

[Act 1997 No 128]



New South Wales

Water Legislation Amendment Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Water Act 1912* so as:
 - (i) to provide for declaration of certain statutory bodies as water management authorities and the licensing of water management works operated by water management authorities so declared, and
 - (ii) to alter the existing 5 year limit on temporary transfers of water allocations on regulated river systems, and
 - (iii) to subject the taking of water from bores licensed under Part 5 of that Act to a similar regime to that which applies to the taking of water from works licensed under Part 2 of that Act, and
- (b) to make minor, consequential and ancillary amendments to various other Acts.

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

Outline of provisions

Clause 1 sets out 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 amendments to the *Water Act 1912* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Water Act 1912

Water management authorities

Proposed Part 9 of the *Water Act 1912* (proposed sections 187–203 to be inserted by Schedule 1 [21]) enables the Governor, by proclamation, to declare any body to be a water management authority. The effect of the declaration will be to include the name of the body in Schedule 3 to that Act. Two such bodies, Sydney Water Corporation Limited and Hunter Water Corporation Limited, are to be included in Schedule 3 without the need for such a proclamation.

A water management authority will be required to be licensed (proposed section 195). A licence will have an initial life of up to 20 years, extendible every 5 years for a further 5 year period (proposed section 190). The licence will authorise the water management authority to take and use water from any water source and to construct and use water management works (proposed section 191). The licence will be subject to review at any time, but with mandatory reviews at the end of the first 6 months after the licence is granted and at the end of every 5 years thereafter (proposed section 193). The conduct of the review will involve the Water Administration Ministerial Corporation calling for public submissions concerning the activities of the water management authority over the previous 5 years. The results of the review will be used to determine what conditions need to be imposed on the water management authority's licence and whether it is appropriate to grant the water management authority a 5 year extension of its licence.

The Ministerial Corporation will be empowered to issue directions to a water management authority to ensure that it complies with the conditions of its licence (proposed section 192). Those directions may be enforced by the

Land and Environment Court. The Ministerial Corporation will also be able to issue directions to a water management authority with respect to the taking of preventive or remedial action and, where such action is not taken, to authorise any other person to take that action at the expense of the water management authority (proposed section 197). The Ministerial Corporation will have the power to impose a civil penalty of up to \$500,000, together with a daily penalty of up to \$20,000, on a water management authority that contravenes the conditions of its licence or failed to comply with a direction to take preventive or remedial action (proposed section 198).

An appeal will lie to the Land and Environment Court against decisions under the proposed Part that are made by the Ministerial Corporation with respect to a water management authority (proposed section 199).

Alteration of 5 year limit on temporary transfers of water allocations

Section 20AI of the *Water Act 1912* provides for the transfer of water allocations with respect to regulated river systems. Temporary transfers (that is, transfers for a period of up to 5 years) can be effected by a simpler procedure than transfers for a longer period. The calculation of the 5 year period is cumulative, taking account of previous transfers that have been approved. It is proposed to alter the 5 year limit in two ways.

Firstly, by allowing the 5 year period to be exceeded when an approved farm water management plan is in place. In determining whether to approve such a plan, in circumstances involving a significant increase in water consumption by the proposed transferee, the Ministerial Corporation will be required to seek, and have regard to, public submissions (proposed section 20AI (3A)–(3C) to be inserted by Schedule 1 [1]).

Secondly, by allowing certain transfers to be ignored when considering the cumulative effect of previous transfers. The transfers to be ignored are those that are merely intended to maintain the transferee's water consumption at the level to which the transferee would ordinarily be entitled in circumstances where that entitlement has been reduced under section 20Z of the Act in times of water shortage (proposed section 20AI (3D) to be inserted by Schedule 1 [1]).

Licensing regime under Part 5 for water bores

Schedule 1 [4]–[20] contains amendments that subject the licensing regime for the construction and use of bores under Part 5 of the Act to similar provisions to those to which the licensing regime for the construction and use

of works under Part 2 of the Act are subject. In particular, the amendments provide for the issue of an embargo on the granting of new licences (proposed section 113A), the imposition of limitations and conditions on licences from time to time (proposed section 116C), the reduction in water allocations in times of water shortage (proposed section 117E), the increase in water allocations in times of water surplus (proposed section 117F), the borrowing and carrying over of water allocations from year to year (proposed section 117G) and the transfer of water allocations (proposed section 117J). Other amendments of a minor, consequential or ancillary nature are also made.

Schedule 2 Amendment of other Acts

The other Acts that are proposed to be amended (Schedule 2) are as follows:

- *Hunter Water Board (Corporatisation) Act 1991 No 53*
- *Land and Environment Court Act 1979 No 204*
- *Rivers and Foreshores Improvement Act 1948 No 20*
- *Water Administration Act 1986 No 195*
- *Water Board (Corporatisation) Act 1994 No 88*
- *Water Supply Authorities Act 1987 No 140*

The amendments to the *Hunter Water Board (Corporatisation) Act 1991*, the *Water Board (Corporatisation) Act 1994* and the *Water Supply Authorities Act 1987* will repeal the power of Hunter Water Corporation Limited, Sydney Water Corporation Limited and water supply authorities under the *Water Supply Authorities Act 1987* to exercise the rights conferred on the Water Administration Ministerial Corporation with respect to the use and flow, and the control, of water.

The amendments to the *Rivers and Foreshores Act 1948* will require the Land and Environment Court to have regard to any relevant Government policies and rivers and foreshores management objectives when exercising its appeal functions under section 22L of that Act.

The amendments to the *Water Administration Act 1986* will require the Water Administration Ministerial Corporation to have regard to principles of ecologically sustainable development, and to other environmental concerns, in the exercise of its functions.