

[Act 2002 No 138]



New South Wales

Water Management Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. *

Overview of Bill

The object of this Bill is to amend the *Water Management Act 2000* so as:

- (a) to make further provision with respect to management plans under Chapter 2 of that Act (**Schedule 1**), and
- (b) to make further provision with respect to access licences under Part 2 of Chapter 3 of that Act (**Schedule 2**), and
- (c) to make further provision with respect to approvals under Part 3 of Chapter 3 of that Act (**Schedule 3**), and
- (d) to make further provision with respect to a number of miscellaneous matters under that Act, including Snowy water licences, enforcement directions, discharges into sewerage systems, savings and transitional provisions and certain definitions (**Schedule 4**).

The Bill also makes consequential amendments to the *Conveyancing Act 1919*, the *Land and Environment Court Act 1979*, the *Rivers and Foreshores Improvement Act 1948* and the *Water Act 1912* (**Schedule 5**).

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the Schedules of amendments to the *Water Management Act 2000*.

Clause 4 is a formal provision giving effect to the Schedule of amendments to the *Conveyancing Act 1919*, the *Land and Environment Court Act 1979*, the *Rivers and Foreshores Improvement Act 1948* and the *Water Act 1912*.

Schedule 1 Amendment of Water Management Act 2000 in relation to management plans

Matters for consideration in management plans

Section 18 requires a management committee to have regard to socio-economic impacts when formulating a management plan. **Schedule 1 [1]** amends section 18 to enable regard to be had also to activities occurring beyond the area or water source concerned.

Access licence dealing rules

Section 20 requires a management plan to establish “transfer rules” for the area to which it relates. These rules govern the way in which an application for approval for the transfer of an access licence is to be dealt with. Proposed section 20 (1) (d) (as inserted by **Schedule 1 [6]**) will require a management plan to establish “access licence dealing rules” to regulate all of the various dealings contemplated by proposed sections 71A to 71J (as inserted by proposed **Schedule 2 [20]**). In the same way as the current transfer rules must comply with higher transfer principles, so also will the proposed access licence dealing rules be required to comply with higher access licence dealing principles.

Minor, consequential and ancillary matters

Schedule 1 also contains a number of other amendments of a minor, consequential or ancillary nature.

Schedule 2 Amendment of Water Management Act 2000 in relation to access licences

Differential introduction of new regime

It is proposed that the transition from the existing regime under the *Water Act 1912* to the new regime under the *Water Management Act 2000* in relation

to access licences will take place at different times for different parts of the State, different water sources and different categories of access licence. This is achieved by proposed section 55A (as inserted by **Schedule 2 [1]**) in conjunction with complementary provisions in the *Water Act 1912* (as inserted by **Schedule 5.4**).

Form and content of access licences

Schedule 2 [9] amends section 63 so as to make it clear what provisions must be included in an access licence to describe its share and extraction components. It also allows an access licence to be issued with zero share and zero extraction components, and provides that an access licence that is held by two or more persons is held by them as tenants in common in equal shares unless they have specified otherwise in the application for the licence.

Priorities between access licences

Section 58 establishes the relative priorities between different categories of access licence. **Schedule 2 [4]** amends section 58 so that the new priorities will be as follows: local water utility, major utility and domestic and stock access licences to have first priority, regulated river (high security) access licences to have second priority, other licences (apart from supplementary water access licences) to have third priority and supplementary water access licences to have the lowest priority.

Dealings with access licences

Three kinds of dealing (transfers of access licences, transfers of water allocations and interstate transfers of access licences) are currently provided for in sections 72 to 74. **Schedule 2 [20]** omits those sections and replaces them with new sections 71A to 71L, as follows:

- (a) proposed section 71A (equivalent to current section 72) provides for the transfer of an access licence from one person to another,
- (b) proposed section 71B provides for the conversion of an access licence from one category (such as a regulated river (high security) access licence) to another (such as a regulated river (general security) access licence),
- (c) proposed section 71C provides for subdivision and consolidation of access licences,
- (d) proposed section 71D provides for the assignment of rights under an access licence, even to the extent of reducing the share and extraction components of an access licence to zero,
- (e) proposed section 71E provides for the cancellation and re-issue of an access licence so as to vary the water management area or water source to which its share component relates,

- (f) proposed section 71F provides for the amendment of the extraction component of an access licence so as to vary the times, rates or circumstances in which, or the areas or locations from which, water may be taken under the licence,
- (g) proposed section 71G (equivalent to current section 73) provides for the assignment of water allocations from one access licence to another,
- (h) proposed section 71H (equivalent to current section 74) provides for the granting or revocation of access licences to give effect to a transfer of access licences pursuant to an interstate agreement,
- (i) proposed section 71I provides for the crediting and debiting of water allocations to an access licence to give effect to an interstate agreement,
- (j) proposed section 71J provides for the amendment of an access licence so as to nominate a water supply work, or group of water supply works, as a work or group of works by which water allocations under the licence may be taken, relevant to amendments proposed to be made to section 341, and so as to withdraw such a nomination,
- (k) proposed section 71K requires an application for a dealing referred to above:
 - (i) to be dealt with in accordance with the water management principles (established by section 5), the relevant access licence dealing rules (to be established under section 20, as amended by **Schedule 1 [5] and [8]**) and the access licence dealing principles (to be established under proposed section 71L), and
 - (ii) to have the consent of each co-holder of the access licence or licences concerned and (except for applications under proposed section 71G or 71I) of each other person having a registered interest in the licence or licences concerned,
- (l) proposed section 71L provides for the establishment of access licence dealing principles to regulate the formulation of access licence dealing rules, to regulate or prohibit dealings referred to above and to establish conversion ratios applicable to the share components of access licences following such a dealing.

Separation of share and extraction components of access licences

Section 56 currently contemplates that separate access licences may in some cases be issued for the share and extraction components of an access licence. **Schedule 2 [2]** repeals the provisions that enable this to occur.

Registration of interests in access licences

The registration of access licences, including third party interests in access licences, is currently dealt with by section 83. **Schedule 2 [25]** repeals this section and replaces it with new sections, as follows:

- (a) proposed section 83 provides for a register of access licences to be kept, in which various dealings and actions under the Act are to be recorded,
- (b) proposed section 83A provides that an access licence is to be taken to be personal property, where proprietary interests that are registered in the General Register of Deeds (kept under Part 23 of the *Conveyancing Act 1919*) have priority over unregistered and later registered interests and have effect despite the provisions of the *Corporations Act 2001* of the Commonwealth.

Transitional provisions for existing entitlements

Schedule 2 [36] amends clause 9 of Schedule 9 so as:

- (a) to ensure that co-holders of an existing entitlement will hold an access licence arising from the entitlement as tenants in common in equal shares unless they have previously notified the Minister to the contrary, and
- (b) to ensure that such an access licence is to include any mandatory conditions required by any relevant management plan to be included in the licence.

Schedule 2 [38] inserts new clauses into Schedule 9, as follows:

- (a) proposed clause 9A sets out a procedure for enabling persons holding interests in existing entitlements, or in land the subject of existing entitlements, to register those interests in the General Register of Deeds and retain their current priorities,
- (b) proposed clause 9B enables the Minister to convert the share components of an access licence arising from an existing entitlement from a volumetric to a proportional basis, and to apply uniform extraction components over similar kinds of access licences arising under such entitlements,
- (c) proposed clause 9C enables the regulations to create supplementary water access licences for certain persons who have previously benefited from directions under section 20AA of the *Water Act 1912* or who have previously held additional licences under section 18 (2) of that Act.

Minor, consequential and ancillary matters

Schedule 2 also contains a number of other amendments of a minor, consequential or ancillary nature, including a substituted definition of *water source* in the Dictionary.

Schedule 3 Amendment of Water Management Act 2000 in relation to approvals

Differential introduction of new regime

It is proposed that the transition from the existing regime under the *Water Act 1912* to the new regime under the *Water Management Act 2000* in relation to approvals will take place at different times for different parts of the State and different types or kinds of approval. This is achieved by proposed section 88A (as inserted by **Schedule 3 [1]**) in conjunction with complementary provisions in the *Rivers and Foreshores Improvement Act 1948* (as inserted by **Schedule 5.3**) and the *Water Act 1912* (as inserted by **Schedule 5.4**).

Grounds of refusal of certain applications

Schedule 3 [5] amends section 97 so as to allow an approval for a work to be granted without the applicant having to own the land, or an easement over the land, on which the work is to be situated so long as the applicant is legally entitled to construct and use the work on that land.

Joint schemes

Schedule 3 [7] substitutes section 101 so as to extend that section to all water management works the subject of a joint scheme, not just water supply works, and so as to allow the statutory conditions to which an approval for a work the subject of a joint scheme to include conditions agreed to by the various landholders affected by the scheme.

Minor, consequential and ancillary matters

Schedule 3 also contains a number of other amendments of a minor, consequential or ancillary nature, including amended definitions of *construct*, *drainage work*, *flood work*, *use* and *water supply work* in the Dictionary.

Schedule 4 Amendment of Water Management Act 2000 in relation to other matters

Snowy water licences

Schedule 4 [28] amends section 372 so as to require the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the *Snowy Hydro Corporatisation Act 1997* consistently with the terms of the *Snowy Water Inquiry Outcomes Implementation Deed* entered into by the Commonwealth, New South Wales and Victoria on 3 June 2002.

Enforcement directions

Schedule 4 [17] inserts proposed section 336A which provides that directions under Part 1 of Chapter 7 (being directions in relation to enforcement of the Act) may be given not only with respect to water management works generally but also to water management works as defined in Part 2 of Chapter 6 (being works that include water supply works and sewage works to which that Part applies).

Discharges into sewerage systems

Schedule 4 [9] amends section 310 to ensure that a water supply authority can impose fees and charges with respect to discharges into its sewerage system.

Schedule 4 [15] amends section 322 to ensure that regulations may be made with respect to all discharges into a water supply authority's sewerage system, not just discharges of trade waste as is currently the case.

Minor, consequential and ancillary matters

Schedule 4 also contains a number of other amendments of a minor, consequential or ancillary nature, including:

- (a) a provision that will allow the savings and transitional provisions set out in Schedule 9 to be over-ridden by regulations, and
- (b) a number of new definitions in section 283 (relevant to the interpretation of the water supply authority provisions in Part 2 of Chapter 6), and
- (c) the amendment, substitution, insertion or repeal of definitions of *drainage work*, *estuary*, *lake*, *river*, *sewage work*, *statutory body* and *waterfront land*.

Schedule 5 Amendment of other Acts

Conveyancing Act 1919 No 6

Schedule 5.1 amends sections 184C and 184G as a consequence of the proposed insertion of section 83A into the *Water Management Act 2000*.

Land and Environment Court Act 1979 No 204

Schedule 5.2 amends section 20 so as to enable appeals to be made to the Land and Environment Court under sections 335 and 336 of the *Water Management Act 2000*.

Rivers and Foreshores Improvement Act 1948 No 20

Schedule 5.3 [1] inserts section 22M to reflect the differential introduction of Part 3 of Chapter 3 of the *Water Management Act 2000* to be effected under proposed section 88A of that Act.

Schedule 5.3 [2] amends section 25 so as to exclude the regulations under the Act from the operation of Part 3 of the *Subordinate Legislation Act 1989* pending the repeal of the *Rivers and Foreshores Improvement Act 1948*.

Water Act 1912 No 44

Schedule 5.4 [2], [4], [6] and [8] insert sections 27A, 129A, 186A and 202A to reflect the differential introduction of Parts 2 and 3 of Chapter 3 of the *Water Management Act 2000* to be effected under proposed section 55A of that Act.

Schedule 5.3 [1], [3], [5] and [7] amend sections 27, 129, 185 and 201 so as to exclude the regulations under the Act from the operation of Part 3 of the *Subordinate Legislation Act 1989* pending the repeal of the *Water Act 1912*.