Section 120 of the Act does not apply to the release of water that is more than 2 degrees Celsius colder than the water into which it is discharged if the water is released from a water supply work pursuant to an approval under the *Water Management Act 2000* that contains one or more conditions relating to the work of a type specified in section 100 (3) of that Act.

[Second reading speech made in—

Legislative Assembly on 17 November 2005

Legislative Council on 1 December 2005]

BY AUTHORITY