

[Act 2000 No 92]



New South Wales

Water Management Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for the protection, conservation and ecologically sustainable development of the water sources of the State, and
- (b) to repeal certain Acts, to amend certain other Acts and to enact savings and transitional provisions consequent on the enactment of the proposed Act, and
- (c) to make other provisions of a minor, consequential or ancillary nature.

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

Outline of provisions

Chapter 1 Preliminary

Chapter 1 contains provisions dealing with the name of the proposed Act, its commencement, its objects and its interpretation.

Chapter 2 Water resource planning

Part 1 Water sharing principles

Part 1 contains provisions establishing water sharing principles and environmental water principles, and provides for the classification of water sources.

Part 2 Management committees

Part 2 contains provisions with respect to the constitution of water management areas, the establishment of management committees for those areas, the membership of those committees and the functions that those committees may exercise.

Part 3 Management plans

Division 1 contains provisions with respect to how a management plan comes to be prepared and what, in general terms, a management plan is to deal with.

Division 2 contains provisions specific to management plans that deal with water sharing.

Division 3 contains provisions specific to management plans that deal with water source protection.

Division 4 contains provisions specific to management plans that deal with drainage management.

Division 5 contains provisions specific to management plans that deal with floodplain management.

Division 6 contains provisions with respect to the procedures to be followed in making a management plan, including provisions for public exhibition, notification of major stakeholders and consultation with the Minister for the Environment.

Division 7 contains a provision that enables the Minister to vary the bulk access regime of a management plan when of the opinion that it is necessary to do so in the public interest.

Division 8 contains provisions with respect to the validity and effect of a management plan.

Part 4 Minister's plans

Part 4 contains a single provision that empowers the Minister to make plans for areas that are not within a water management area, for water management areas that are not yet the subject of a management plan and for matters not dealt with by management plans. Generally speaking, a Minister's plan is to have the same effect as a management plan.

Part 5 Implementation programs

Part 5 contains a single provision that empowers the Minister to develop programs to implement management plans and Minister's plans. Implementation programs relating to management plans will be developed in conjunction with the management committee by which the management plan was prepared.

Chapter 3 Water resource management

Part 1 Basic landholder rights

Division 1 contains a single provision conferring rights on landholders to take and use water for domestic and stock purposes without the need for any access licence or approval.

Division 2 contains provisions conferring rights on landholders within a harvestable rights area to collect and store rainwater run-off.

Part 2 Access licences

Division 1 defines the rights conferred by an access licence, and provides for the various categories of access licences that may be granted and the relative priorities between them. The Division also provides for the making of “available water determinations” which, together with an access licence, determine when and how the holder of an access licence may take water under the licence.

Division 2 contains provisions with respect to the procedures to be followed for the grant and renewal of access licences.

Division 3 contains provisions with respect to the conditions that may be imposed on access licences (including mandatory conditions arising from management plans and Minister’s plans) and the period for which access licences are to be in force (20 years for public utilities, 15 years generally and 2 years for access licences for “opportunistic water”).

Division 4 contains provisions with respect to the transfer of access licences and the water allocations under them in accordance with specified transfer rules to be established by management plans and Minister’s plans.

Division 5 contains provisions enabling water allocations to be recredited to access licences in accordance with specified water return flow rules to be established by the Minister.

Division 6 contains provisions with respect to the surrender, suspension, cancellation and compulsory acquisition of access licences. Compensation for access licences compulsorily acquired will be determined by the Valuer-General whose decisions will be appealable to the Land and Environment Court.

Division 7 contains provisions enabling the Minister to declare embargoes on applications for access licences.

Division 8 contains provisions with respect to records and registration.

Division 9 contains a provision that provides for the payment of compensation to the holders of access licences who are adversely affected as a consequence of a variation to a bulk access regime that is made by the Minister under proposed section 38.

Division 10 contains a provision with respect to the making of regulations.

Part 3 Approvals

Division 1 contains provisions describing the various kinds of approval that may be granted (water use approvals, water management work approvals and activity approvals) and empowers the Minister to grant temporary exemptions from the requirements for an approval.

Division 2 contains provisions with respect to the procedures to be followed for the grant of an approval. In some cases, applications will have to be advertised and third party objections may be made. The approval process is linked into the integrated development procedures of the *Environmental Planning and Assessment Act 1979*.

Division 3 contains provisions with respect to the conditions that may be imposed on approvals (including mandatory conditions arising from management plans and Minister's plans) and the period for which approvals are to be in force (20 years for water management work approvals, 10 years for water use approvals and aquifer interference approvals and 3 years for controlled activity approvals).

Division 4 contains provisions with respect to the amendment, surrender, suspension and cancellation of approvals.

Division 5 contains provisions enabling the Minister to declare embargoes on applications for approvals.

Division 6 contains provisions with respect to the keeping of registers in relation to approvals.

Part 4 Finance

Part 4 contains provisions with respect to the recovery of administrative costs, the establishment of guidelines for charges and other matters relating to costs and charges.

Chapter 4 Joint private works

Part 1 Irrigation corporations

Division 1 applies Part 1 to existing irrigation corporations and defines certain expressions used in the Part.

Division 2 contains provisions with respect to the functions of irrigation corporations.

Division 3 contains provisions with respect to the operating licences under which irrigation corporations conduct their affairs.

Division 4 contains administrative provisions with respect to irrigation corporations.

The provisions of this Part replicate such of the provisions of the *Irrigation Corporations Act 1994* as are still relevant to irrigation corporations.

Part 2 Private irrigation districts

Division 1 applies Part 2 to both new and existing private irrigation districts and defines certain expressions used in the Part.

Division 2 contains provisions with respect to the constitution of lands as a private irrigation district on the petition of landholders within the proposed district.

Division 3 contains provisions with respect to the establishment of a private irrigation board for a private irrigation district so constituted.

Division 4 empowers a private irrigation board to construct new water supply works and take over existing water supply works.

Division 5 contains provisions with respect to the payment of compensation by a private irrigation board.

Division 6 contains provisions with respect to the fixing, assessment and levying of rates and charges by a private irrigation board.

Division 7 contains provisions with respect to the supply of water by a private irrigation board to landholders within its district.

Division 8 contains provisions with respect to the effects of subdividing land within a private irrigation district in relation to water allocations.

Division 9 contains provisions with respect to meetings of landholders within a private irrigation district.

Division 10 contains provisions with respect to certain financial matters.

Division 11 contains administrative provisions with respect to private irrigation boards.

The provisions of this Part replicate provisions of the *Private Irrigation Districts Act 1973*.

Part 3 Private drainage boards

Division 1 applies Part 3 to existing drainage boards and defines certain expressions used in the Part.

Division 2 contains provisions with respect to the constitution and functions of private drainage boards.

Division 3 contains provisions with respect to the fixing, assessment and levying of rates by a private drainage board.

Division 4 contains provisions with respect to the valuation for rating purposes of land within a private drainage board's district.

Division 5 contains provisions with respect to the effects of subdividing land within a drainage district in relation to the use of drainage works.

Division 6 contains administrative provisions with respect to private drainage boards.

The provisions of this Part replicate such of the provisions of the *Drainage Act 1939* as are still relevant to private drainage boards.

Part 4 Private water trusts

Division 1 applies Part 4 to existing water supply trusts and defines certain expressions used in the Part.

Division 2 contains provisions with respect to the constitution and functions of private water trusts.

Division 3 contains provisions with respect to the functions exercisable by private water trusts in connection with the supply of water to land within the trust district.

Division 4 contains provisions with respect to the fixing, assessment and levying of rates by a private water trust.

Division 5 contains provisions with respect to the effects of subdividing land within a water supply district in relation to water allocations.

Division 6 contains administrative provisions with respect to private water trusts.

The provisions of this Part replicate such of the provisions of Part 3 of the *Water Act 1912* as are still relevant to private water trusts.

Chapter 5 Public works

Part 1 Fish River water supply works

Division 1 defines certain expressions used in Part 1, vests the control of the Fish River water supply works in the Minister and empowers the Minister to repair those works.

Division 2 contains provisions with respect to the supply of water from the Fish River water supply works.

Division 3 contains provisions with respect to the establishment of special areas within which public and private development are to be controlled under the proposed Act.

Division 4 contains provisions with respect to the accounting procedures to be observed in relation to the Fish River water supply works.

Division 5 contains provisions empowering regulations to be made with respect to specified matters.

The provisions of this Part replicate such of the provisions of the *Fish River Water Supply Administration Act 1945* as are still relevant.

Part 2 Hunter Valley flood mitigation works

Division 1 applies Part 2 to the Hunter Valley, and defines certain expressions used in the Part.

Division 2 confers certain powers on the Minister with respect to the construction of works and the restriction of certain activities that might adversely affect flood mitigation works.

Division 3 contains provisions with respect to the contributions to be made by local councils, public authorities and the Hunter Catchment Management Trust towards the costs of constructing and maintaining flood mitigation works within the Hunter Valley.

Division 4 contains administrative provisions with respect to the Hunter Valley flood mitigation works.

The provisions of this Part replicate such of the provisions of the *Hunter Valley Flood Mitigation Act 1956* as are still relevant.

Part 3 Lowbidgee flood control and irrigation works

Part 3 empowers the Minister to supply water by way of flood irrigation to landholders within the Lowbidgee flood control and irrigation district, and to levy rates in connection with that supply.

The provisions of this Part replicate such of the provisions of Part 7 of the *Water Act 1912* as are still relevant.

Chapter 6 Public utilities

Part 1 Major utilities

Division 1 contains provisions with respect to the declaration of certain public utilities as major utilities and certain other administrative provisions.

Division 2 contains provisions with respect to the granting of water authorisations to major utilities. A water authorisation is a substitute for a water management work approval under Part 3 of Chapter 3.

Division 3 contains provisions enabling the Minister to give, and enforce, directions for the carrying out of remedial work.

Division 4 contains provisions with respect to rights of appeal to the Land and Environment Court.

The provisions of this Part replicate such of the provisions of Part 9 of the *Water Act 1912* as are still relevant.

Part 2 Water supply authorities

Division 1 defines certain expressions used in Part 2.

Division 2 contains provisions with respect to the constitution of water supply authorities.

Division 3 contains provisions with respect to the functions of water supply authorities.

Division 4 contains provisions with respect to the establishment of special areas within which public and private development are to be controlled under the proposed Act.

Division 5 contains provisions with respect to compliance certificates issued by water supply authorities (for use in connection with the subdivision and development of land) and for developer contributions to a water supply authority's costs of augmenting water, sewerage and drainage works.

Division 6 contains provisions with respect to the fixing, assessment and levying of service charges and other charges.

Division 7 contains administrative provisions with respect to water supply authorities.

The provisions of this Part replicate such of the provisions of the *Water Supply Authorities Act 1987* as are still relevant.

Chapter 7 Enforcement

Part 1 Directions to landholders and other persons

Part 1 enables the Minister to give directions to landholders and other persons for the purpose of enforcing compliance with the requirements of the proposed Act. The Part also allows the Minister to do whatever is necessary to give effect to a direction that is not complied with, and to recover the costs of so doing from the person to whom the direction was given. The Part also empowers the Minister to seek injunctions from the Land and Environment Court to restrain a breach of the proposed Act.

Part 2 Powers of entry

Part 2 gives certain powers of entry onto private land, and regulates the manner in which such powers are to be exercised.

Part 3 Offences

Division 1 contains provisions creating a number of major offences (that is, offences that carry maximum penalties of \$275,000 if committed by corporations and \$132,000 if committed by individuals).

Division 2 contains provisions creating a number of minor offences (that is, offences that carry lesser maximum penalties).

Part 4 Recovery of rates and charges

Part 4 contains provisions with respect to the recovery of rates and charges, whether by private bodies under Chapter 4 or public authorities under Chapters 5 and 6. Unpaid rates and charges are to be a charge on land, enforceable (in the case of rates and charges owed to the Minister or a water supply authority) by compulsory sale of land. Interest on unpaid rates and charges will be payable at the current rate for unpaid judgments of the Supreme Court. There will be provision for the issuing of certificates as to the amount of unpaid rates or charges in relation to specified land, such a certificate to be conclusive proof of its contents in favour of the person to whom it is issued or to a purchaser of the land.

Part 5 Legal proceedings and appeals

Division 1 contains a number of miscellaneous provisions with respect to legal proceedings. In particular, it allows proceedings for offences to be taken before the Land and Environment Court or a Local Court, and limits a Local Court in relation to the maximum penalties that it may impose for an offence. The Division also provides for the issuing of penalty notices.

Division 2 provides a right of appeal to the Land and Environment Court against certain decisions under the proposed Act.

Chapter 8 Administration

Part 1 Water Advisory Council

Part 1 contains provisions with respect to the establishment and functions of the Water Advisory Council.

Part 2 Water Administration Ministerial Corporation

Part 2 contains provisions with respect to the constitution and functions of the Water Administration Ministerial Corporation. In particular, the Ministerial Corporation is to be empowered to compulsorily acquire land and is to be a Constructing Authority for the purposes of the *Public Works Act 1912*.

Part 3 General administration

Part 3 contains general provisions with respect to administration, including the appointment of committees, the delegation of functions the appointment of authorised officers, the resolution of disputes between public authorities and the establishment and maintenance of registers.

Chapter 9 Miscellaneous

Chapter 9 contains provisions:

- (a) asserting the State's rights to the control, use and flow of water, and
- (b) abolishing certain common law riparian rights, and
- (c) providing for the service of documents, and
- (d) binding the Crown to the provisions of the proposed Act, and
- (e) excluding personal liability for persons involved in the administration of the proposed Act, and
- (f) excluding Crown liability for failures in water supply, and
- (g) providing for annual reports, and
- (h) providing for the making of regulations, and
- (i) providing for the repeal of certain Acts, the amendment of other Acts, and the enactment of savings and transitional provisions, and
- (j) requiring the proposed Act to be reviewed after 5 years.

Schedule 1 lists the irrigation corporations to which the proposed Act applies.

Schedule 2 lists the major utilities to which the proposed Act applies.

Schedule 3 lists the water supply authorities to which the proposed Act applies.

Schedule 4 lists the lands that are exempt from service charges imposed by water supply authorities.

Schedule 5 deals with the constitution and procedure of water supply authorities.

Schedule 6 deals with the constitution and procedure of the Water Advisory Council and management committees.

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Explanatory note

Schedule 7 lists the Acts to be repealed by the proposed Act.

Schedule 8 contains amendments to other Acts as a consequence of the enactment of the proposed Act.

Schedule 9 contains savings and transitional provisions consequent on the enactment of the proposed Act.

The Dictionary defines certain words and expressions used in the proposed Act.