

New South Wales

Water Management Amendment Bill 2004

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* (the *Principal Act*) to facilitate the commencement of the Act and published water sharing plans and to deal with aspects of the National Water Initiative.

Schedule 1 to the Bill contains amendments to the Principal Act relating to water management plans and other related matters:

- (a) to provide that the Minister for the Environment must concur in the making and amendment of plans by the Minister for Natural Resources (the *Minister*), and
- (b) to enable the Minister to extend water sharing plans on the recommendation of the Natural Resources Commission, and
- (c) to give catchment management authorities a role in water management and to provide a link with catchment action plans, and
- (d) to ensure that plans are not subject to challenge before or after a judicial review period of 3 months, and

(e) to clarify the operation of Minister's plans.

Schedule 2 to the Bill contains amendments to the Principal Act relating to domestic and stock rights and water usage. The amendments limit those rights so as to protect existing such rights and other water rights, and environmental water.

Schedule 3 to the Bill contains amendments to the Principal Act:

- (a) to provide for the keeping of a Water Access Licence Register (the ***Access Register***) in which is to be recorded the grant of water access licences and specified dealings and matters affecting the licences in an analogous way to the recording of various dealings and matters in relation to land in the Register kept under the *Real Property Act 1900*, and
- (b) to categorise the dealings that may be carried out in respect of access licences and to set out the way in which they take effect, and
- (c) to provide for the creation of security interests over water access licences and holdings in access licences by registration of such interests in the Access Register and to confer various rights on the holders of such security interests, and
- (d) to enable caveats to be lodged with respect to the recording of certain matters in the Access Register in an analogous way to the lodging of caveats in relation to various dealings in relation to land in the Register kept under the *Real Property Act 1900*, and
- (e) to enable the holder of an access licence to transfer the water entitlements conferred by the licence to another person for a specified period of not less than 6 months.

Schedule 4 to the Bill contains amendments to the Principal Act:

- (a) to make further provision in relation to the types of access licence, and
- (b) to modify the procedures relating to the granting, surrender, suspension and cancellation of access licences and the recovery of outstanding amounts in relation to access licences, and
- (c) to modify the procedures relating to the keeping of water allocation accounts for access licences and the crediting and debiting of water in relation to those accounts, and
- (d) to change the period for which approvals are granted under the Act and to enable extensions of approvals to be granted, and
- (e) to modify the procedures relating to the granting, amendment, suspension and cancellation of approvals, and
- (f) to make further provision in relation to interstate agreements in respect of access licences and water allocations, and

- (g) to make other miscellaneous amendments in relation to access licences and approvals.

Schedule 5 to the Bill contains a number of miscellaneous amendments to the Principal Act.

Schedule 6 to the Bill contains amendments to the Principal Act:

- (a) to make provision with respect to the conversion of former entitlements to access licences and approvals under the Principal Act, and
- (b) to make further provisions of a savings or transitional nature.

Schedule 7 makes consequential and other amendments to various Acts and an instrument. In particular, Schedule 7.1 amends the *Catchment Management Authorities Act 2003* to provide for:

- (a) the establishment and operation of Environmental Water Trust Funds by catchment management authorities in connection with their environmental water functions, and
- (b) non-regulatory water management provisions to be included in catchment action plans.

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 that gives effect to the amendments to the *Water Management Act 2000* set out in Schedules 1–6.

Clause 4 is a formal provision that gives effect to the amendments to the *Catchment Management Authorities Act 2003*, other Acts and an instrument set out in Schedule 7.

Schedule 1 Amendments relating to plans and other matters

Schedule 1 amends the Principal Act in connection with water management plans and related matters.

Schedule 1 [1] and [10] clarify the classes of environmental water and requirements for environmental water rules. The amendments redefine the classes of environmental water to *planned environmental water* (committed by management plans for fundamental ecosystem health or other environmental purposes) and *adaptive environmental water* (committed by the conditions of

access licences for specified environmental purposes). The amendments retain the obligation for water management plans to contain provision for planned environmental water and require them to provide for adaptive environmental water.

Schedule 1 [2]–[8] contain amendments by way of statute law revision.

Schedule 1 [9] requires management committees in preparing draft water management plans to have regard to the provisions of relevant catchment action plans.

Schedule 1 [11] and [17] clarify the power of the Minister to amend a water management plan. Provision is made to enable a plan to be amended for the purpose of enabling a catchment management authority (or the Minister or other public body) to obtain an access licence for adaptive environmental water resulting from the recovery of water by public expenditure or works. The amendments ensure that any amendment requires the concurrence of the Minister for the Environment.

Schedule 1 [13] clarifies the date from which the 10 year period of a management plan commences.

Schedule 1 [15] deals with replacement plans.

Schedule 1 [16] enables the Minister to extend a water management plan (for a period not exceeding 10 years at any one time). An extension requires:

- (a) a recommendation of the Natural Resources Commission, and
- (b) a public report by the Commission on the performance of the existing plan against State-wide and regional targets.

Schedule 1 [12] and [14] make consequential amendments.

Schedule 1 [18] ensures that water management plans are not subject to challenge before or after the 3 months' judicial review period before the Land and Environment Court.

Schedule 1 [19] and [21] clarify the provisions relating to the making of Minister's plans in areas where there are no plans made following the development and submission of draft plans by management committees. The amendments apply provisions relating to plans prepared by committees but make the various provisions for preparation and exhibition of draft plans and other matters discretionary.

Schedule 1 [20] ensures that any Minister's plan requires the concurrence of the Minister for the Environment.

Schedule 1 [22]–[24] clarify the circumstances in which compensation is payable by the State for reductions in water allocations arising from the Minister’s amendment of a plan. The amendments make it clear that compensation does not arise for reduction resulting from the making of a replacement management plan after the expiry of the 10-year period of an earlier plan.

Schedule 1 [25] establishes the Water Innovation Council to advise the Minister and catchment management authorities on the identification and pursuit of measures for water conservation.

Schedule 1 [26] confers water management functions on catchment management authorities. In particular, functions are conferred relating to assisting the Minister in the development or implementation of management plans, managing adaptive environmental water and monitoring water quality and other environmental health objectives.

Schedule 1 [27] provides definitions of *catchment management authority* and *Natural Resources Commission*.

Schedule 2 Amendments relating to domestic and stock rights and water usage

Schedule 2 [2] amends section 52 of the Principal Act to place restrictions on the authority conferred by that section on the owners or occupiers of land to take and use water for domestic consumption or stock watering without the need for an access licence or approval. **Schedule 2 [1]** makes a consequential amendment to section 52.

Schedule 2 [3] amends section 52 to clarify the meaning of intensive animal husbandry as used in the definition of *stock watering*. Currently, that term is not defined.

Schedule 2 [4] and [5] amend section 323 of the Principal Act:

- (a) to provide that an order made under the section does not expire after 7 days, but has effect until it is repealed or until the expiry of any period specified in the order for its expiry (whichever occurs first), and
- (b) to make it clear that an order under the section prevails against another provision of the Act relating to the distribution, sharing or taking of water to the extent of any inconsistency.

Schedule 2 [6] re-enacts section 325 of the Principal Act. The new section provides that the Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that water taken or used under the authority of a domestic and stock right or domestic and stock access

licence is not wasted. In particular, the new section provides that the Minister may direct a landholder to take specified measures to ensure that such water is used in accordance with guidelines issued by the Minister under the new section.

Schedule 2 [7] amends section 345 of the Principal Act to make it clear that it is an offence for a person to take water in contravention of a direction in force under section 323 of the Act.

Schedule 3 Amendments relating to dealings and other matters

Water Access Licence Register

Schedule 3 [5] inserts a new Division 3A (proposed sections 71–71K) into Part 2 of Chapter 3 of the Principal Act to achieve the object described in paragraph (a) in the matter relating to Schedule 3 of the above Overview. The Division requires the Minister to keep a Water Access Licence Register (the *Access Register*) for the purposes of the Act in a form and manner determined by the Minister (proposed section 71). The Minister is directed to record various matters relating to an access licence in the Access Register (proposed section 71A). These include various Ministerial actions taken in respect of licences, certain dealings in licences, caveats lodged in relation to licences, security interests held over the licences and matters such as devolutions of, and changes in co-holder's tenancy arrangements under, licences. Proposed Schedule 1A (**Schedule 3 [34]**) sets out in detail requirements for registration of these matters and contains various other provisions (Part 3 of proposed Schedule 1A) conferring powers on the Minister in relation to the Minister's functions with respect to the recording of matters in the Access Register.

Matters (other than assignment dealings) required to be recorded in the Access Register have no effect until they are so recorded (proposed section 71B).

Schedule 3 [28] inserts proposed section 87B to enable the Minister to issue access licence certificates for water access licences (similar to certificates of title under the *Real Property Act 1900*). Proposed section 71G (**Schedule 3 [5]**) provides that the Minister may require production of the access licence certificate for an access licence before recording certain matters in the Access Register.

The proposed Division also provides for the creation of security interests in licences (proposed section 71D) and the registration of caveats to prohibit the recording of certain matters in relation to a licence (proposed sections 71E and 71F).

The Minister may cause the Access Register to be searched for information recorded in it (proposed section 71H) and for persons to inspect the Access Register on payment of the approved fee (proposed section 71J). **Schedule 7.4** amends the *Privacy and Personal Information Protection Regulation 2000* to exempt the Minister from the provisions of Part 6 of the *Privacy and Personal Information Protection Act 1998* for the purposes of providing such information.

Provision is also made to enable the Access Register to be corrected and amended (proposed section 71I) and to require the Minister to supply reasons for certain decisions in relation to the Access Register (proposed section 71K).

Schedule 3 [33] amends section 368 of the Principal Act to provide for the making of appeals to the Land and Environment Court against decisions of the Minister with respect to the recording of matters in the Access Register.

The Minister will be able to delegate the Minister's functions in respect of the Access Register (see section 389 of the Principal Act). It is envisaged that some functions will be delegated to the Registrar-General as recording of various dealings and matters in relation to access licences in the Access Register will be done in a way that is analogous to the way dealings and other matters relating to land are recorded in the Register kept under the *Real Property Act 1900*. Accordingly, **Schedule 3 [1] and [30]** amend sections 4 and 88, respectively, to provide for certain terms and expressions to have the same meaning in the Principal Act in relation to access licences as they have in relation to land in the *Real Property Act 1900* and to enable the regulations to apply, adopt or incorporate, whether with or without modification, provisions of that Act or the regulations under it.

Proposed section 88 (e) (**Schedule 3 [29]**) will enable regulations to be made generally with respect to the recording of matters in the Access Register.

Schedule 3 contains a number of consequential amendments, including amendments to sections 63 (6) (b) and (10), 64 (2), 71B (1) and (6), 71C (1) and (6), 71D (1)–(4), 71E (1) and (5), 71F (1), 71G (5), 71H (2) and (3) (b). These omit provisions superseded by the new provisions that provide for dealings and other matters to take effect on being recorded in the Access Register and provisions requiring notice of dealings to be given to the Registrar-General so that they can be recorded in the General Register of Deeds under section 184C (2) (h1) of the *Conveyancing Act 1919* (as this paragraph is to be repealed by **Schedule 7.2 [2]**.)

Proposed section 347A (**Schedule 3 [32]**) creates certain offences in relation to fraudulently obtaining any access licence certificate or recording in the Access Register and makes any recording in the Access Register obtained in contravention of the proposed section void against the parties to the fraud.

Dealings in access licences

Schedule 3 [6] inserts a new section 71L into the Principal Act which sets out how dealings in access licences and holdings in access licences (that is, the shares of the entitlements conferred by access licences held by particular co-holders of the licences) take effect. For this purpose dealings are categorised as general dealings, dealings on default and assignment dealings, and further differentiated according to whether or not the consent of the Minister is required to the dealing concerned. Consequential amendments are made by **Schedule 3 [7]**.

Schedule 3 [35] inserts new definitions of *dealing* in an access licence or holding in an access licence, *general dealing*, *dealing on default* and *assignment dealing*. General dealings are essentially the dealings described in existing sections 71B–71F, 71H and 71J (which are renumbered by **Schedule 3 [25]** as sections 71O–71S, 71U and 71W) and include a new form of dealing, the term transfer (proposed section 71N—**Schedule 3 [6]**). A term transfer of a water licence is similar to a lease of land. Assignment dealings are essentially the dealings described in existing sections 71G and 71I (which are renumbered by **Schedule 3 [25]** as sections 71T and 71V). Dealings on default are a new form of dealing (proposed section 71X—**Schedule 3 [21]**) that enables a security holder (or receiver referred to in section 115A of the *Conveyancing Act 1919*) to take action to transfer a licence or holding in a licence over which a registered security interest is held when the holder of the licence or holding defaults in payment of any debt or obligation secured by the security interest. The section specifies certain action that must be taken before such a transfer can take place, including giving notice to the defaulter and an opportunity to rectify the default and attempting to obtain the highest possible amount for the licence or holding by sale. Failure to take the action as specified can lead to proceedings in the Land and Environment Court to prohibit registration of the transfer or to obtain compensation for resultant loss.

Security interests over access licences and holdings in access licences

Schedule 3 [5] inserts proposed section 71D to provide for the creation of registered security interests over access licences and holdings in access licences that are held as tenants in common. A registered security interest is created by execution of an instrument in the approved form evidencing the existence of a security interest over the licence or holding and registration of the security interest by recording it in the Access Register. The security interest is only effective once recorded in the Access Register. Proposed section 71D (3) provides for registration of the security interest to be dutiable under Chapter 7 of the *Duties Act 1997*. Proposed section 71D does not apply to a security interest arising from an existing mortgage over land referred to in clause 19 of Schedule 10. (Clause 19 sets out a separate scheme for registration of interests

in the nature of security interests in certain entitlements held under the *Water Act 1912* and other Acts to be repealed by the Principal Act.) Consequential amendments are made by **Schedule 3 [36]** to insert definitions of *security holder* and *security interest*.

Proposed Schedule 1A (**Schedule 3 [34]**) sets out in detail requirements for registration of security interests (proposed clause 3) and provides for an earlier registered security interest to have priority, for all purposes, over a later registered security interest (proposed clause 4).

A new form of dealing, a dealing on default (proposed section 71X—**Schedule 3 [21]**), enables a security holder (or receiver referred to in section 115A of the *Conveyancing Act 1919*) to take action to transfer a licence or holding in a licence over which a registered security interest is held when the holder of the licence or interest defaults in payment of any debt or obligation secured by the security interest (see above under the heading “Dealings in access licences”). Provision is also made to enable security holders to protect their interests over a licence or holding by lodgment of caveats (see below).

Caveats

Proposed sections 71E and 71F (**Schedule 3 [5]**) provide for the recording of caveats on access licences and holdings in access licence on the application of holders and co-holders of the licences and holdings, security holders, parties to dealings and prospective dealings in licences and holdings and persons who claim entitlements to the licence or holding by a devolution under proposed section 72. While a caveat remains in force the Minister is prohibited from recording any general dealing, security interest or change in co-holder’s tenancy arrangements in the licence or holding that interferes with the entitlements or rights in respect of the licence or holding claimed by the caveator. Part 2 of proposed Schedule 1A (**Schedule 3 [34]**) contains more detailed provisions about caveats, including provision for the withdrawal of caveats, duration of caveats, notifying the caveator when certain dealings, security interests and other matters are lodged with the Minister for recording in the Access Register and the compensation payable by a caveator in certain circumstances where loss is caused because of the caveat.

Devolution of, and tenancy arrangements and other matters relating to, access licences

Schedule 3 [26] inserts proposed sections 72 and 73.

Proposed section 72 enables a person to whom an access licence or holding in an access licence has devolved by operation of law (for example, a person entitled to a licence or holding through a will or on intestacy, as survivor of a

licence or holding held by joint tenants or by court order) to apply to be recorded in the Access Register as the holder or co-holder of the licence or holding.

An access licence may be co-held as joint tenants, tenants in common or under other arrangements recorded in the Access Register when a licence that is granted is recorded in the Register. Proposed section 73 enables the co-holder of an access licence to apply to the Minister to record in the Access Register any alteration in the way in which the licence is held by co-holders.

Duties Act 1997

Proposed section 88 (3) (**Schedule 3 [30]**) enables regulations to be made excluding a specified class of licence granted under the Principal Act from the operation of section 11 (1) (h) of the *Duties Act 1997*.

Schedule 4 Amendments relating to access licences and approvals

Categories and grant of access licences

Schedule 4 [3] enables the share component of an access licence to be expressed as a specified number of units.

Schedule 4 [4] substitutes section 57 of the Principal Act, which sets out the categories of access licence, to include a further category of a regulated river (conveyance) access licence and to make it clear that the regulations may prescribe subcategories of access licence. A new concept of a *specific purpose access licence* is introduced (**Schedule 4 [51]**) which means a major utility access licence, a local water utility access licence, a domestic and stock access licence, an access licence of a subcategory of access licence or an access licence of a type that is declared by the regulations to be a specific purpose access licence. The Minister is to impose a condition when granting a specific purpose access licence that the licence is to be used only for the purpose for which it was granted (**Schedule 4 [11]**).

Schedule 4 [6] limits the circumstances in which an application may be made for an access licence. The existing provisions enable applications to be made for an access licence subject only to there being no embargo under Division 7 of Part 2 of Chapter 3 on the making of the application or no order of the Minister under section 65 declaring that certain access licences are to be allocated by auction, tender or other specified means. Proposed section 61 (1) provides that a person may only apply for certain types of access licence where the regulations enable, or a water management plan enables, an application to be made, or the application is for an access licence with a zero share component or the person has acquired a right to apply for the licence under section 65. Certain other

applications are permitted under the savings and transitional provisions (see **Schedule 6**). **Schedule 4 [21]** omits the provisions relating to embargoes on access licences.

Schedule 4 [9] substitutes section 65 so as to enable the Minister to make an order declaring that the right to apply for certain access licences is to be acquired by auction, tender or other means specified in the order. The proposed section also enables the Minister to grant an access licence to the Minister, a catchment management authority or other public body in accordance with a water management plan with a condition attached that water credited to the licence is to be used for environmental purposes either generally or at specified times or in specified circumstances. **Schedule 4 [10]** makes a consequential amendment.

Duration, surrender, suspension and cancellation of access licences

Schedule 4 [13] provides that an access licence remains in force until it is cancelled. The existing provisions provide for access licences to remain in force for specified periods and provide for renewals. **Schedule 4 [5], [7], [8], [25] and [48]** remove references to renewals of access licences as there will no longer be renewals.

Schedule 4 [15] provides that if an access licence is surrendered the Minister is to be recorded as the holder of the licence and the Minister may subsequently deal with the licence.

Schedule 4 [16] inserts proposed section 77A which sets out circumstances in which particular types of access licences can be cancelled. For example, a supplementary access licence is to be cancelled when the relevant water management plan ceases to make provision for the extraction of water under the licence and a specific purpose access licence can be cancelled if the Minister is of the opinion that the purpose for which it was granted no longer exists. The existing grounds of suspension and cancellation remain for failure to comply with conditions, commission of certain offences and failure to pay charges. **Schedule 4 [17]** expands those existing grounds to include failure to pay fees and civil penalties in respect of the access licence. **Schedule 4 [19]** contains a consequential amendment.

Schedule 4 [20] requires notice to be given to the holder of an access licence and the holder of any registered security interest in the access licence of the Minister's intention to suspend or cancel the licence.

Schedule 4 [18] sets out the effect of a suspension of an access licence.

Register of available water determinations and water allocation accounts

Schedule 4 [22] inserts a new Division 8A into Part 2 of Chapter 3 of the Principal Act (proposed sections 84–85B) which replaces the existing provisions relating to the register of available water determinations and the keeping of water allocation accounts for access licences.

Proposed section 84 mirrors existing section 84 relating to the register of available water determinations.

Proposed section 85 requires an account to be kept in respect of each access licence to which water is credited or from which water is debited from time to time in accordance with the Principal Act. New provisions are included dealing with the crediting of water to new access licence accounts and the accounting for water acquired by the holder of an access licence as a result of the early release of water by Snowy Hydro Limited in accordance with arrangements entered into with the Minister.

Existing section 85 enables the Minister, if a water management plan provides, to withdraw water because of dam spillage or evaporation from amounts in a water allocation account carried over from one accounting period to another. Proposed section 85 provides that the Minister can make withdrawals in accordance with a water management plan. **Schedule 4 [1]** enables a water management plan to include provisions relating to withdrawal of water from accounts because of dam spillage or evaporation or in any other circumstances prescribed by the regulations.

Proposed section 85A enables the Minister, by order, to make arrangements for the taking of water from uncontrolled flows, in accordance with water management plans, by the holders of certain types of access licences.

Proposed section 85B enables the Minister, if satisfied that the holder of an access licence has illegally taken water, to debit the holder's account with up to 5 times the amount of the water taken and to impose a civil penalty of up to 5 times the amount of the fees or charges for the water. **Schedule 4 [45]** provides for an appeal against such a decision to be made to the Land and Environment Court.

Schedule 4 [52] makes a consequential amendment.

Liability for and recovery of fees, charges and civil penalties in respect of access licences

Schedule 4 [43] inserts proposed Division 2 (sections 362A–362C) into Part 4 of Chapter 7 of the Principal Act relating to the liability for payment, and the recovery of, fees, charges and civil penalties in respect of access licences.

Proposed section 362A provides for the liability of joint owners of an access licence to pay fees, charges and civil penalties.

Proposed section 362B enables the Minister to give a certificate to an applicant stating what amounts of fees, charges and civil penalties are outstanding in respect of an access licence.

Proposed section 362C enables the Minister to recover outstanding fees, charges and civil penalties from the holder of the access licence who incurred them or from the current holder of the access licence. The proposed section also provides that if a person surrenders an access licence the person remains liable for the outstanding fees, charges and civil penalties in respect of the access licence.

Schedule 4 [40], [42] and [47] make consequential amendments.

Granting, duration, amendment, surrender, suspension and cancellation of approvals

Schedule 4 [30] makes it clear that the Minister may grant combined approvals.

Schedule 4 [31] substitutes section 102 of the Principal Act to enable the Minister to vary a condition of an approval rather than having to substitute the condition.

Schedule 4 [32] changes the periods for which an approval remains in force. Generally, approvals will be granted for periods not exceeding 10 years. Approvals granted to major utilities or local water utilities have effect for a period of 20 years (proposed section 104).

Provisions relating to renewals are removed and instead provision is made for the granting of extensions of the periods for which approvals remain in force (proposed section 105). **Schedule 4 [29], [37], [38] and [49]** make consequential amendments.

The current provisions provide that a water use approval or water management work approval is taken to be held by each successive landholder of the land benefited by the approval. **Schedule 4 [33] and [34]** extend those provisions to all types of approvals and enable exemptions to be prescribed by the regulations.

Schedule 4 [35] substitutes section 107 which currently enables amendment of a water management work approval on application so as to enable all types of approval to be amended on application. Certain restrictions apply where an amendment would extend the operation of the approval to additional land.

Schedule 4 [36] includes additional grounds for cancellation of certain types of approvals.

Aquifer interference approvals

An aquifer interference approval may be granted to authorise the carrying out of aquifer interference activities. **Schedule 4 [50]** substitutes the definition of *aquifer interference activity* so as to include the taking of water from an aquifer in the course of carrying out mining or any other activity prescribed by the regulations and the disposal of such water. **Schedule 4 [28]** makes a consequential amendment.

Interstate arrangements in relation to access licences and approvals

Schedule 4 [14] enables a water supply work situated in another State or Territory to be nominated for an access licence in accordance with an interstate arrangement authorised by the Principal Act.

Schedule 4 [27] provides that a water use approval may authorise the use of water within New South Wales taken from a water source outside New South Wales.

Schedule 4 [41] provides that a person is not guilty of an offence of illegally taking water if the person is taking the water in accordance with an interstate agreement authorised under the Principal Act.

Schedule 4 [46] enables the Minister to enter into arrangements with the Minister of another State or Territory in relation to the carrying out of administrative functions in circumstances referred to in the previous two paragraphs.

Miscellaneous amendments relating to access licences and approvals

Schedule 4 [2] and [26] make amendments to enable greater flexibility in the declarations stating the parts of the State to which the provisions of the Principal Act relating to access licences and approvals apply.

Schedule 4 [12] enables the Minister to amend the share component or extraction component of an access licence in accordance with a water management plan.

Schedule 4 [24] provides that no compensation is payable by or on behalf of the Crown in relation to the suspension or cancellation of an access licence or certain recordings in the Access Register. **Schedule 4 [23]** makes a consequential amendment.

Schedule 4 [39] makes it clear that the Minister can waive or reduce any fee or charge imposed under the Principal Act.

Schedule 4 [44] provides for an appeal against a refusal of the Minister to grant consent to a dealing with respect to an access licence to be made to the Land and Environment Court.

Schedule 5 Miscellaneous amendments

Schedule 5 [1] enables the Minister to make available water determinations in relation to one or more individual access licences (rather than to classes of access licences) in cases of severe water shortage. **Schedule 5 [2] and [3]** make consequential amendments.

Schedule 5 [4] changes the rules of distribution applying to the making of an available water determination in times of severe water shortage. The rules of distribution set out the priority that the various classes of persons have in relation to the taking of available water.

Schedule 5 [5] and [6] omit provisions that provide that a recommendation for the inclusion of land in or exclusion of land from an irrigation corporation's area of operations cannot be made to the Governor by the Minister unless the inclusion or exclusion is agreed to by such number or proportion of the corporation's shareholders as may be prescribed by the regulations.

Schedule 5 [7] gives greater flexibility to the times at which an election of the members of a private irrigation board must be held.

Schedule 5 [8] enables the Governor to fill casual vacancies whenever arising in the membership of a private irrigation board. **Schedule 5 [9]** makes a consequential amendment.

Schedule 5 [10] and [12] make amendments by way of statute law revision to change outdated references.

Schedule 5 [11] and [14] update cross references as result of other amendments made by the proposed Act.

Schedule 5 [13] includes irrigation corporations in the protection from personal liability provisions.

Schedule 5 [15] substitutes Schedule 8.29 [10] to the Principal Act. The effect of the substitution is merely to update a reference to a provision which is being transferred from the existing Schedule 9 to the new Schedule 10.

Schedule 6 Savings and transitional amendments

Introduction

Savings and transitional provisions are currently contained in Schedule 9 to the Principal Act. That Schedule includes uncommenced provisions with respect to the conversion of former entitlements (that is, rights under the *Water Act 1912*, the *Rivers and Foreshores Improvement Act 1948* and the repealed *Irrigation Corporations Act 1994*) to access licences and approvals. The proposed Act repeals the uncommenced provisions and replaces them with new provisions. Because of their number and the fact that they are subject to a staged commencement (parallel to the staged commencement of Parts 2 and 3 of Chapter 3 of the Principal Act), the new provisions are contained in proposed Schedules 10 and 11. Other savings and transitional provisions consequent on the enactment of the proposed Act, being provisions dealing with matters other than the conversion of former entitlements, are included in proposed Part 4 to Schedule 9.

Schedule 6 [1] amends clause 1 of Schedule 9 so as to enable the regulations under the Principal Act to make provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 6 [2]–[6] repeal the uncommenced provisions of Schedule 9 that are being replaced by Schedules 10 and 11 and make consequential amendments to that Schedule.

Schedule 6 [7] inserts proposed Part 4 into Schedule 9.

Schedule 6 [8] inserts proposed Schedules 10 and 11 into the Principal Act. Schedule 10 contains the substantive provisions with respect to the conversion of former entitlements to access licences and approvals. Schedule 11 comprises a table that identifies the category and subcategory of access licence that arise from each former entitlement.

Conversion of former entitlements to access licences and approvals

As referred to above, the substantive provisions are contained in proposed Schedule 10, which comprises 4 Parts:

Part 1 contains clauses 1 and 2. Clause 1 applies the proposed Schedule to those access licences and approvals to which Parts 2 and 3 of Chapter 3 of the Principal Act apply by virtue of proclamations under sections 55A and 88A. Clause 2 is a definitions clause for the purposes of proposed Schedules 10 and 11.

Part 2 comprises 3 Divisions, dealing with:

- (a) the actual conversion of former entitlements (Division 1), and

- (b) the continuation in respect of new access licences of security interests held in respect of former entitlements (Division 2), and
- (c) other matters relevant to access licences and approvals that have arisen from former entitlements (Division 3).

Part 3 comprises 3 Divisions, dealing with:

- (a) the restricted application of certain offence provisions with respect to access licences and approvals (Division 1), and
- (b) the continued effect (in their unamended form) of certain provisions of other Acts that have been amended by Schedule 8 to the Principal Act (Division 2), and
- (c) the restricted application of provisions of the *Water Act 1912*, the *Rivers and Foreshores Improvement Act 1948* and the *Irrigation Corporations Act 1994* in relation to matters to which Part 2 or 3 of Chapter 3 of the Principal Act applies (Division 3).

Part 4 contains miscellaneous provisions with respect to the enforcement of debts and other matters relevant to access licences arising from former entitlements.

Other savings and transitional provisions

As referred to above, these are included in proposed Part 4 of Schedule 9. They include the following:

- (a) savings provisions with respect to existing management plans (proposed clauses 61–65),
- (b) a provision that enables applications for access licences to be made in certain circumstances which are additional to the circumstances set out in proposed section 61 (proposed clause 66),
- (c) a provision to translate references in existing instruments to sections of the Principal Act that are to be renumbered by the proposed Act (clause 67),
- (d) provisions to continue in force certain directions under sections of the Principal Act that are being amended or substituted by the proposed Act (clauses 68 and 69).

Schedule 7 Amendment of other Acts and instrument

Schedule 7 amends other Acts and an instrument consequential on the amendments to the *Water Management Act 2000*.

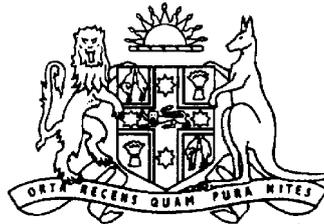
Schedule 7.1 contains amendments to the *Catchment Management Authorities Act 2003*. **Schedule 7.1 [1]** refers to the water management functions of catchment management authorities conferred under the *Water Management Act 2000*, as amended by the proposed Act.

Schedule 7.1 [2] enables catchment action plans of catchment management authorities to deal with water quality and the non-regulatory management issues.

Schedule 7.1 [3] and [4] provide for the establishment and operation of Environmental Water Trust Funds by catchment management authorities in connection with their environmental water functions. Under the proposed amendments:

- (a) *environmental water functions* are defined (including in particular the acquisition of adaptive environmental water), and
- (b) separate trust funds are established for money provided for environmental water functions and the proceeds of dealings in water access licences held by authorities, and
- (c) provisions relating to environmental water functions are to be included in catchment action plans.

Schedule 7.2 and 7.4 make consequential and other amendments to the *Conveyancing Act 1919* and the *Privacy and Personal Information Protection Regulation 2000* as referred to in the Outline to Schedule 3. **Schedule 7.3** makes a consequential amendment to the *Land and Environment Court Act 1979*.



New South Wales

Water Management Amendment Bill 2004

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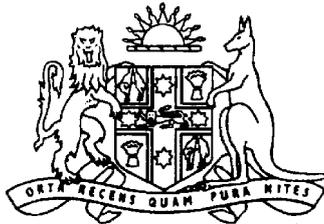
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Water Management Amendment Bill 2004

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New South Wales

Water Management Amendment Bill 2004

No. , 2004

A Bill for

An Act to amend the *Water Management Act 2000* to make further provision with respect to the management of the water resources of the State; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Water Management Amendment Act 2004</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Water Management Act 2000 No 92	7
The <i>Water Management Act 2000</i> is amended as set out in Schedules 1–6.	8 9
4 Amendment of other Acts and instrument	10
The Acts and instrument specified in Schedule 7 are amended as set out in that Schedule.	11 12

Schedule 1 Amendments relating to plans and other matters

(Section 3)

[1] Section 8

Omit the section. Insert instead:

8 Environmental water

- (1) For the purposes of this Act, *environmental water* comprises the following:
 - (a) water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or in specified circumstances, and that cannot to the extent committed be taken or used for any other purpose (*planned environmental water*),
 - (b) water that is committed by the conditions of access licences for specified environmental purposes, either generally or at specified times or in specified circumstances (*adaptive environmental water*).
- (2) A management plan must contain provisions for the identification, establishment and maintenance of planned environmental water (*environmental water rules*). The environmental water rules relating to a water source do not need to specify that a minimum quantity of water is required to be present in the water source at all times.
- (3) Environmental water rules are to be established for all of the water sources in the State as soon as practicable after the commencement of this section.
- (4) A management plan must contain provisions relating to adaptive environmental water.

[2] Section 13 Membership of committee

Omit “catchment management boards and trusts” from section 13 (1) (d).

Insert instead “catchment management authorities”.

[3] Section 14 Functions of management committees	1
Omit “for the water management area” from section 14 (2) (a).	2
Insert instead “for the whole or any part of the management area or of the water sources in the area”.	3 4
[4] Section 14 (2) (b)	5
Omit “for the water management area”.	6
Insert instead “in the water management area”.	7
[5] Section 15 Preparation of draft management plan	8
Omit section 15 (3) and (4). Insert instead:	9
(3) If the management committee fails to prepare a draft management plan in accordance with its terms of reference, the Minister may make a Minister’s plan under section 50 in respect of the matter.	10 11 12 13
[6] Section 17 Provisions applicable to all management plans	14
Omit “for a water management area may”.	15
Insert instead “may, in respect of a water management area or water source to which it applies,”.	16 17
[7] Section 17 (a)	18
Omit “in the water sources in the area”.	19
[8] Section 17 (b) and (c)	20
Omit “having effect within the area” wherever occurring.	21
[9] Section 18 Matters for consideration	22
Insert after section 18 (1):	23
(1A) In formulating a draft management plan, the management committee must also have due regard to the provisions of any relevant catchment action plan under the <i>Catchment Management Authorities Act 2003</i> .	24 25 26 27

[10] Section 20 Core provisions	1
Omit “in relation to each of the classes of environmental water referred to in section 8 (1)” from section 20 (1) (a).	2 3
[11] Section 42 Amendment of management plans	4
Omit section 42 (2) and (3). Insert instead:	5
(2) This section does not limit the operation of Division 9.	6
[12] Section 43 Duration of management plans	7
Omit “Subject to this section” from section 43 (1).	8
Insert instead “Subject to section 43A”.	9
[13] Section 43 (1)	10
Omit “has effect for 10 years from the date on which it is made.”.	11
Insert instead:	12
has effect for:	13
(a) if the plan commenced on 1 July in any year—10 years from that date, or	14 15
(b) in any other case—10 years from 1 July next after the date the plan commenced.	16 17
[14] Section 43 (2)	18
Insert “(other than provisions dealing with water sharing)” after “management plan”.	19 20
[15] Section 43 (4)	21
Insert after section 43 (3):	22
(4) A new management plan may be made in accordance with this Act to replace an earlier management plan. Any such replacement plan may contain provisions of a savings or transitional nature consequent on the replacement of the plan.	23 24 25 26

[16] Section 43A	1
Insert after section 43:	2
43A Extension of duration of management plan dealing with water sharing	3 4
(1) The Minister may, on the recommendation of the Natural Resources Commission and by notice published in the Gazette before its expiry under section 43 or this section, extend a management plan that deals with water sharing for a further period of 10 years after the plan was due to expire.	5 6 7 8 9
(2) More than one such extension of a management plan that deals with water sharing may be made.	10 11
(3) Before deciding whether to extend a management plan that deals with water sharing or to make a new management plan, the Minister is to consider a report of the Natural Resources Commission that reviews (within the previous 5 years) the following:	12 13 14 15 16
(a) the extent to which the water sharing provisions have materially contributed to the achievement, or the failure to achieve, the relevant State-wide natural resource management standards and targets in the relevant catchment management area (as referred to in section 5 of the <i>Catchment Management Authorities Act 2003</i>),	17 18 19 20 21 22
(b) whether changes to those provisions were warranted.	23
(4) For the purposes of a report under subsection (3):	24
(a) the Natural Resources Commission is to call for public submissions and to have regard to any duly received, and	25 26 27
(b) the Natural Resources Commission is to have regard to any other relevant State-wide and regional government policies or agreements that apply to the catchment management area.	28 29 30 31
(5) A report of the Natural Resources Commission under subsection (3) is to be made public after the decision of the Minister with respect to the extension of the management plan or on the expiration of 6 months after the report is received by the Minister, whichever first occurs.	32 33 34 35 36

(6)	If the Minister decides not to extend a management plan under this section, the Minister may, by notice published in the Gazette, extend the existing management plan until the commencement of a replacement management plan or until the first anniversary of the date the plan would otherwise have expired, whichever first occurs.	1 2 3 4 5 6
[17] Section 45		7
	Omit the section. Insert instead:	8
45	Minister may amend or repeal management plan	9
(1)	The Minister may at any time, by order published in the Gazette, amend a management plan:	10 11
(a)	if satisfied it is in the public interest to do so, or	12
(b)	in such circumstances, in relation to such matters and to such extent as the plan so provides, or	13 14
(c)	if the amendment is required to give effect to a decision of the Land and Environment Court relating to the validity of the plan.	15 16 17
(2)	Without limiting the circumstances in which the Minister may act under subsection (1) (a), the Minister may amend a management plan under subsection (1) (a) for the purpose of enabling a catchment management authority, the Minister or other public body to obtain an access licence (containing conditions for adaptive environmental water use) as a result of the availability of additional water that has been conserved by public expenditure or works.	18 19 20 21 22 23 24 25
(3)	Before amending a management plan, the Minister must obtain the concurrence of the Minister for the Environment to the amendment.	26 27 28
(4)	The date of commencement of a management plan may, but the duration of a management plan may not, be extended by an amendment of the plan under this section.	29 30 31
(5)	The Minister may at any time, by order published in the Gazette, repeal a management plan (other than a management plan that deals with water sharing).	32 33 34
(6)	The amendment or repeal of a management plan under this section takes effect on the date the order is published in the Gazette or on a later date specified in the order.	35 36 37

- (7) An order under subsection (1) (a) varying a bulk access regime is not to be made in relation to a water management area for which a management committee for water sharing is constituted unless the Minister has consulted with the committee in relation to the proposed amendment. 1
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- (8) A provision of a management plan that authorises the amendment of the plan in accordance with section 42 (2) of this Act is to be construed as a reference to an amendment authorised by subsection (1) (b). 6
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[18] Section 47 10

Omit the section. Insert instead: 11

47 Validity of management plans and exercise of plan-making functions 12
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- (1) The validity of a management plan may not be challenged, reviewed, quashed or called into question before any court in any proceedings, other than before the Land and Environment Court in proceedings commenced within the judicial review period. 14
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- (2) The judicial review period in respect of a management plan is: 19
 - (a) the period of 3 months after the date the plan was published in the Gazette, except as provided by paragraph (b), or 20
21
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 - (b) in relation to a provision of the plan that was inserted by an amendment of the plan (other than an amendment under section 45 (1) (c)), the period of 3 months after the date that the amendment was published in the Gazette. 23
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A judicial review period does not arise as a result of the extension of the duration of a management plan. 28
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- (3) The judicial review period cannot be extended by the Land and Environment Court or any other court, despite any other Act or law. 30
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- (4) Without limiting subsection (1), the exercise by a designated person of any plan-making function may not be: 33
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 - (a) challenged, reviewed, quashed or called into question before any court in any proceedings, or 35
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- (b) restrained, removed or otherwise affected by any proceedings,
other than before the Land and Environment Court in proceedings commenced within the judicial review period.
- (5) The provisions of or made under this Act and the rules of natural justice (procedural fairness), so far as they apply to the exercise of any plan-making function, do not place on a designated person any obligation enforceable in a court (other than in the Land and Environment Court in proceedings commenced within the judicial review period).
- (6) Accordingly, no court (other than the Land and Environment Court in proceedings commenced within the judicial review period) has jurisdiction or power to consider any question involving compliance or non-compliance, by a designated person, with those provisions or with those rules so far as they apply to the exercise of any plan-making function.
- (7) This section is not to be construed as applying the rules of natural justice to the exercise of plan-making functions for the purposes of proceedings instituted within the judicial review period.
- (8) In this section:
- court* includes any court of law or administrative review body.
- designated person* means the Minister, a management committee, the Director-General or any person or body assisting or otherwise associated with any of them.
- exercise* of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.
- judicial review period*—see subsection (2).
- management plan* includes purported management plan.
- plan-making function* means 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).
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<i>proceedings</i> includes:	1
(a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and	2 3 4
(b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the <i>Supreme Court Act 1970</i> .	5 6 7 8
[19] Section 50 Minister's plans	9
Insert after section 50 (2):	10
(2A) Part 3 (except sections 15 and 36–41) applies to a Minister's plan. However, the Minister:	11 12
(a) may adopt any of the provisions of sections 36–41 in a particular case, and	13 14
(b) may dispense with a particular requirement of Part 3 in the case of a Minister's plan referred to in subsection (1A).	15 16 17
[20] Section 50 (3)	18
Omit the subsection. Insert instead:	19
(3) Before making a Minister's plan, the Minister must obtain the concurrence of the Minister for the Environment to the making of the plan.	20 21 22
[21] Section 50 (5)	23
Omit the subsection. Insert instead:	24
(5) The Minister may decide whether to make a Minister's plan or a management plan in respect of any matter (whether or not any draft management plan has been submitted to the Minister).	25 26 27 28
[22] Section 87 Compensation payable for reductions in water allocations arising from Minister's amendment of management plan	29 30 31
Insert "or extended" after "made" in section 87 (2) (a).	32

[23] Section 87 (2) (a1)	1
Insert after section 87 (2) (a):	2
(a1) a management plan that is made following the expiry of the management plan that established the bulk access regime, or	3 4 5
[24] Section 87 (2) (c)	6
Omit the paragraph. Insert instead:	7
(c) 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.	8 9 10 11
[25] Section 387A	12
Insert after section 387:	13
387A Water Innovation Council	14
(1) The Minister may establish a Water Innovation Council for the purposes of this Act.	15 16
(2) The Water Innovation Council is to consist of such persons as, in the opinion of the Minister, have the qualifications and expertise appropriate to the function of the Council.	17 18 19
(3) The function of the Water Innovation Council is to advise the Minister and catchment management authorities on the identification and pursuit of measures for water conservation, including measures for:	20 21 22 23
(a) the recovery of water (that is, preventing the loss of water from uncapped bores, porous irrigation channels, evaporation and the like), and	24 25 26
(b) the re-use of water, and	27
(c) the efficient use of water.	28
The Council is also to advise the Minister on any other matter that is referred by the Minister for advice.	29 30
(4) Provisions with respect to the members and procedure of the Water Innovation Council or any other advisory body established under this section are, subject to any requirements of the regulations, to be determined by the Minister.	31 32 33 34

[26] Section 389A	1
Insert after section 389:	2
389A Conferral of water management functions on catchment management authorities	3
	4
(1) The Minister may authorise a catchment management authority to exercise the following functions:	5
	6
(a) assisting the Minister or a management committee in the development of, in consultations about or in the implementation of management plans,	7
	8
	9
(b) managing adaptive environmental water under access licences,	10
	11
(c) monitoring water quality and other environmental health objectives of management plans (including in connection with a review or audit of any such plan).	12
	13
	14
(2) A catchment management authority may, with the approval of the Minister, acquire, hold and deal with access licences.	15
	16
(3) This section does not limit section 389.	17
[27] Dictionary	18
Insert in alphabetical order:	19
<i>catchment management authority</i> means a catchment management authority established under the <i>Catchment Management Authorities Act 2003</i> .	20
	21
	22
<i>Natural Resources Commission</i> means the Natural Resources Commission established under the <i>Natural Resources Commission Act 2003</i> .	23
	24
	25

Schedule 2 Amendments relating to domestic and stock rights and water usage

(Section 3)

[1] Section 52 Domestic and stock rights

Omit “An” from section 52 (1).

Insert instead “Subject to subsection (2), an”.

[2] Section 52 (2)

Omit the subsection. Insert instead:

(2) Any entitlement under subsection (1) to take or use water is subject to the following provisions:

(a) owners or occupiers of new landholdings that are created by the subdivision of an existing landholding to which subsection (1) applied before the subdivision must not take or use water under the subsection contrary to any prohibition or restriction imposed on them by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose),

(b) subsection (1) does not authorise a landholder to construct a dam or water bore without a water supply work approval.

[3] Section 52 (3)

Omit “stock being raised on the land, but does not include the use of water in connection with intensive animal husbandry” from the definition of *stock watering*.

Insert instead “stock animals being raised on the land, but does not include the use of water in connection with the raising of stock animals on an intensive commercial basis that are housed or kept in feedlots or buildings for all (or a substantial part) of the period during which the stock animals are being raised”.

[4] Section 323 Temporary water restrictions

Omit “and, unless sooner revoked, expires at the end of 7 days after it is so broadcast” from section 323 (3).

[5] Section 323 (3A) and (3B)	1
Insert after section 323 (3):	2
(3A) An order under this section:	3
(a) ceases to have effect if it is repealed, or	4
(b) where the order provides that it ceases to have effect on a specified day or on the expiry of a specified period, ceases to have effect on that day or on the expiry of that period, unless the order is sooner repealed.	5 6 7 8
(3B) In the event of any inconsistency between an order under this section and any other provision of this Act relating to the distribution, sharing or taking of water (including any order made, or any condition imposed on an access licence or approval, under this Act), the order under this section prevails to the extent of the inconsistency.	9 10 11 12 13 14
[6] Section 325	15
Omit the section. Insert instead:	16
325 Directions and guidelines concerning waste of water	17
(1) Directions concerning water wastage	18
The Minister may, by order in writing served on a landholder, direct the landholder to take specified measures to ensure that:	19 20
(a) water used under the authority of a water use approval applying to the land is beneficially used, and is not wasted or improperly used, or	21 22 23
(b) water taken or used under the authority of a domestic and stock right is beneficially used, and is not wasted or improperly used, or	24 25 26
(c) water used under the authority of a domestic and stock right or domestic and stock access licence is used in accordance with any guidelines established under this section, or	27 28 29 30
(d) water taken by means of a water supply work situated on the land is beneficially used, and is not wasted or improperly used.	31 32 33
(2) Despite section 332, the measures that may be specified in a direction under subsection (1) are not limited to the measures referred to in that section.	34 35 36

-
- (3) **Establishment of guidelines concerning use of water for domestic consumption or stock watering** 1
2
- The Minister may, by order published in the Gazette, establish 3
guidelines with respect to the reasonable use of water for 4
domestic consumption and stock watering by landholders 5
authorised to use water for either or both of those purposes 6
under a domestic and stock right or domestic and stock access 7
licence. 8
- (4) **Preparation and exhibition of draft guidelines** 9
- Before establishing any guidelines under this section, the 10
Minister must prepare draft guidelines. 11
- (5) The Minister: 12
- (a) must give public notice of the draft guidelines, and 13
- (b) must exhibit the draft guidelines (together with such 14
other information as is appropriate or necessary to 15
enable the draft guidelines and their implications to be 16
understood) at the places, on the dates and during the 17
times set out in the notice. 18
- (6) The public notice referred to in subsection (5) (a): 19
- (a) must specify the places at which, the dates on which, 20
and the times during which, the draft guidelines may be 21
inspected by the public, and 22
- (b) must specify a period of at least 40 days during which 23
submissions may be made to the Minister in relation to 24
the guidelines (the *submission period*), and 25
- (c) must be published in a daily newspaper circulating 26
throughout New South Wales. 27
- (7) During the submission period, any person may make written 28
submissions to the Minister on the draft guidelines. 29
- (8) **Procedure after exhibition of draft guidelines** 30
- After complying with the requirements of this section, the 31
Minister: 32
- (a) may establish guidelines under this section in 33
accordance with the draft guidelines, or 34

(b)	may establish guidelines under this section in accordance with the draft guidelines, but with such alterations as the Minister thinks fit, or	1 2 3
(c)	may decide not to proceed with the draft guidelines.	4
(9)	Publication of guidelines once established	5
	The Minister is to cause:	6
(a)	a copy of any guidelines established under this section as in force from time to time to be published on the Internet site of the Department of Infrastructure, Planning and Natural Resources, and	7 8 9 10
(b)	copies of the guidelines as in force from time to time to be made available for inspection by members of the public during ordinary business hours at such places as the Minister directs.	11 12 13 14
(10)	A failure to comply with subsection (9) does not affect the validity of any guidelines established under this section.	15 16
(11)	Definitions	17
	In this section:	18
	<i>domestic consumption</i> , in relation to land, includes (but is not limited to) domestic consumption within the meaning of section 52.	19 20 21
	<i>stock watering</i> , in relation to land, includes (but is not limited to) stock watering within the meaning of section 52.	22 23
[7]	Section 345 Contravention of certain directions	24
	Insert at the end of the section:	25
(2)	A person must not take water from a water source specified in a direction under section 323 if the taking of the water contravenes a prohibition or restriction specified in the direction.	26 27 28 29

Schedule 3 Amendments relating to dealings and other matters

(Section 3)

[1] Section 4 Interpretation

Insert after section 4 (1):

(1A) A word or expression (not being a word or expression defined in the Dictionary to this Act) that is used in this Act and that is defined in the *Real Property Act 1900* has the same meaning in this Act in relation to an access licence (or holding in an access licence) or dealing in such a licence (or holding) as it has in that Act in relation to land or an estate or interest in land.

(1B) Subsection (1A) applies except in so far as the context or subject-matter otherwise indicates or requires.

[2] Section 63 Determination of applications

Omit “in equal shares” from section 63 (6) (b).

Insert instead “with the entitlements conferred by the licence under section 56 apportioned equally between the tenants”.

[3] Section 63 (10)

Omit the subsection.

[4] Section 64 Notice of decision

Omit section 64 (2).

[5] Chapter 3, Part 2, Division 3A

Insert after Division 3 of Part 2 of Chapter 3:

Division 3A Water Access Licence Register

Subdivision 1 Keeping of the Register

71 Water Access Licence Register

(1) The Minister is to keep a Water Access Licence Register for the purposes of this Act (the *Access Register*).

-
- (2) In the Access Register, there is to be a division recording the matters specified in section 71A (1) (the *General Division*) and a division recording the matters specified in section 71A (2) (the *Assignment Division*). 1
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4
- (3) The Access Register is to be kept in the form and manner determined by the Minister. 5
6
- (4) Without limiting subsection (3), the Access Register may be kept in the form of a computer record. 7
8
- 71A Dealings and other matters that must be recorded in the Access Register** 9
10
- (1) The following matters relating to an access licence (including a replacement access licence) or a holding in an access licence must be recorded in the General Division of the Access Register: 11
12
13
14
- (a) Ministerial action in relation to the licence or holding, 15
 - (b) any general dealing in the licence or holding, 16
 - (c) any dealing on default in relation to the licence or holding, 17
18
 - (d) any caveat lodged in relation to the licence or holding, 19
 - (e) any security interest held over the licence or holding, 20
 - (f) any devolution of the licence or holding as referred to in section 72, 21
22
 - (g) any alteration in co-holder's tenancy arrangements in relation to the licence or holding, as referred to in section 73, 23
24
25
 - (h) any other matter prescribed by the regulations. 26
- (2) The following matters are to be recorded in the Assignment Division of the Access Register in such manner as the Minister considers appropriate: 27
28
29
- (a) any assignment dealing in an access licence, 30
 - (b) any other matter prescribed by the regulations. 31

71B	Matters that must be recorded in General Division of Access Register ineffective until registered	1 2
(1)	Any matter required to be recorded in the General Division of the Access Register:	3 4
(a)	has no effect unless it is so recorded, and	5
(b)	takes effect on being recorded.	6
(2)	An assignment dealing in relation to an access licence takes effect when details of the assignment are entered in the water allocation account for the access licence.	7 8 9
71C	Provisions with respect to registration of dealings, security interests, caveats and other matters in the Access Register	10 11
	Schedule 1A has effect.	12
Subdivision 2	Registration of security interests	13
71D	Creation of registered security interests by recording in Access Register	14 15
(1)	A registered security interest over an access licence (or a holding in an access licence that is held as a tenancy in common) is created by:	16 17 18
(a)	execution of an instrument in the approved form evidencing the existence of a security interest over the licence or holding, and	19 20 21
(b)	registering the security interest by recording it in the Access Register in accordance with Part 1 of Schedule 1A.	22 23 24
	Note. A security interest has no effect until recorded in the Access Register—see sections 71A (1) (e) and 71B.	25 26
(2)	Subsection (1) does not apply to:	27
(a)	a specific purpose access licence, or	28
(b)	a security interest referred to in clause 19 of Schedule 10.	29 30
	Note. Clause 19 of Schedule 10 makes provision for the registration of security interests in access licences arising from entitlements under former legislation.	31 32 33

-
- (3) For the purposes of Chapter 7 of the *Duties Act 1997*: 1
- (a) a registered security interest over an access licence or 2
holding in an access licence is taken to be a security by 3
way of mortgage or charge over property wholly or 4
partly in New South Wales, and 5
 - (b) the liability date is the date on which the registered 6
security interest is first recorded in the Access Register, 7
except as provided by the regulations. 8

Subdivision 3 Registration of caveats 9

71E Minister may register caveats 10

- (1) The Minister may, on the application in the approved form of 11
an affected person, record a caveat on an access licence (or 12
holding in an access licence) in the Access Register in such 13
manner as appears to the Minister to be appropriate. 14
- (2) Without limiting subsection (1), the Minister may (whether or 15
not on the application of an affected person) record a caveat 16
in the Access Register: 17
 - (a) on behalf of any person with a legal disability or on 18
behalf of the Crown, or 19
 - (b) if it appears to the Minister that any error has been made 20
by misdescription or otherwise in relation to an access 21
licence, or to prevent any fraud or improper dealing 22
with a licence. 23
- (3) In this section: 24
 - affected person*, in relation to an access licence or holding in 25
an access licence, means the following: 26
 - (a) the holder or a co-holder of the licence or holding, 27
 - (b) a holder of a security interest over the licence or holding 28
(whether or not registered), 29
 - (c) a party to a dealing, or prospective dealing, in the 30
licence or holding, 31
 - (d) a person entitled, or claiming to be entitled, to be 32
registered as a holder or co-holder of the licence or 33
holding by devolution as referred to in section 72, 34
 - (e) any other person of a class prescribed by the 35
regulations. 36

71F	Effect of a caveat	1
(1)	A caveat on an access licence (or holding in an access licence) prohibits the recording in the Access Register of any general dealing, security interest or change in co-holder's tenancy arrangements in relation to the licence or holding that interferes with the entitlements or rights in respect of the licence or holding claimed by the person by or on whose behalf the caveat is lodged (the <i>caveator</i>).	2 3 4 5 6 7 8
(2)	A caveat on an access licence or holding in an access licence does not affect the recording in the Access Register of any Ministerial action, devolution, assignment dealing or dealing on default in relation to the licence or holding.	9 10 11 12
(3)	Subsection (1) does not prohibit the registration of any matter if:	13 14
(a)	the caveator consents to the registration, or	15
(b)	a court of competent jurisdiction orders the registration, or makes an order that by necessary implication requires it, despite the caveat, or	16 17 18
(c)	the matter is required to be registered expressly or by necessary implication by any enactment of the State or the Commonwealth, or	19 20 21
(d)	in such other circumstances as are prescribed by the regulations.	22 23
(4)	Subsection (1) does not prohibit registration of any matter in relation to the access licence or holding in an access licence the subject of a caveat if the matter was lodged for registration before the caveat was lodged.	24 25 26 27
	Note. Part 2 of Schedule 1A contains further provisions with respect to caveats.	28 29
Subdivision 4	Miscellaneous	30
71G	Minister may require production of access licence certificate before recording matters in Access Register	31 32
	The Minister may require the access licence certificate for an access licence to be produced to the Minister before the Minister records any dealing, security interest or changes to co-holder's tenancy arrangements under the licence in the Access Register.	33 34 35 36 37

71H	Searches of the Access Register	1
(1)	The Minister may, on application made by a person in the approved form for a search of any information recorded in the Access Register, cause:	2
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		4
(a)	a search to be made of the Access Register, and	5
(b)	a certificate of the result of the search to be issued to the person.	6
		7
(2)	The search is to be authenticated in such manner as the Minister considers appropriate.	8
		9
(3)	The Minister is not required to cause a search to be carried out, or a certificate to be issued, under this section, unless:	10
		11
(a)	the approved fee (if any) for the search or certificate has been paid, or	12
		13
(b)	the Minister is satisfied that the fee will be paid in accordance with arrangements approved by the Minister.	14
		15
		16
71I	Correction and amendment of Access Register	17
	The Minister may, on such evidence as the Minister considers sufficient, correct an error, omission or defect, or amend for any other reason, any recording in the Access Register.	18
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71J	Access to the Access Register	21
(1)	The Minister is to make the information recorded in the Access Register available to any member of the public at the times and in the manner and on payment of the fee (if any) approved by the Minister.	22
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(2)	The information may be made available in accordance with such conditions as are determined by the Minister.	26
		27
(3)	The conditions may:	28
(a)	require the payment, whether on a periodic or other basis, of fees and charges, and	29
		30
(b)	restrict access to information in the Access Register or any part of the Register.	31
		32

71K	Minister to supply reasons for certain decisions in relation to Access Register	1
		2
(1)	A person who is dissatisfied with any decision of the Minister in relation to the keeping of the Access Register may apply to the Minister for a copy of the Minister's reasons for the decision.	3
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(2)	It is the Minister's duty to provide the person with those reasons.	7
		8
[6]	Sections 71L–71N	9
	Omit section 71A. Insert instead:	10
71L	How does a dealing take effect?	11
(1)	General dealings requiring consent	12
	A general dealing in an access licence or holding in an access licence that requires the Minister's consent takes effect as follows:	13
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		15
(a)	application is made to the Minister in the approved form, and accompanied by the approved fee, for consent to the dealing,	16
		17
		18
(b)	the Minister grants consent, but only if:	19
(i)	the dealing complies with section 71Y (General) and with the other provisions of this Division that are applicable to the dealing, and	20
		21
		22
(ii)	in the case of an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the application,	23
		24
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(c)	if an access licence or holding in an access licence is subject to a registered security interest, the security holder consents to the recording of the dealing in the Access Register,	27
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(d)	application is made to the Minister in accordance with subsection (2) to record the dealing in the Access Register,	31
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(e)	the dealing takes effect on registration (subject to and in accordance with this Act) in the Access Register.	34
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- (2) An application to record a dealing requiring the Minister's consent in the Access Register must be lodged with the Minister within 6 months (or such other period as is prescribed by the regulations) after consent is granted. Consent is taken to be revoked if an application is not lodged within that period. 1
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- (3) **Dealings on default and general dealings not requiring consent** 7
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- A dealing on default or general dealing in an access licence or holding in an access licence that does not require the Minister's consent takes effect as follows: 9
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- (a) in the case of a general dealing in an access licence that is co-held—each co-holder of the licence has (subject to sections 71M and 71N) consented to the recording of the dealing in the Access Register, 12
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- (b) in the case of a general dealing in an access licence or holding in an access licence that is the subject of a registered security interest—consent to the recording of the dealing in the Access Register is obtained from the security holder, 16
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- (c) in the case of a dealing in default in an access licence or holding in an access licence—the dealing complies with section 71X (1), 21
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- (d) the dealing on default or general dealing complies with any other provisions of this Division that are applicable to the dealing, 24
25
26
- (e) an application is made to the Minister to record the dealing in the Access Register, 27
28
- (f) the dealing takes effect on registration (subject to and in accordance with this Act) in the Access Register. 29
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- (4) **Assignment dealings** 31
- An assignment dealing in an access licence takes effect as follows: 32
33
- (a) an application is made to the Minister in the approved form for consent to the dealing, 34
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- (b) if the Minister grants consent, details of the assignment are entered in the water allocation account for the access licence and the dealing takes effect on that entry. 36
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71M	Transfer of access licences (cf former s 71A)	1
(1)	Access licences may be transferred in accordance with this section.	2 3
(2)	A local water utility access licence may be transferred only if the transferee is a local water utility.	4 5
(3)	A major utility access licence may be transferred only if the transferee is a major water utility.	6 7
(4)	The consent of the Minister is required before:	8
	(a) the transfer of an access licence of a category or subcategory prescribed by the regulations, or	9 10
	(b) the transfer of an access licence in circumstances prescribed by the regulations.	11 12
(5)	The consent of the proposed transferee is required before the transfer of any access licence.	13 14
(6)	Two or more co-holders of an access licence that is transferred under this section are taken to hold the licence in the way recorded in the Access Register.	15 16 17
(7)	This section applies to the transfer of a holding in an access licence in the same way as it applies to the transfer of an access licence held by a single person. However, holdings in access licences may be transferred only if the co-holders hold as tenants in common.	18 19 20 21 22
(8)	A person who is the holder of a holding in an access licence may transfer it without the consent of any other persons who are co-holders of the access licence concerned.	23 24 25
71N	Term transfers of entitlements under access licences	26
(1)	This section applies to access licences except local water utility access licences and major utility access licences.	27 28
(2)	The holder of an access licence to which this section applies (the <i>actual holder of the licence</i>) may transfer the water entitlements conferred by the licence to another person for a specified period of not less than 6 months (a <i>term transfer</i>).	29 30 31 32
(3)	The consent of the proposed transferee to the term transfer is required.	33 34

- (4) The consent of the Minister is required before: 1
 - (a) the term transfer of an access licence of a category or 2
subcategory prescribed by the regulations, or 3
 - (b) the term transfer of an access licence in circumstances 4
prescribed by the regulations. 5
- (5) During the period for which a term transfer has effect, the 6
transferee is taken to be the holder of the access licence 7
concerned (to the exclusion of the actual holder of the licence) 8
for the following purposes: 9
 - (a) any entitlements conferred by the licence on the holder 10
of the licence, 11
 - (b) the payment of fees and charges under the licence, 12
 - (c) compliance with the terms and conditions of the 13
licence, 14
 - (d) compliance with any order or direction issued under 15
this Act with which the holder of the licence must 16
comply, 17
 - (e) section 341 (Unlawful taking of water), 18
 - (f) an application under section 71W (Access licence may 19
nominate water supply works) or 71T (Assignment of 20
water allocations between access licences), 21
 - (g) any other purpose prescribed by the regulations. 22
- (6) The period for which a term transfer is in force may be 23
reduced with the consent of the transferee. 24
- (7) Despite subsection (6), the Minister may consent to a 25
reduction of the period of a term transfer without the consent 26
of the transferee if satisfied that the transferee has failed to 27
comply with any obligations imposed on the transferee under 28
subsection (5). 29
- (8) During the period for which a term transfer is in force, the 30
actual holder of the licence is entitled to apply in accordance 31
with this Act for registration of any dealing with respect to the 32
licence, but, in the case of a dealing other than a dealing under 33
section 71M, only with the written consent of the transferee. 34
- (9) This section applies to a term transfer of such water 35
entitlements as are conferred by a holding in an access licence 36
in the same way as it applies to the transfer of the whole of the 37
water entitlements conferred by an access licence. In so 38

	applying this section, a reference in this section to the holder of an access licence is to be read as the holder of the holding in the access licence.	1 2 3
(10)	However, holdings in access licences may be the subject of a term transfer only if the co-holders hold as tenants in common.	4 5 6
(11)	A person who holds a holding in an access licence may transfer such water entitlements as are conferred by the holding without the consent of any of the other co-holders of the access licence.	7 8 9 10
[7]	Section 71B Conversion of access licence to new category	11
	Omit section 71B (1). Insert instead:	12
(1)	On the application of the holder of an access licence, the Minister may consent to the cancellation of the licence and the grant of a new licence of a different category or subcategory.	13 14 15
[8]	Section 71B (6)	16
	Omit the subsection.	17
[9]	Section 71C Subdivision and consolidation of access licences	18
	Omit section 71C (1). Insert instead:	19
(1)	On the application of the holder of the access licence or access licences concerned, the Minister may consent:	20 21
(a)	to the subdivision of an access licence—by cancelling the licence and granting two or more access licences in its place, or	22 23 24
(b)	to the consolidation of two or more access licences that relate to the same water management area or water source and are of the same category or subcategory—by cancelling the licences and granting a single licence in their place.	25 26 27 28 29
[10]	Section 71C (6)	30
	Omit the subsection.	31

[11] Section 71D Assignment of rights under access licence	1
Omit section 71D (1)–(3). Insert instead:	2
(1) On the application of the holder or holders of two or more access licences of the same category with respect to the same water management area or water source, the Minister may consent to the assignment of rights between the access licences concerned by:	3
(a) reduction of the share or extraction component, or both, of one or some of the licences, and	4
(b) a corresponding increase in the share or extraction component, or both, of the others.	5
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[12] Section 71D (4)	12
Omit the subsection.	13
[13] Section 71E Amendment of share component of access licence	14
Omit section 71E (1). Insert instead:	15
(1) On the application of the holder of an access licence, the Minister may consent to the cancellation of the access licence and the grant of a new access licence with a share component specifying a different water source or water management area.	16
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[14] Section 71E (5)	21
Omit the subsection.	22
[15] Section 71F Amendment of extraction component of access licence	23
	24
Omit “amend” from section 71F (1).	25
Insert instead “consent to the amendment of”.	26
[16] Section 71G Assignment of water allocations between access licences	27
	28
Omit section 71G (5).	29

[17] Section 71H Interstate transfer of access licences	1
Omit section 71H (2). Insert instead:	2
(2) On an application made pursuant to such an agreement, the Minister may consent to the grant or cancellation of an access licence to give effect to such a transfer.	3 4 5
[18] Section 71H (3) (b)	6
Omit the paragraph.	7
[19] Section 71I Interstate assignment of water allocations	8
Omit section 71I (2). Insert instead:	9
(2) On an application made pursuant to such an agreement, the Minister may consent to the crediting of water allocations to an access licence, or the debiting of water allocations from an access licence, to give effect to such an assignment.	10 11 12 13
[20] Section 71J Access licence may nominate water supply works	14
Omit “amend”. Insert instead “consent to the amendment of”.	15
[21] Section 71X	16
Insert after section 71J:	17
71X Dealings on default	18
(1) A security holder (or a receiver referred to in section 115A of the <i>Conveyancing Act 1919</i>) may transfer the access licence or holding in an access licence over which the security interest is held under this section if:	19 20 21 22
(a) default is made in the payment of any debt or performance of any other obligation under a contract or other legally enforceable arrangement secured by the security interest, and	23 24 25 26
(b) notice is served, in accordance with the regulations, on the holder or co-holder of the licence who is in default (the <i>defaulter</i>), on any other person having a registered security interest (whether or not having less priority), or who has registered a caveat, over the licence or holding and on the Minister, and	27 28 29 30 31 32

- (c) the defaulter fails, for a period of not less than 30 days after service of the notice, to rectify the default, and 1
2
- (d) the security holder or receiver offers the licence or holding for sale, and 3
4
- (e) the security holder or receiver takes all reasonable steps to secure the highest possible amount by the sale, and 5
6
- (f) application is made to the Minister in the approved form, to record the transfer of the licence or holding in the Access Register to give effect to the sale, or, if the security holder is unable to realise the money secured by the security interest by sale after taking all reasonable steps to do so, to record the transfer of the licence or holding to the security holder in the Access Register. 7
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- (2) The purchase money from a sale under this section is to be applied as follows: 15
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 - (a) firstly, in payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding, 17
18
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 - (b) secondly, in payment of the expenses of the sale and costs of the transfer, 20
21
 - (c) thirdly, in payment of money then due or owing to any holders of registered security interests over the licence or holding in order of their priority, 22
23
24
 - (d) fourthly, in payment of any residue to the defaulter. 25
- (3) For the purposes of a transfer under this section, the security holder is taken to be the holder or co-holder of the licence and, accordingly: 26
27
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 - (a) the security holder may do any thing necessary to effect the transfer and may give any discharge to the transferee that could be given by the holder or co-holder of the licence, and 29
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 - (b) the transferee need make no enquiry in relation to the sale that the purchaser would not be required to make of the holder or co-holder of the licence. 33
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- (4) On registration of the transfer, the licence or holding is held by the transferee freed and discharged from the registered security interest and any other registered security interest over the licence or holding of less priority. Otherwise the 36
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transferee holds the licence or holding with an equivalent interest in the licence or holding to the interest held by the defaulter and subject to the same conditions and obligations (including the payment of any outstanding fees, charges or civil penalties incurred in respect of the licence or holding) to which the defaulter would, but for the transfer, be subject under this Act.

(5) An affected person may apply, in accordance with rules of court, to the Land and Environment Court for an order prohibiting the registration of the transfer of an access licence or holding in an access licence under this section. The Court may make such an order if it is satisfied that the security holder or receiver has failed to comply with the requirements of subsection (1) or (2) with respect to the transfer of the licence or holding.

(6) If a security holder or receiver fails to comply with the requirements of subsection (1) or (2) with respect to the transfer of an access licence or holding in an access licence under this section, the security holder is liable to pay to any affected person who suffers pecuniary loss that is attributable to that failure compensation with respect to that loss.

(7) The compensation is recoverable in proceedings in the Land and Environment Court by the person who claims to have sustained the loss.

(8) In this section:
affected person, in relation to the transfer of an access licence or holding in an access licence under this section, means any person on whom notice is required to be served under subsection (1) (b), or who is entitled to purchase money from a sale under subsection (2), in relation to the transfer.

[22] Section 71K General

Omit “under this Division” from section 71K (1).

Insert instead “for the Minister’s consent to a general dealing or dealing on default”.

[23] Section 71K (2)

Omit the subsection.

[24] Section 71K (3)	1
Omit “section 71E”. Insert instead “section 71R”.	2
[25] Sections 71B–71J, 71K and 71L	3
Renumber sections 71B–71J and 71K and 71L as sections 71O–71W and 71Y and 71Z, respectively, and insert after the heading to each section, with appropriate reference numbers, the matter “(cf former s)”.	4 5 6
[26] Chapter 3, Part 2, Division 4A	7
Insert after Division 4 of Part 2 of Chapter 3:	8
Division 4A Devolution of, and tenancy arrangements and other matters relating to, access licences	9 10
72 Devolution of access licences	11
(1) A person to whom an access licence or holding in an access licence has devolved by operation of law may apply to the Minister in the approved form to be recorded in the Access Register as the holder or a co-holder of the licence or holding.	12 13 14 15
(2) Without limiting subsection (1), such an application may be made:	16 17
(a) by an executor, administrator or other person claiming to be entitled to be registered on the death, will or intestacy of the holder or co-holder of the licence or holding, or otherwise, as the holder or co-holder, or	18 19 20 21
(b) by or on behalf of a person who was a co-holder as joint tenant of an access licence or holding in an access licence on the death of a person recorded in the Access Register with the person as a co-holder as joint tenant of the licence or holding, or	22 23 24 25 26
(c) by or on behalf of a person that a court has ordered is to be recorded in the Access Register as the holder or co-holder of the licence or holding.	27 28 29
(3) The application must be supported by such evidence of the applicant’s entitlement to be recorded in the Access Register as a holder or co-holder as the Minister may require.	30 31 32

(4)	The Minister is to record the person as the holder or co-holder of the licence or holding:	1
		2
(a)	if satisfied that the applicant is entitled to be recorded in the Access Register as the holder or co-holder, and	3
		4
(b)	if nothing recorded in the Access Register prevents the registration.	5
		6
(5)	This section applies to 2 or more persons to whom rights have devolved in the same way as it applies to a single person to whom rights have devolved.	7
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73	Changes in co-holder's tenancy arrangements	10
(1)	A co-holder of an access licence (whether held as joint tenant or tenant in common) may apply to the Minister in the approved form to record an alteration in the way in which the licence is held by the co-holders (the <i>co-holder's tenancy arrangement</i>) in the Access Register.	11
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(2)	The alteration to the co-holder's tenancy arrangement takes effect when it is recorded in the Access Register.	16
		17
(3)	The Minister must not record the alteration unless:	18
(a)	each co-holder of the licence that is affected by the alteration has consented to it being recorded, and	19
		20
(b)	any holder of a security interest over the licence or a holding in the licence that is affected by the alteration has consented to it being recorded.	21
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		23
(4)	Subsection (3) (a) does not apply where a joint tenant unilaterally wishes to sever a joint tenancy by relinquishing the joint tenancy.	24
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		26
(5)	The Minister may require an applicant to verify any information provided for the purposes of this section by statutory declaration.	27
		28
		29
[27]	Chapter 3, Part 2, Division 8	30
	Omit the heading to the Division and sections 83, 83A and 86.	31

[28] Section 87B	1
Insert before section 88:	2
87B Access licence certificate	3
(1) The Minister may from time to time issue a certificate in the approved form in respect of an access licence (an <i>access licence certificate</i>).	4 5 6
(2) If the Minister issues an access licence certificate, the Minister must cancel, wholly or partially as the case requires, any access licence certificate superseded by the new certificate that is available to the Minister. For that purpose, the Minister may require production to the Minister of the superseded certificate.	7 8 9 10 11 12
(3) If an access licence certificate is lost, mislaid or destroyed, the person to whom it was issued (or a person having legal authority to act on the person's behalf) may apply in the approved form to the Minister for the issue of a new access licence certificate.	13 14 15 16 17
(4) The application is to be supported by such evidence as the Minister may require.	18 19
(5) The Minister may, if satisfied that an access licence certificate has been lost, mislaid or destroyed, issue a new access licence certificate or new access licence certificates for the licence or holding in an access licence to which the lost, mislaid or destroyed certificate relates and may record in the Access Register that the new certificate or certificates have been issued.	20 21 22 23 24 25 26
[29] Section 88 Regulations	27
Insert after section 88 (d):	28
(e) the recording of any dealing, caveat, security interest, devolution, change in co-holder's tenancy arrangements or other matter in relation to an access licence or holding in an access licence in the Access Register.	29 30 31 32 33

[30] Section 88 (2) and (3)	1
Insert at the end of section 88:	2
(2) Without limiting subsection (1) (e), the regulations may, for the purposes of this Part, apply, adopt or incorporate, whether with or without modification, any provision of the <i>Real Property Act 1900</i> or the regulations made under that Act.	3 4 5 6
(3) The regulations may exclude a specified class of licence granted under this Act from the operation of section 11 (1) (h) of the <i>Duties Act 1997</i> .	7 8 9
[31] Section 113 Register of approvals	10
Insert at the end of section 113 (1) (b):	11
, and	12
(c) every agreement entered into by landholders under section 101 (2).	13 14
[32] Section 347A	15
Insert after section 347:	16
347A Offences with respect to the Access Register	17
(1) A person must not:	18
(a) fraudulently obtain, or assist in fraudulently obtaining, the issue or delivery of an access licence certificate, or a recording in the Access Register, or any alteration in any instrument or approved form issued by the Minister, or	19 20 21 22 23
(b) fraudulently use, or assist in fraudulently using, any approved form issued by the Minister, or	24 25
(c) by any false statement or misrepresentation obtain, or attempt to obtain, an access licence certificate or instrument evidencing any matter that may be recorded in the Access Register.	26 27 28 29
(2) Any recording in the Access Register obtained in contravention of this section is void as between all parties to the fraud.	30 31 32

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- (3) The Minister must not register an access licence or any Ministerial action until:
- (a) the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or
 - (b) if an appeal is made against the decision within that time, at or after the time the appeal is finally disposed of.
- (4) The Minister may include in the Access Register such other information about the holder of an access licence and the conditions of, and other matters relating to, the licence as the Minister considers appropriate.
- 2 Registration of dealings in access licences and holdings in access licences**
- (1) A party to a dealing in an access licence or holding in an access licence may make an application to the Minister in the approved form for the dealing to be registered in the Access Register.
- (2) The application must be accompanied:
- (a) by an instrument evidencing the dealing, and
 - (b) by such other documents (if any) as the Minister may require, and
 - (c) by such fee (if any) as approved by the Minister.
- Note.** This clause has a similar effect in relation to registration of dealings in access licences and holdings in access licences to the effect section 41 of the *Real Property Act 1900* has in relation to registration of dealings in estates or interests in land.
- (3) The Minister must (unless anything recorded in the Access Register prevents the registration of the dealing):
- (a) register the dealing by recording in the Access Register the particulars of the names of the parties to the dealing and a description of the dealing, and
 - (b) endorse on the instrument evidencing the dealing the fact of the entry having been made, together with the date and time of the making of the entry.

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- 3 Registration of security interests over access licences and holdings in access licences** 1
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- (1) A security holder may apply to the Minister in the approved 3
form for the security interest to be recorded in the Access 4
Register as a registered security interest. 5
- (2) The application must be accompanied: 6
- (a) by an instrument or instruments evidencing the security 7
interest, and 8
- (b) by such other documents (if any) as the Minister may 9
require, and 10
- (c) by such fee (if any) as is approved by the Minister. 11
- Note.** This clause has a similar effect in relation to registration of security 12
interests in access licences and holdings in access licences to the effect 13
section 41 of the *Real Property Act 1900* has in relation to registration of 14
dealings in estates or interests in land. 15
- (3) The Minister must (unless any thing recorded in the Access 16
Register prevents the registration of the security interest): 17
- (a) register the security interest by recording in the Access 18
Register the particulars of the name of the holder of the 19
interest and a description of the interest, and 20
- (b) endorse on the instrument evidencing the security 21
interest the fact of the entry having been made, together 22
with the date and time of the making of the entry. 23
- (4) The Minister is to register the security interest without 24
inquiring into, or being concerned with, the legal effect of the 25
instrument evidencing it. 26
- (5) The Minister may, on application in the approved form by the 27
holder of a registered security interest, remove the security 28
interest from the Access Register or amend details recorded in 29
relation to it. 30
- (6) The Minister may include in the Access Register such other 31
information about a registered security interest as the Minister 32
considers appropriate. 33
- 4 Priority of registered security interests in access licences and 34
holdings in access licences** 35
- (1) Except as provided by clause 19 of Schedule 10, an earlier 36
registered security interest has priority, for all purposes, over 37
a later registered security interest. 38

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- (2) Subclause (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act. 1
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- Note.** Subclause (2) ensures that the priorities established by subclause (1) are not over-ridden by the provisions of the *Corporations Act 2001* with respect to the distribution of assets of a corporation that is being wound up under that Act. 5
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- (3) For the purposes of this Act, a person is not taken to hold an interest in an access licence or a holding in an access licence held by a corporation merely because the person is a shareholder in the corporation. 9
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Part 2 Caveats 13

5 Withdrawal of caveat 14

- (1) A caveat may be withdrawn at any time by: 15
- (a) the caveator, or 16
 - (b) a person with legal authority under a law of this State or any other place to act on behalf of the caveator, or 17
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 - (c) by any other person, or person belonging to a class of persons, prescribed by the regulations. 19
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- (2) The withdrawal is to be in the approved form. 21

6 Duration of caveat 22

- (1) A caveat is taken to have had effect from the time at which it is lodged with the Minister. 23
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- (2) A caveat ceases to have effect if: 25
- (a) the Land and Environment Court makes an order for its removal on an appeal under section 368, or 26
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 - (b) the caveat is withdrawn, or 28
 - (c) the caveator is given notice under clause 7 and 21 days have passed since the notice was given. 29
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- (3) Subclause (2) (c) does not apply if, before the end of the 21 days the caveator:
- (a) obtains an order from the Land and Environment Court extending the caveat for such further period as is specified in the order or until the further order of the Court, and
 - (b) lodges a copy of the order certified by a proper officer of the Court with the Minister.
- 7 Notice to caveator**
- (1) If a general dealing, dealing on default, security interest or change in co-holder's tenancy arrangements in relation to an access licence or holding in an access licence that is the subject of a caveat is lodged with the Minister, or the holder of an access licence or holding in an access licence so requests, the Minister must notify the caveator that it has been lodged.
- (2) The Minister is not required to give notice if:
- (a) the caveator is a party to the dealing, or
 - (b) the caveator has specified the class of matters the caveator wants to receive notice of and the matter falls outside that class, or
 - (c) if the caveator has changed address since lodging the caveat and has not notified the Minister of the change.
- 8 Powers of Land and Environment Court in relation to caveats**
- The Land and Environment Court may:
- (a) order the withdrawal of a caveat from an access licence or holding in an access licence, or
 - (b) order the Minister to register a general dealing, dealing on default, security interest or change in co-holder's tenancy arrangements in relation to an access licence or holding despite the caveat, or
 - (c) extend the period provided for by clause 6, or
 - (d) make such further or other orders as it thinks fit.

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- 9 Compensation payable in certain cases** 1
- (1) Any person who, without reasonable cause: 2
- (a) lodges a caveat with the Minister under this Schedule, 3
or 4
- (b) procures the lapsing of a registered caveat, or 5
- (c) being the caveator, refuses or fails to withdraw a caveat 6
after being requested to do so, 7
- is liable to pay to any person who sustains pecuniary loss that 8
is attributable to that act, refusal or failure compensation with 9
respect to that loss. 10
- (2) The compensation is recoverable in proceedings in a court of 11
competent jurisdiction by the person who claims to have 12
sustained the loss. 13
- (3) A caveator is not entitled to bring proceedings under 14
subclause (1) (b) if the caveator, having had an opportunity to 15
do so, has failed to take all reasonable steps to prevent the 16
caveat from lapsing. 17
- Part 3 Miscellaneous** 18
- 10 Powers of Minister with respect to production and retention of 19
certain instruments** 20
- (1) The Minister may require any person who may have 21
possession or control of an instrument relating to an access 22
licence or holding in an access licence that is the subject of 23
any matter that may be recorded in the Access Register to 24
produce the instrument. 25
- (2) The Minister may retain an instrument relating to an access 26
licence that is the subject of any matter that may be recorded 27
in the Access Register (whether or not produced under 28
subclause (1)) until it is no longer required for action in 29
connection with an application for registration of the matter in 30
the Access Register. 31

11 Lodgment and registration of documents

The Minister may refuse to accept, or record in the Access Register, a dealing, an application for consent to a dealing or a security interest, caveat, devolution or change in co-holder's tenancy arrangements in relation to an access licence or holding in an access licence if:

- (a) it is not in the approved form or does not comply with any requirement made by or under this or any other Act with respect to the making or execution of such a matter, or
- (b) the Minister requests the production of the access licence certificate for the access licence for the purpose of recording the matter in the Access Register and it is not produced, or
- (c) the application concerned is not accompanied by the approved fee (if any) for the matter concerned.

12 Wrongful retention of certain instruments

- (1) The Minister may, by notice in writing served on a person at the person's last known address, require the person to deliver up an access licence certificate or an instrument evidencing any matter that may be recorded in the Access Register for the purpose of the certificate or instrument being cancelled or corrected if the Minister is satisfied that:
 - (a) the certificate has been issued to the person in error or contains any misdescription of an access licence or holding in an access licence, or
 - (b) a recording has been made in error in the Access Register, or
 - (c) the certificate or recording in the Access Register has been fraudulently or wrongfully obtained by the person, or
 - (d) the certificate or instrument is fraudulently or wrongfully retained by the person.
- (2) If the person:
 - (a) cannot be found for the giving of such notice of requirement, or

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- (b) having been given such notice does not comply with the requirement, 1
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- the Minister may, if the Minister thinks fit, commence proceedings against the person in the Land and Environment Court for an order that the person (the *defendant*) deliver up the access licence certificate or instrument for the purpose of it being cancelled or corrected. 3
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- (3) The Court may order that service on the defendant of the originating process and of all other documents in the proceedings be dispensed with. 8
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- (4) Subject to the *Land and Environment Court Act 1979*, the Court must not order that service on the defendant be dispensed with unless the Court is satisfied that: 11
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- (a) the defendant cannot be found in New South Wales, or 14
- (b) it is uncertain whether the defendant is living. 15
- (5) The Court may order the personal attendance before it of the defendant. 16
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- (6) On the personal appearance of the defendant before the Court, the Court may examine the defendant on oath. 18
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- (7) The Court may order the defendant to deliver up to the Minister, within such time as the Court may fix, the access licence certificate or instrument evidencing the matter. 20
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- [35] Dictionary** 23
- Insert in alphabetical order: 24
- access licence certificate* means a certificate issued under section 87B. 25
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- Access Register* means the Water Access Licence Register required to be kept under section 71. 27
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- approved form* means form approved by the Minister. 29
- assignment dealing* means the following: 30
- (a) an assignment of water allocations to or from the water allocation account for an access licence as referred to in section 71T, 31
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(b) the crediting or debiting of water allocations to or from an access licence to give effect to an interstate assignment of water allocations as referred to in section 71V.

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caveat on an access licence or holding in an access licence means a caveat in respect of the licence or holding recorded in the Access Register.

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co-holder's tenancy arrangement means the joint tenancy, tenancy in common or other arrangement under which the entitlements conferred by an access licence are held by co-holders of the licence.

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dealing in an access licence or holding in an access licence means a general dealing, a dealing on default or an assignment dealing in the licence or holding.

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dealing on default in an access licence or holding in an access licence means the transfer of the licence or holding as referred to in section 71X.

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general dealing in an access licence or holding in an access licence means the following:

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- (a) the transfer of the licence or holding from one person to another, as referred to in section 71M,
- (b) the term transfer of the water entitlements conferred by the licence or holding from one person to another, as referred to in section 71N,
- (c) the grant of a new access licence of a different category or subcategory, as referred to in section 71O,
- (d) the grant of an access licence arising from a subdivision or consolidation, as referred to in section 71P,
- (e) the assignment of rights in the licence, as referred to in section 71Q,
- (f) the grant of a new access licence after amendment of the share component of the licence, as referred to in section 71R,
- (g) the amendment of the extraction component of an access licence, as referred to in section 71S,
- (h) the grant or cancellation of an access licence to give effect to the interstate transfer of an access licence, as referred to in section 71U,

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(i) the amendment of the licence to nominate a specified water supply work, or group of water supply works, as a means by which water allocations under the licence may be taken, as referred to in section 71W,	1 2 3 4
(j) such other dealings as are prescribed by the regulations.	5
<i>holding in an access licence</i> means the share of the entitlements conferred by the access licence held by a particular co-holder of the licence.	6 7 8
<i>Ministerial action</i> , in relation to an access licence or holding in an access licence means the following:	9 10
(a) the grant of an access licence under section 63,	11
(b) the issue of a replacement access licence (within the meaning of Schedule 10) arising from the operation of that Schedule,	12 13 14
(c) the amendment or revocation of the conditions of an access licence under sections 66–68,	15 16
(d) the amendment of the share or extraction component of an access licence under section 68A,	17 18
(e) the surrender of an access licence under section 77,	19
(f) the cancellation of an access licence under section 77A,	20
(g) the suspension or cancellation of an access licence under section 78,	21 22
(h) the compulsory acquisition of an access licence under section 79,	23 24
(i) any other action in relation to an access licence or holding in an access licence prescribed by the regulations.	25 26 27
<i>record</i> , in relation to the Access Register, includes amend, cancel or omit.	28 29
<i>registered</i> means registered in the Access Register.	30
[36] Dictionary, definition of “security interest”	31
Omit the definition. Insert instead in alphabetical order:	32
<i>security holder</i> , in relation to an access licence or holding in an access licence, means the holder of a registered security interest over the licence or holding.	33 34 35

Water Management Amendment Bill 2004

Schedule 3 Amendments relating to dealings and other matters

security interest over an access licence or holding in an access licence means a mortgage or charge over, or other arrangement of a kind prescribed by the regulations in respect of, the licence or holding, that secures the payment of a debt or performance of some other obligation under a contract or other legally enforceable arrangement.

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Schedule 4 Amendments relating to access licences and approvals

(Section 3)

[1] Section 21 Additional provisions

Omit “and the maximum credit that may be allowed to accumulate in any account” from section 21 (c).

Insert instead “the maximum credit that may be allowed to accumulate in any account and the withdrawal of water from any account by reason of evaporation or dam spill or in such other circumstances as may be prescribed by the regulations”.

[2] Section 55A Application of Part

Omit section 55A (1). Insert instead:

- (1) This Part applies to:
 - (a) each part of the State or each water source, and
 - (b) each category or subcategory of access licence that relates to that part of the State or that water source,that is declared by proclamation to be a part of the State or water source, and category or subcategory of access licence, to which this Part applies.

[3] Section 56 Access licences

Insert at the end of section 56 (2) (c):

, or

- (d) as a specified number of units.

[4] Section 57

Omit the section. Insert instead:

57 Categories of licence

- (1) There are the following categories of access licences:
 - (a) regulated river (high security) access licences,
 - (b) regulated river (general security) access licences,
 - (c) regulated river (conveyance) access licences,
 - (d) unregulated river access licences,

(e) aquifer access licences,	1
(f) estuarine water access licences,	2
(g) coastal water access licences,	3
(h) supplementary water access licences,	4
(i) major utility access licences,	5
(j) local water utility access licences,	6
(k) domestic and stock access licences,	7
(l) such other categories of access licence as may be prescribed by the regulations.	8 9
(2) Subcategories of any category of access licence may be prescribed by the regulations.	10 11
[5] Chapter 3, Part 2, Division 2, heading	12
Omit “and renewal”.	13
[6] Section 61 Applications for granting of access licences	14
Omit section 61 (1). Insert instead:	15
(1) A person may apply to the Minister for an access licence if:	16
(a) the application is for a specific purpose access licence and the regulations provide, or a management plan provides, that an application for the licence may be made, or	17 18 19 20
(b) the application is for an access licence with a zero share component (as referred to in section 63 (5)), or	21 22
(c) the person has acquired the right to apply for the licence under section 65.	23 24
[7] Section 61 (4)	25
Omit the subsection.	26
[8] Section 63 Determination of applications	27
Omit section 63 (8) and (9).	28

[9] Section 65	1
Omit the section. Insert instead:	2
65 Controlled allocation of access licences	3
(1) The Minister may, by order published in the Gazette, declare that the right to apply for 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.	4 5 6 7
(2) An order under this section:	8
(a) may relate to one or more particular access licences, or a particular class of access licences or all access licences, for a specified water management area or water source, and	9 10 11 12
(b) may specify a limited period for which such an access licence is to have effect.	13 14
(3) If a management plan so provides, the Minister may grant a 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 this Part.	15 16 17 18 19
(4) The Minister must impose a condition on a licence granted under subsection (3) to the effect that the water credited from time to time to the licence must be used for environmental purposes either generally or at specified times or in specified circumstances.	20 21 22 23 24
Note. Section 45 (2) enables the Minister to amend a management plan for the purpose of enabling the granting of licences in certain circumstances containing conditions for adaptive environmental water use.	25 26 27 28
[10] Section 66 Conditions of access licence	29
Omit “Minister’s plan” from section 66 (1) (a). Insert instead “this Act”.	30

[11] Section 66 (2A)	1
Insert after section 66 (2):	2
(2A) When granting a specific purpose access licence, the Minister is to impose a condition on the licence so as to ensure that the licence is used for the purpose for which it is granted. Such a condition may limit the operation of the licence to a particular location.	3 4 5 6 7
[12] Section 68A	8
Insert after section 68:	9
68A Amendment of share or extraction components of access licences by Minister	10 11
(1) The Minister may amend the share component or extraction component of an access licence in accordance with the relevant management plan.	12 13 14
(2) The Minister must cause written notice of an amendment of an access licence under this section to be served on the holder of the licence and any security holder in relation to the licence.	15 16 17 18
(3) An amendment under this section has no effect until it is recorded in the Access Register.	19 20
Note. The holder of an access licence that is amended in accordance with this section may be entitled to compensation under section 87.	21 22
[13] Section 69	23
Omit sections 69 and 70. Insert instead:	24
69 Duration of access licence	25
An access licence ceases to be in force on the date that the cancellation of the licence is recorded in the Access Register.	26 27
[14] Section 71J Access licence may nominate water supply works	28
Insert at the end of the section:	29
(2) A water supply work or group of water supply works situated in another State or Territory may be nominated for an access licence so long as the operation of the work or works is lawful in the place in which the work or works is or are situated and	30 31 32 33

an arrangement is in place (as referred to in section 391A) between the Minister and a Minister of the other State or Territory concerned.

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[15] Section 77 Surrender of access licences

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Omit section 77 (3). Insert instead:

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- (3) If the notice of surrender of an access licence provides that the surrender is not to take effect until after a date specified in the notice, the Minister is not to record the surrender under section 71A in the Access Register before that date.
- (4) The Minister must record in the Access Register that the Minister is the holder of the surrendered access licence.
- (5) Subsection (4) does not prevent the Minister from subsequently dealing with a surrendered access licence in any manner that a holder of the licence may deal with it (for example, transferring the licence).

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[16] Section 77A

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Insert after section 77:

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77A Cancellation of access licences that can no longer be used or are no longer required

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- (1) The Minister is to cancel a supplementary access licence when the relevant management plan ceases to make provision for the extraction of water under such an access licence.
- (2) The Minister is to cancel a specific purpose access licence if the Minister is of the opinion that the purpose for which the licence was granted no longer exists.
- (3) The regulations may prescribe criteria which the Minister is to consider when determining under subsection (2) whether the purpose for which a specific purpose access licence was granted no longer exists.
- (4) The Minister is to cancel an access licence of a category prescribed by regulations referred to in section 57 (1) (1) (other than a specific purpose access licence) if the regulations prescribe the period for which such a licence is to have effect and the period has expired.

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(5)	The Minister is to cancel an access licence if the period for which the licence is to have effect was specified in an order under section 65 and the period has expired.	1 2 3
(6)	The Minister may cancel any access licence of which the Minister is the holder.	4 5
[17]	Section 78 Suspension and cancellation of access licences	6
	Omit section 78 (1) (c). Insert instead:	7
	(c) if any fees, charges or civil penalties in respect of the licence have not been paid, whether or not those fees, charges or civil penalties were incurred by the current holder of the licence.	8 9 10 11
[18]	Section 78 (3)	12
	Omit the subsection. Insert instead:	13
	(3) During any period of suspension of an access licence:	14
	(a) the holder of the licence is not authorised by the licence to order or take any water credited to the water allocation account for the licence, and	15 16 17
	(b) the holder of the licence is not entitled to apply for the registration of any dealing with respect to the licence, and	18 19 20
	(c) appropriate water allocations continue to accrue to the account for the licence, and	21 22
	(d) fees and charges payable under this Act in respect of the licence will continue to apply.	23 24
[19]	Section 78 (4)	25
	Omit the subsection.	26
[20]	Section 78A	27
	Insert after section 78:	28
78A	Notification of intention to suspend, cancel or require payment of penalty	29 30
	(1) Action under section 77A or 78 may not be taken in relation to an access licence unless the Minister:	31 32

(a)	has given written notice to the holder of the access licence, and if there are security holders in relation to the access licence to those security holders, that the Minister proposes to take such action, and	1 2 3 4
(b)	has given any such person that has been notified a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and	5 6 7
(c)	has taken any such submissions into consideration.	8
(2)	Subsection (1) (b) and (c) do not apply to the cancellation of an access licence under section 77A (1), (4), (5) or (6).	9 10
(3)	Despite subsection (1), a security holder is not entitled to make a submission in relation to the proposed suspension or cancellation of an access licence other than a submission to the effect that the security holder is prepared to make arrangements satisfactory to the Minister for the payment of any outstanding fee, charge or civil penalty if such payment would result in the Minister not proceeding with the suspension or cancellation.	11 12 13 14 15 16 17 18
[21]	Chapter 3, Part 2, Division 7	19
	Omit the Division.	20
[22]	Sections 84–85B	21
	Omit sections 84 and 85. Insert instead:	22
	Division 8A Register of available water determinations and accounting for water	23 24
	84 Register of available water determinations	25
(1)	The Minister is to cause a register to be kept of each available water determination made under section 59.	26 27
(2)	The regulations may make provision for or with respect to the form in which such a register is to be kept and the particulars that are to be recorded in such a register.	28 29 30
(3)	The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.	31 32 33

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- 85 Keeping of water allocation accounts** 1
- (1) For each access licence, the Minister is to cause an account to 2
be kept of: 3
- (a) the water allocations that are acquired under 4
section 71T or 71V in relation to the licence or 5
otherwise credited from time to time to the licence, and 6
- (b) the water allocations that are taken or assigned under 7
section 71T or 71V or otherwise debited or withdrawn 8
from time to time in relation to the licence, and 9
- (c) the water allocations that are recredited to the licence 10
from time to time under section 76. 11
- (2) Water allocations are to be credited to the account for an 12
access licence in accordance with any relevant available water 13
determination. 14
- (3) Despite subsection (2), an amount of water may be credited to 15
the account for an access licence as a result of arrangements 16
made with the Minister for the early release of water by 17
Snowy Hydro Limited. However, the same amount of water 18
as is so credited is to be debited subsequently in accordance 19
with the directions of the Minister. 20
- (4) The first amount of water to be credited to the account of an 21
access licence granted part of the way through an accounting 22
period is to bear the same proportion to the amount of 23
available water that would be allocated to the licence if it had 24
existed for the whole of the accounting period as the part of 25
the accounting period remaining when the licence was 26
granted bears to the whole of the accounting period. 27
- (5) Water allocations in an account may be withdrawn by the 28
Minister to the extent provided by the relevant management 29
plan, as referred to in section 21 (c). 30
- (6) The regulations may make provision for or with respect to the 31
form in which an account is to be kept under this section and 32
the particulars that are to be recorded in such an account. 33
- 85A Authorisation to take water from uncontrolled flows** 34
- (1) This section applies to a water source in respect of which a 35
management plan makes provision for the taking of water 36
from uncontrolled flows. 37

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| (2) | The Minister may, by order in writing, authorise the holders of regulated river (high security) access licences or regulated river (general security) access licences, or both, that relate to a water source to which this section applies to take water from the water source that has not been credited to the accounts of those licences. | 1
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| (3) | Such an order: | 7 |
| (a) | may only be made in accordance with the provisions of the relevant management plan relating to the taking of water from uncontrolled flows, and | 8
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| (b) | is to set out the water sharing provisions of the relevant management plan that provide for the taking of water from uncontrolled flows, and | 11
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| (c) | is to specify the circumstances in which water may be taken (for example, in accordance with announcements made by the Minister). | 14
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| (4) | As soon as practicable after making such an order in respect of a water source, the Minister must cause a copy of the order to be published in the Gazette and in one or more local newspapers circulating within the part or parts of the State within which the water source is situated. | 17
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| (5) | An order under this section takes effect when it is first published in the Gazette or a newspaper in accordance with subsection (4) or at such later time as may be specified in the order. | 22
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| (6) | The amount of water taken by the holder of an access licence in accordance with an order under this section is to be noted in the account for the licence. | 26
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| (7) | The provisions of an order under this section have effect despite any other provision of this Act relating to water sharing or to rules of distribution of water (other than section 323). | 29
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| 85B | Water illegally taken | 33 |
| (1) | If the Minister is satisfied that a person who is the holder of an access licence has taken water in contravention of section 341 (whether or not the person has been prosecuted for such a contravention), the Minister may do either or both of the following: | 34
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(a)	debit up to 5 times the amount of the water so taken from any water allocations credited or to be credited to the account for the licence,	1 2 3
(b)	in addition to any fee or charge in respect of the water so taken, order the holder of the licence to pay a civil penalty of an amount not exceeding 5 times that fee or charge.	4 5 6 7
(2)	Action under this section may not be taken in relation to an access licence unless the Minister:	8 9
(a)	has given written notice to the holder of the access licence that the Minister proposes to take such action, and	10 11 12
(b)	has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and	13 14 15
(c)	has taken any such submissions into consideration.	16
[23]	Chapter 3, Part 2, Division 9, heading	17
	Omit the heading. Insert instead:	18
	Division 9 Compensation relating to access licences	19
[24]	Section 87A	20
	Insert after section 87:	21
	87A No compensation payable in relation to access licence	22
	No compensation is payable by or on behalf of the Crown to any person who suffers loss or damage because of any of the following:	23 24 25
(a)	the suspension or cancellation of an access licence,	26
(b)	any error, misdescription or omission in the Access Register,	27 28
(c)	the registration in the Access Register of any person as the holder of an access licence or a security interest in an access licence,	29 30 31
(d)	the registration of a caveat in the Access Register.	32

[25] Section 88 Regulations	1
Omit “, renewal” from section 88 (b).	2
[26] Section 88A Application of Part	3
Omit section 88A (1). Insert instead:	4
(1) This Part applies to:	5
(a) each part of the State or each water source, and	6
(b) each type or kind of approval that relates to that part of	7
the State or that water source,	8
that is declared by proclamation to be a part of the State or	9
water source, and type or kind of approval, to which this Part	10
applies.	11
[27] Section 89 Water use approvals	12
Insert at the end of the section:	13
(2) A water use approval may authorise the use within New South	14
Wales of water taken from a water source outside New South	15
Wales.	16
[28] Section 91 Activity approvals	17
Omit “an aquifer interference activity” from section 91 (3).	18
Insert instead “one or more specified aquifer interference activities”.	19
[29] Section 92 Applications for approvals	20
Omit section 92 (8).	21
[30] Section 95 Determination of applications	22
Omit section 95 (2). Insert instead:	23
(2) The Minister may, with the consent of the applicant	24
concerned:	25
(a) grant a combined approval instead of separate	26
approvals in relation to more than one type of approval	27
or in relation to more than one use, work or activity or	28
type or kind of use, work or activity, or	29

- (b) combine a new approval with an existing approval so long as the period for which the new approval is granted expires at the same time as the period for which the existing approval was granted.

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[31] Section 102

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Omit the section. Insert instead:

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102 Imposition or variation of conditions after approval is granted

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- (1) The Minister may impose discretionary conditions on an approval after it has been granted, or may vary a discretionary condition, but only if the Minister:
 - (a) has given written notice to the holder of the approval that the Minister proposes to impose such conditions or make such a variation, and
 - (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions or variation, and
 - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an approval, or a variation made, at the request of the holder of the approval.
- (3) Mandatory conditions are to be imposed on an approval whenever it becomes necessary to do so in order to give effect to a relevant management plan.
- (4) The Minister must cause written notice of any conditions imposed or variation made under this section to be served on the holder of the approval concerned.
- (5) A condition or variation referred to in subsection (4) takes effect on the day on which the notice referred to in that subsection is served on the holder of the approval or on such later day as may be specified in the notice in that regard.

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[32] Sections 104 and 105	1
Omit the sections. Insert instead:	2
104 Duration of approval	3
(1) Subject to this section, an approval has effect for such period as is specified in the approval (being a period not exceeding 10 years) or, if the period of the approval is extended under section 105, that extended period.	4 5 6 7
(2) An approval granted to a major utility or a local water utility has effect for a period of 20 years or, if that 20-year period is extended under section 105, that extended period.	8 9 10
(3) A water supply work approval for a bore that is used solely for accessing water to which the holder is entitled as a basic landholder right (other than water from the Great Artesian Basin) has effect until it is cancelled.	11 12 13 14
(4) If an application for extension of an approval is lodged before the approval expires, the term of the expiring approval is extended until:	15 16 17
(a) the date of the final decision on the application, or	18
(b) a date fixed by the Minister for the approval,	19
whichever is the later date.	20
(5) If:	21
(a) an approval expires without an application for its extension being made, and	22 23
(b) an application for its extension is subsequently made by the former holder of an approval and is accompanied by a statutory declaration of the reasons for the delay in making the application, and	24 25 26 27
(c) the reasons are accepted by the Minister,	28
the term of the approval is taken to have been extended, and the application may be dealt with, as if the application had been made before the approval expired.	29 30 31
105 Extension of approvals	32
(1) The holder of an approval may, in accordance with the regulations, apply for an extension of the period for which the approval has effect.	33 34 35

- (2) A period for which an approval has effect may be extended more than once under this section, but each extension may not exceed the period for which an approval of that type could have originally been granted. 1
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- (3) An application for an extension must be granted unless: 5
 - (a) the relevant management plan provides, or the regulations provide, that an extension of such an approval must be assessed as if it were an application for a new approval, or 6
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 - (b) the application is required to be refused under subsection (4). 10
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- (4) An application for an extension must be refused if: 12
 - (a) in the case of a water use approval, the applicant has not certified that the extension is necessary because the particular purpose for which the approval was granted still exists, or 13
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 - (b) in the case of a water management work approval, the Minister is not satisfied that the applicant complies with section 97 (5), or 17
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 - (c) the applicant has not certified that the terms and conditions of the approval have been complied with. 20
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- (5) If assessment of an application for extension of an approval (the *original approval*) is required, the provisions of section 92 (2)–(6) apply to the application and the application is to be assessed as if the application were an application for the granting of a new approval to authorise: 22
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 - (a) in the case of a water use approval, the continuing use of the water for the particular purpose and at the particular location specified in the original approval, or 27
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 - (b) in the case of a water management work approval, the continuing maintenance and use of the work to which the original approval relates, or 30
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 - (c) in the case of an activity approval, the continuing carrying out of the activity to which the original approval relates in the same location or area specified in the original approval. 33
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[33] Section 106 Land benefited by approval	1
Omit “A water use approval or water management work approval” from section 106 (1).	2 3
Insert instead “An approval”.	4
[34] Section 106 (4)	5
Insert “, or to such types or kinds of approvals,” after “circumstances”.	6
[35] Section 107	7
Omit the section. Insert instead:	8
107 Amendment of approvals	9
(1) On the application of the holder of an approval, the Minister may amend the approval.	10 11
(2) Without limiting subsection (1), an approval may be amended to alter, add to or reduce any of the uses, works, activities or land to which the approval relates.	12 13 14
(3) An amendment of an approval must not result in the approval relating to any additional land, or authorising the extension, construction or use of a water management work on any additional land, unless the additional land adjoins the land to which the unamended approval relates and is lawfully occupied by the holder of the approval.	15 16 17 18 19 20
(4) Subsection (3) does not apply to an amendment to an approval in respect of a joint scheme (referred to in section 101 (1)) that results in the approval applying to additional land.	21 22 23
(5) If the granting of an application under this section would result in the approval concerned relating to additional uses, works, activities or land, the application is to be advertised, assessed and determined in accordance with this Part in the same way as an application for a new approval, but only in relation to the additional uses, works, activities or land.	24 25 26 27 28 29

[36] Section 109 Suspension and cancellation of approvals	1
Insert after section 109 (1) (c):	2
(c1) in the case of an approval granted in relation to a water supply work, if:	3
(i) the holder of the approval is also the holder of an access licence for which the water supply work has been nominated under section 71W (Access licence may nominate water supply works), and	4
(ii) the holder has failed to make due payment with respect to any fees, charges or civil penalties that are payable in respect of the licence (whether or not those fees, charges or civil penalties were incurred by the current holder of the approval),	5
(c2) in the case of an approval granted in relation to a water supply work referred to in section 104 (3), if:	6
(i) the holder of the approval cannot, on the written request of the Minister, demonstrate that the bore the subject of the approval is being maintained in accordance with the conditions of the approval, or	7
(ii) the bore has been decommissioned,	8
[37] Section 112 Operation of embargo	9
Omit “renewal of an approval” from section 112 (1) (c).	10
Insert instead “extension of the period for which an approval has effect”.	11
[38] Section 113 Register of approvals	12
Omit “renewed, transferred” from section 113 (1) (b).	13
Insert instead “extended, amended”.	14
[39] Section 114 Minister may impose fees and charges	15
Insert after the note:	16
(2) The Minister may waive or reduce any such fee or charge in a particular case or class of cases if the Minister is of the opinion that the circumstances warrant it.	17
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[40] Section 115 Certificate as to charges outstanding	1
Omit the section.	2
[41] Section 341 Unlawful taking of water	3
Insert after section 341 (4):	4
(5) A person is not guilty of an offence under this section in relation to the taking of water:	5
(a) in accordance with an order under section 85A, or	6
(b) in accordance with an authorisation given by the Minister of another State or Territory in accordance with an agreement referred to in section 71V (Interstate assignment of water allocations).	7
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[42] Chapter 7, Part 4	12
Omit the heading. Insert instead:	13
Part 4 Recovery of rates, charges and other money	14
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Division 1 Recovery of rates, charges and other amounts by charging authorities	16
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[43] Chapter 7, Part 4, Division 2	18
Insert after section 362:	19
Division 2 Provisions relating to access licences	20
362A Joint owners	21
(1) If an access licence is co-held by two or more co-holders, those co-holders are jointly and severally liable to the Minister for the fees, charges and civil penalties relating to the licence, but as between themselves each are only liable for such part of those fees, charges and civil penalties as is proportionate to his or her interest in the licence.	22
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(2) If any of those co-holders pays to the Minister more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.	28
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362B	Certificate as to charges outstanding in relation to access licences	1
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(1)	The Minister may, in relation to any access licence, issue a certificate to the effect that, as at the date on which the certificate is issued:	3
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(a)	a specified amount is payable in relation to the access licence pursuant to fees, charges and civil penalties imposed under this Act, or	6
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(b)	no amount is so payable.	9
(2)	Such a certificate is conclusive proof that, as at the date on which it was issued, no amounts were payable in respect of the access licence other than such amounts as are specified in the certificate.	10
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362C	Unpaid fees, charges and civil penalties	14
(1)	Any civil penalty imposed by the Minister under this Act that remains unpaid is recoverable in any court of competent jurisdiction as a debt due to the Crown.	15
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(2)	If a fee, charge or civil penalty imposed by the Minister under this Act relates to an access licence, the fee, charge or civil penalty may be recovered from the holder of the licence who incurred the fee, charge or penalty or the holder of the licence for the time being.	18
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(3)	Despite subsection (2), if a person surrenders an access licence, any fee, charge or civil penalty imposed by the Minister under this Act that relates to the licence may be recovered from that person.	23
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[44]	Section 368 Appeals to Land and Environment Court	27
	Omit “the transfer of an access licence” from section 368 (1) (e).	28
	Insert instead “a dealing in an access licence”.	29
[45]	Section 368 (1) (ma)	30
	Insert after section 368 (1) (m):	31
	(ma) a decision under section 85B,	32

[46] Section 391A	1
Insert after section 391:	2
391A Interstate arrangements in relation to access licences and approvals	3
(1) The Minister may enter into arrangements with a Minister of any other State or Territory with respect to the carrying out of administrative functions in relation to access licences or approvals, and their equivalents in the other State or Territory, in cases referred to in section 71W (2) or 89 (2).	4 5 6 7 8 9
(2) Without limiting subsection (1), such arrangements may be made with respect to the following:	10 11
(a) the collection of fees, charges and civil penalties,	12
(b) the keeping of water allocation accounts.	13
[47] Section 395 Unpaid fees and charges	14
Omit the section.	15
[48] Dictionary	16
Omit “, and includes a renewal of an access licence” from the definition of <i>access licence</i> .	17 18
[49] Dictionary, definition of “approval”	19
Omit “, and includes a renewal of an approval”.	20
[50] Dictionary, definition of “aquifer interference activity”	21
Omit the definition. Insert instead:	22
<i>aquifer interference activity</i> means an activity involving any of the following:	23 24
(a) the penetration of an aquifer,	25
(b) the interference with water in an aquifer,	26
(c) the obstruction of the flow of water in an aquifer,	27
(d) the taking of water from an aquifer in the course of carrying out mining, or any other activity prescribed by the regulations,	28 29 30
(e) the disposal of water taken from an aquifer as referred to in paragraph (d).	31 32

[51] Dictionary	1
Insert in alphabetical order:	2
<i>specific purpose access licence</i> means:	3
(a) a major utility access licence, or	4
(b) a local water utility access licence, or	5
(c) a domestic and stock access licence, or	6
(d) an access licence of a subcategory of access licence, or	7
(e) an access licence of a type that is declared by the regulations to be a specific purpose access licence.	8 9
<i>water allocation account</i> for an access licence means the account for the licence referred to in section 85 (1).	10 11
[52] Dictionary, definition of “water allocation”	12
Omit “account for the licence referred to in section 85 (1)”.	13
Insert instead “water allocation account for the licence”.	14

Schedule 5 Miscellaneous amendments

(Section 3)

[1] Section 59 Available water determinations

Omit section 59 (1). Insert instead:

- (1) From time to time, the Minister may, by order in writing, make either or both of the following determinations (an *available water determination*):
- (a) a determination as to the availability of water for the various categories or subcategories of access licences in relation to one or more specified water management areas or water sources,
 - (b) while an order is in force under section 60 (2), a determination as to the availability of water for one or more individual access licences in relation to one or more specified water management areas or water sources.

[2] Section 59 (2)

Omit “publicly”.

[3] Section 60 Rules of distribution applicable to making of available water determinations

Insert “of a type referred to in section 59 (1) (a)” after “available water determination” in section 60 (1).

[4] Section 60 (3)

Omit the subsection. Insert instead:

- (3) While an order under subsection (2) is in force, the following rules of distribution apply to the making of an available water determination:
- (a) first priority is to be given to:
 - (i) the taking of water for domestic purposes by persons exercising basic landholder rights, and
 - (ii) the taking of water for domestic purposes or essential town services authorised by an access licence,
 - (b) second priority is to be given to the needs of the environment,

(c) third priority is to be given to:	1
(i) the taking of water for stock purposes by persons exercising basic landholder rights, and	2
(ii) in the case of regulated rivers, the taking of water for purposes (other than domestic purposes) authorised by a regulated river (high security) access licence, and	3
(iii) the taking of water for the purposes of supply of commercial and industrial activities authorised by a major utility access licence or local water utility access licence, subject to the water made available being in accordance with any drought management strategy established by the Minister for that purpose, and	4
(iv) the taking of water for the purposes of electricity generation authorised by a major utility access licence, and	5
(v) the taking of water for purposes authorised by a domestic and stock access licence or by persons exercising any other water rights in relation to stock, and	6
(vi) the taking of water for purposes authorised by a conveyance access licence in connection with the supply of water for any other purpose or need referred to in this paragraph,	7
(d) fourth priority is to be given to the taking of water for purposes authorised by any other category or subcategory of access licence.	8
[5] Section 130 Determination of applications	9
Omit section 130 (2).	10
[6] Section 134 Determination of applications	11
Omit section 134 (2).	12
[7] Section 149 Election of members of private irrigation boards	13
Insert “preceding or” after “Saturday” in section 149 (1) (b).	14

[8] Section 149A	1
Insert after section 149:	2
149A Filling of casual vacancies	3
The Governor may, by proclamation in the Gazette, appoint a person (being eligible for election) to fill any casual vacancy in the membership of a private irrigation board and to hold office until the date of declaration of the poll for the next election to be held for the board under section 149.	4 5 6 7 8
[9] Section 150 Removal of members of private irrigation board from office and appointment of administrator	9 10
Omit section 150 (2).	11
[10] Section 262 Annual contribution to works program by Hunter-Central Rivers Catchment Management Authority	12 13
Omit "Trust" from section 262 (2) (b).	14
Insert instead "Authority".	15
[11] Sections 341 (2A), 342 (2A) and 343 (4)	16
Omit "clause 9 of Schedule 9" wherever occurring.	17
Insert instead "Schedule 10".	18
[12] Section 364 Proceedings for offences	19
Omit "section 56 of the <i>Justices Act 1902</i> " from the note to section 364 (2).	20 21
Insert instead "section 179 of the <i>Criminal Procedure Act 1986</i> ".	22
[13] Section 397 Exclusion of personal liability	23
Insert at the end of section 397 (2) (h):	24
, or	25
(i) an irrigation corporation.	26

[14] Section 403 Savings, transitional and other provisions	1
Omit “Schedule 9 has effect”.	2
Insert instead “Schedules 9, 10 and 11 have effect”.	3
[15] Schedule 8 Amendment of other Acts	4
Omit Schedule 8.29 [10]. Insert instead:	5
[10] Schedule 2, Part 4	6
Insert after Part 3:	7
Part 4 Provisions consequent on enactment of Water Management Act 2000	8 9 10
14 Water rights	11
(1) Section 6A (3), as in force immediately before the commencement of Schedule 10 to the <i>Water Management Act 2000</i> , continues to apply as if an access licence arising under clause 3 (1) (a) of that Schedule were a water right in relation to:	12 13 14 15 16
(a) the land specified in the entitlement from which the access licence arose as the land to which that entitlement related immediately before that commencement, or	17 18 19 20
(b) if the access licence is transferred or amended so as to specify some other land as the land to which the access licence relates, that other land.	21 22 23
(2) This clause ceases to apply on the commencement of Schedule 8.29 [2] to the <i>Water Management Act 2000</i> .	24 25

Schedule 6 Savings and transitional amendments	1
(Section 3)	2
[1] Schedule 9 Savings, transitional and other provisions	3
Insert at the end of clause 1 (1):	4
<i>Water Management Amendment Act 2004</i>	5
[2] Schedule 9, clause 1 (4)	6
Insert “, Schedule 10 or Schedule 11” after “this Schedule”.	7
[3] Schedule 9, clause 2	8
Omit the first definition of <i>appointed day</i> .	9
[4] Schedule 9, clause 2	10
Omit “(except clause 3 and Divisions 2 and 3)” from the second definition of <i>appointed day</i> .	11
[5] Schedule 9, clauses 3, 9, 9A, 9B, 9C and 10	13
Omit the clauses.	14
[6] Schedule 9, Part 2, Division 3	15
Omit the Division.	16
[7] Schedule 9, Part 4	17
Insert after Part 3:	18
Part 4 Provisions consequent on enactment of Water Management Amendment Act 2004	19
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61 Definition	22
In this Part, <i>the 2004 amending Act</i> means the <i>Water Management Amendment Act 2004</i> .	23
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62	References in management plans to environmental health water and supplementary environmental water	1 2
	In any management plan made before the commencement of this clause:	3 4
	(a) a reference to environmental health water or supplementary environmental water is taken to be a reference to planned environmental water, and	5 6 7
	(b) any environmental water rules established by the plan in relation to environmental health water or supplementary environmental water are taken to have been established in relation to planned environmental water.	8 9 10 11 12
63	Duration of management plans	13
(1)	Subject to section 43, any management plan for a water source whose nominal commencement date occurs before the date on which the water source is declared, by proclamation under section 55A, to be a water source to which Part 2 of Chapter 3 applies commences on, and has effect for 10 years from 1 July next after, the date so declared.	14 15 16 17 18 19
(2)	In any management plan whose actual commencement date is later than its nominal commencement date:	20 21
	(a) any date or period of time that is required to be calculated by reference to the nominal commencement date is instead to be calculated by reference to the actual commencement date, and	22 23 24 25
	(b) any date specified in the plan is taken instead to be the date occurring after the date so specified by the number of days by which the actual commencement date succeeds the nominal commencement date.	26 27 28 29
(3)	In this clause:	30
	<i>actual commencement date</i> , in relation to a management plan referred to in subclause (1), means the date on which that plan commences pursuant to that subclause.	31 32 33
	<i>nominal commencement date</i> , in relation to a management plan, means the date specified in the plan as the date on which the plan is to commence.	34 35 36

64	Validity of management plans and exercise of plan-making functions	1 2
(1)	Section 47, as substituted by the 2004 amending Act, applies to a management plan made before the substitution in the same way as it applies to a management plan made after the substitution.	3 4 5 6
(2)	Subclause (1) does not apply to any management plan made before the substitution of section 47 if proceedings under section 47, as in force before the substitution, were commenced in the Land and Environment Court within 3 months after the date of its publication in the Gazette.	7 8 9 10 11
65	Minister's plans	12
	Section 50, as amended by the 2004 amending Act, applies to:	13
(a)	any management plan that was in course of preparation before the commencement of this clause, and	14 15
(b)	any management plan that was made before the commencement of this clause,	16 17
	in the same way as it applies to any management plan that is prepared or made after that commencement.	18 19
66	Applications for access licences	20
	Despite section 61, a person may apply for an access licence in accordance with this Act if:	21 22
(a)	the application is for a specific purpose access licence and the relevant management plan contains provisions to the effect that access licences of the type concerned should be exempt from any embargo under this Act (even though the provisions of this Act relating to the declaration of embargoes may have been repealed), or	23 24 25 26 27 28
(b)	the application is for a supplementary access licence and is made by the owner or occupier of land on which is situated a work referred to in:	29 30 31
(i)	the Schedule to the order under the <i>Water Act 1912</i> published in Gazette No 119 of 19 July 2002 at page 5,493, or	32 33 34
(ii)	the Schedule to the order under the <i>Water Act 1912</i> published in Gazette No 210 of 8 November 2002 at page 9,491.	35 36 37

67	References to former sections 71A and 71B–71J, 71K and 71L	1
(1)	In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [6] to the 2004 amending Act, a reference to section 71A extends to section 71M, as inserted by Schedule 3 [6].	2 3 4 5
(2)	In any instrument that was in force under this Act immediately before the commencement of Schedule 3 [25] to the 2004 amending Act, a reference to section 71B–71J, 71K or 71L extends to section 71O–71W, 71Y or 71Z, respectively, as renumbered by Schedule 3 [25].	6 7 8 9 10
(3)	The renumbering of section 71K as section 71Y does not affect the operation or validity of any access licence dealing principles or access licence dealing rules that were in force immediately before the section was renumbered.	11 12 13 14
68	Directions under section 323	15
	Any direction in force under section 323 immediately before the amendment of that section by the 2004 amending Act continues to have effect as if that section had not been amended by that Act.	16 17 18 19
69	Directions under section 325	20
	Any direction in force under section 325 immediately before the substitution of that section by the 2004 amending Act continues to have effect as if that section had not been substituted by that Act.	21 22 23 24
[8]	Schedules 10 and 11	25
	Insert after Schedule 9:	26
	Schedule 10 Conversion of former entitlements to access licences and approvals	27 28
	(Section 403)	29
	Part 1 Preliminary	30
	1 Application of Schedule	31
	This Schedule applies:	32

- (a) to each category or subcategory of access licence that relates to a part of the State or water source to which Part 2 of Chapter 3 applies by operation of a proclamation under section 55A, and
- (b) to each type or kind of approval that relates to a part of the State or water source to which Part 3 of Chapter 3 applies by operation of a proclamation under section 88A.

2 Definitions

In this Schedule and Schedule 11:

appointed day means:

- (a) in relation to a category or subcategory of access licence to which Part 2 of Chapter 3 applies or an entitlement from which such an access licence arises, the day appointed under section 55A in relation to that category or subcategory of access licence, or
- (b) in relation to a type or kind of approval to which Part 3 of Chapter 3 applies or an entitlement from which such an approval arises, the day appointed under section 88A in relation to that type or kind of approval.

Note. Clause 9 provides that, in certain circumstances, the operation of those Parts is deferred in relation to particular entitlements.

entitlement means:

- (a) a licence, permit, authority, irrigation corporation licence or group licence referred to in Part 2 of the 1912 Act, or
- (b) a right to take and use water referred to in section 38B of the 1912 Act, or
- (c) a licence referred to in Part 5 of the 1912 Act, or
- (d) an approval referred to in Part 8 of the 1912 Act, or
- (e) a water management licence under Part 9 of the 1912 Act, or
- (f) a permit under Part 3A of the 1948 Act, or
- (g) an irrigation corporation licence under the 1994 Act, or
- (h) any power under section 12 of the *Water Administration Act 1986* or section 8 of the 1912 Act that, immediately before the appointed day, was

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- exercisable by any person pursuant to an agreement between that person and the Ministerial Corporation, or
- (i) any right to take water from an unlicensed bore (being a bore constructed as referred to in section 112 (1) (b) of the 1912 Act) that was in force immediately before the appointed day, or
 - (j) any arrangement that, immediately before the commencement of this Schedule, was in force between the Inverell Shire Council and the Ministerial Corporation, or
 - (k) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.
- former entitlement**, in relation to an access licence or approval, means the entitlement from which the access licence or approval arises because of the operation of this Schedule.
- replacement access licence**, in relation to an entitlement, means an access licence (including any supplementary water access licence) that, by operation of this Schedule, arises from the entitlement or from a direction under section 20AA of the 1912 Act in relation to the entitlement.
- replacement approval**, in relation to an entitlement, means an approval that, by operation of this Schedule, arises from the entitlement.
- specified water source** means a water source specified in a management plan.
- the 1912 Act** means the *Water Act 1912*.
- the 1948 Act** means the *Rivers and Foreshores Improvement Act 1948*.
- the 1994 Act** means Division 3 of Part 4 of the *Irrigation Corporations Act 1994*, as continued in force by the regulations.

Part 2	Conversion of former entitlements	1
Division 1	Entitlements generally	2
3	Access licences and approvals arising from former entitlements	3 4
(1)	Subject to this Schedule, an entitlement that, immediately before the appointed day, was in force under the 1912 Act, the 1948 Act or the 1994 Act is taken to have been replaced:	5 6 7
(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 for the quantity of water so specified (subject to such of the conditions of the entitlement as are applicable to an access licence), and	8 9 10 11 12
(b)	to the extent to which it entitles any person or body to use a specified water management work, by a water management work approval held by that person or body in respect of that work (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and	13 14 15 16 17 18
(c)	to the extent to which it entitles any person or body to use water on any land, by a water use approval held by that person or body in respect of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and	19 20 21 22 23
(d)	to the extent to which it entitles any person or body to carry out a specified activity, by an activity approval held by that person or body in respect of that activity (subject to such of the conditions of the entitlement as are applicable to an approval of that kind).	24 25 26 27 28
(2)	Subclause (1) does not apply to an entitlement that, immediately before the appointed day, was held by a local water utility for the purposes of town water supply.	29 30 31
4	Categories and subcategories of access licence	32
(1)	Without limiting clause 3, an entitlement of the kind referred to in Column 1 of Schedule 11 that, immediately before the appointed day, was held for a purpose specified in Column 2 of that Schedule, or subject to conditions limiting the entitlement to such a purpose, is taken to be:	33 34 35 36 37

- (a) an access licence of the category referred to in Column 3 of that Schedule, in the case of an entitlement with respect to a regulated river, or 1
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 - (b) an access licence of the category referred to in Column 4 of that Schedule, in the case of an entitlement with respect to an unregulated river, estuary, lake or aquifer. 4
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 - (2) A description appearing between square brackets in Column 3 or 4 of Schedule 11 indicates that the access licence concerned is of the subcategory indicated by that description. 7
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- 5 More than one licence or approval may replace a single entitlement** 10
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- (1) An entitlement that, immediately before the appointed day, was held for or limited to 2 or more purposes specified in Column 2 of Schedule 11 is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by a separate access licence held by that person or body: 12
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 - (a) for each of those purposes for which a separate category or subcategory of licence is specified in Schedule 11, and 18
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 - (b) for the quantity of water applicable under the entitlement for the relevant purpose. 21
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 - (2) An entitlement that, immediately before the appointed day, was held in relation to 2 or more water sources to which Part 2 of Chapter 3 applies is, to the extent to which it entitles any person or body to take a specified quantity of water, taken to have been replaced by separate access licences held by that person or body: 23
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 - (a) for each of the specified water sources, and 29
 - (b) for the quantity of water applicable under the entitlement to the relevant specified water source. 30
31
 - (3) An entitlement with respect to a water management work that, immediately before the appointed day, allocated water not only to the land on which the work is situated but also to other land (being land held otherwise than by the landholder of the land on which the work is situated) is taken to have been replaced: 32
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| (a) | to the extent to which it allocates water to the land on which the work is situated: | 1
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| (i) | by an access licence held by the landholder of that land for the quantity of water so allocated (subject to such of the conditions of the entitlement as are applicable to an access licence), and | 3
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| (ii) | by a water management work approval held in respect of that work by the landholder of that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and | 8
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| (iii) | by a water use approval held by the landholder of that land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind), and | 13
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| (b) | to the extent to which it allocates water to other land (being land held otherwise than by the landholder of the land on which the work is situated): | 17
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19 |
| (i) | by an access licence held by the landholder of that other land for the quantity of water so allocated (subject to such of the conditions of the entitlement as are applicable to an access licence), and | 20
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| (ii) | by a water use approval held by the landholder of that other land for the use of water on that land (subject to such of the conditions of the entitlement as are applicable to an approval of that kind). | 25
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| (4) | Subclause (3) does not apply to an entitlement held by an irrigation corporation or a private irrigation board. | 30
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| 6 | Access licences and approvals not to arise from certain entitlements | 32
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| (1) | An entitlement that, immediately before the appointed day, entitled any person or body: | 34
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| (a) | to take water, or | 36 |
| (b) | to construct or use a water management work, or | 37 |
| (c) | to use water, or | 38 |
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- (d) to carry out an activity, 1
for a specified purpose for which an access licence or 2
approval is not required to be obtained under this Act or the 3
regulations is, to the extent to which it relates to any such 4
purpose, not replaced by an access licence or approval. 5
Note. For example, an owner or occupier of a landholding may take 6
water and construct and use works for domestic and stock purposes, or 7
within a harvestable rights area, without being required to hold an access 8
licence. 9
- (2) A document purporting to be an access licence or approval 10
that is inadvertently issued in replacement of an entitlement 11
referred to in subclause (1) is of no effect. 12
- 7 Manner in which access licences to be expressed** 13
- (1) The Minister, by order in writing, may at any time convert the 14
manner in which the share component of an access licence 15
(other than a local water utility access licence) is expressed 16
from a specified quantity of water to any other manner in 17
which the share component of an access licence may be 18
expressed under section 56. 19
- (2) The Minister, by order in writing, may at any time apply 20
uniform extraction components to replacement access 21
licences, but having regard to any relevant management plan. 22
- (3) An order under this clause: 23
- (a) may apply to access licences generally, or to access 24
licences of a specified category or subcategory, and 25
- (b) may apply with respect to one or more parts of the State 26
or water sources. 27
- (4) No compensation is payable as a consequence of the making 28
of an order under this clause. 29
- 8 Supplementary water access licences** 30
- On the appointed day, and if the regulations so provide, 31
supplementary water access licences, additional to those 32
arising under this Part, are taken to have arisen in accordance 33
with the regulations. 34

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- 9 Entitlements with no specified quantity of water to continue under former Acts** 1
2
- (1) Despite any other provision of this Schedule: 3
- (a) neither an access licence nor an approval arise in 4
relation to an entitlement if, immediately before the 5
appointed day, the entitlement was for an unspecified 6
quantity of water or for a quantity of water yet to be 7
specified, and 8
- (b) in any such case, the 1912 Act, the 1948 Act or the 1994 9
Act, as the case requires, is taken to continue to apply 10
to the entitlement until such time as a quantity of water 11
is specified under that Act in relation to the entitlement, 12
or until the entitlement ceases to be in force under that 13
Act, whichever occurs first. 14
- (2) Parts 2 and 3 of Chapter 3, and this Schedule (apart from this 15
clause) apply to the entitlement from the day the quantity is 16
specified in relation to the entitlement: 17
- (a) as if that day were the appointed day, and 18
- (b) as if the entitlement entitled the person or body to take 19
the specified quantity of water. 20
- 10 Owners to hold new access licences if occupier or 21
predecessor did not obtain entitlement** 22
- (1) This clause applies to an entitlement if, on the appointed day, 23
the owner of the land to which the entitlement relates (the 24
landowner) is not the same person as the person who is in 25
occupation of the land (the *current occupier*). 26
- (2) The entitlement is taken to have been replaced by an access 27
licence held by the landowner, and not by the current 28
occupier, to the extent to which the entitlement was originally 29
granted otherwise than to the current occupier or a 30
predecessor in title of the current occupier. 31
- (3) The access licence referred to in subclause (2) is taken to be 32
the subject of a term transfer (within the meaning of 33
section 71N) to the current occupier. 34
- (4) Despite section 71N, the term transfer referred to in 35
subclause (3) continues in force until the current occupier 36
ceases to be entitled to occupy the land. 37
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11	Mortgagors of old system land to hold new access licences	1
(1)	This clause applies to an entitlement with respect to land (other than land under the provisions of the <i>Real Property Act 1900</i>) that, on the appointed day, is subject to a mortgage that is registered in the General Register of Deeds (the <i>original mortgage</i>).	2 3 4 5 6
(2)	The entitlement is taken to have been replaced by an access licence held by the person holding the right to redeem the original mortgage.	7 8 9
12	Partial application of Act to existing entitlement	10
(1)	This clause applies if:	11
(a)	immediately before the appointed day, an entitlement applied to more than one water source, work or activity, and	12 13 14
(b)	on or after that day, the entitlement continues to apply to a water source, work or activity but is partially replaced by an access licence or approval in respect of some other water source, work or activity.	15 16 17 18
(2)	Subject to this Schedule, the entitlement and replacement access licence or approval are each taken to be subject to a condition that limits the total quantity of water that may be taken and used under both of them to not more than the total quantity of water authorised to be taken and used under the entitlement immediately before the replacement access licence or approval first came into effect.	19 20 21 22 23 24 25
(3)	Subclause (2) does not apply to a local water utility access licence.	26 27
13	Local water utilities	28
(1)	On, or as soon as practicable after, the appointed day, the Minister must issue to a local water utility that, immediately before the appointed day, held one or more entitlements for town water supply purposes:	29 30 31 32
(a)	for each specified water source to which Part 2 of Chapter 3 applies:	33 34
(i)	one access licence, or	35

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| (ii) | if the entitlements relate to more than one water supply scheme, one access licence for each such scheme, and | 1
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| (b) | one or more water supply work approvals to cover all water supply schemes situated on land to which Part 3 of Chapter 3 applies, and | 4
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| (c) | one water use approval to cover each water supply scheme situated on land to which Part 3 of Chapter 3 applies, being land supplied with water by the local water utility. | 7
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| (2) | The share component of an access licence referred to in subclause (1) (a) is to be expressed as a specified volume per year. | 11
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| (3) | Subject to subclauses (4) and (5), the specified volume in relation to the access licence may be any of the following: | 14
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| (a) | the quantity of water specified in the former entitlements immediately before the appointed day, | 16
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| (b) | a quantity of water calculated by reference to the nature and extent of the area to which the licence relates: | 18
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| (i) | having regard to population levels, geographical location and current water usages, and | 20
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| (ii) | assuming that reasonable demand management strategies are implemented in that area, | 22
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| (c) | a quantity of water calculated on the basis of the current yield of the water management works under the control or management of the local water utility by which the licence is taken to be held. | 24
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| (4) | The yield referred to in subclause (3) (c) is to be determined with regard to historical stream flow data, and with regard to drought management strategies and demand management practices established by the local water utility concerned. | 28
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| (5) | In the case of an access licence whose specified volume is greater than the quantity of water currently taken and used under the former entitlements, the Minister may at any time impose a condition on the access licence to the effect that water in excess of that quantity, or in excess of such greater quantity as the Minister may determine, is not to be taken, used or assigned except with the consent of the Minister. | 32
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- (6) Such a condition is not to be imposed unless the Minister is satisfied that the imposition of such a condition is necessary in the public interest. 1
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 - (7) The Minister has absolute discretion as to whether or not to grant consent to the assignment of excess water, as referred to in subclause (5), and, in particular, is not subject to any limitation under section 71Y as to the manner in which an application for such consent is dealt with. 4
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 - (8) If a former entitlement relates partly to a water source to which Part 2 of Chapter 3 applies and partly to some other water source, the share components for the replacement access licences arising under this clause are not to include any quantity of water covered by an entitlement remaining under the 1912 Act. 9
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 - (9) If more than one access licence is issued to a local water utility under this clause, the Minister may impose on each access licence a condition limiting the total quantity of water that may be taken and used under those licences. 15
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 - (10) In this clause, *water supply scheme* means an aggregation of water supply works used by a local water utility for the purposes of exercising its water supply functions. 19
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- 14 Water use approvals for town water supply** 22
- (1) To the extent to which, immediately before the appointed day, an entitlement allowed water taken by a person or body to be used for town water supply and one or more other purposes, the entitlement is taken to have been replaced by the following water use approvals: 23
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 - (a) an approval entitling the appropriate local water utility (or such other person or body as is responsible for town water supply in that area) to use water for town water supply, 28
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 - (b) an approval entitling the firstmentioned person or body to use water for the other purposes (but only on the land to which the entitlement relates). 32
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 - (2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind. 35
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15 Private water trusts

- (1) This clause applies to a private water trust's right, pursuant to Part 3 of the 1912 Act, to take and use water conserved or obtained by a work administered and managed by the private trust (being a right saved by clause 16 of the *Water Management (Private Water Trusts—General) Savings and Transitional Regulation 1995*, as in force immediately before 1 September 2002, whether or not the right is in force immediately before the appointed day) referred to in this clause as a **Part 3 right**.
- (2) On the appointed day, a private water trust's Part 3 right in relation to a water source is taken to have been replaced:
- (a) to the extent to which it entitled any private water trust to take a specified quantity of water, by an access licence held by the private water trust for the quantity of water provided for in the relevant volumetric water allocation scheme under section 20W of the 1912 Act, as in force immediately before 1 September 2002, and
 - (b) to the extent to which it entitled the private water trust to use a specified water supply work, by a water supply work approval held by the private water trust in respect of that work, and
 - (c) by a water use approval entitling the private water trust to use water on the land to which the right related.
- (3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the Part 3 right as are applicable to an access licence or approval of that kind.

16 Location of bores

The location to be specified in an approval for a bore that replaces a licence under Part 5 of the 1912 Act may differ from the location specified in the licence if the bore to which the licence relates is situated elsewhere than at the location so specified.

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- 17 Multiple bore licences** 1
- (1) This clause applies to any group of licences under Part 5 of the 1912 Act that, immediately before the appointed day, were linked by a condition specifying a maximum quantity of water that may be taken under all of the licences, referred to in this clause as *linked Part 5 licences*. 2
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- (2) On the appointed day, any linked Part 5 licences are taken to have been replaced: 7
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- (a) to the extent to which they entitled any person or body to take a specified quantity of water, by a single aquifer access licence held by all the persons or bodies who held the licences for the quantity of water specified by the linking condition, and 9
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- (b) to the extent to which they entitled any person or body to use a specified water supply work, by one water supply work approval held by all the persons or bodies who held the licences in respect of works to which the linking condition related, and 14
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- (c) by one water use approval entitling all the persons or bodies who held the licences to use water on the land to which the linking condition related. 19
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- (3) An access licence or approval referred to in subclause (2) is subject to such of the conditions of the linked Part 5 licences as are applicable to an access licence or approval of that kind. 22
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- (4) In any group of linked Part 5 licences, the Part 5 licence last granted is taken to be the entitlement from which the replacement access licence and approvals arise for the purposes of clause 21. 25
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- 18 Water use approvals for joint schemes** 29
- (1) An entitlement that, immediately before the appointed day, was in force under Division 4 of Part 2 of the 1912 Act is taken to have expired on that day and been replaced, to the extent to which it entitles a person or body to use water on the land to which it relates, by separate water use approvals for each person or body who is entitled to take water under the replacement access licence. 30
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- (2) An approval referred to in subclause (1) is subject to such of the conditions of the entitlement as are applicable to an approval of that kind.

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Division 2 Continuation of security interests

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19 Registration of security interests in replacement access licences

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- (1) Subject to this clause, a person who, immediately before the appointed day, had an interest in an entitlement (being an interest in the nature of a security interest) is taken to have an equivalent security interest in the replacement access licence.
- (2) If the interest in the entitlement arose from a mortgage over land, the equivalent security interest in the access licence is taken to be a mortgage over the replacement access licence.
- (3) If a document in the approved form with respect to a security interest in a replacement access licence is lodged for registration in the Access Register within the prescribed period, or is subsequently lodged for registration pursuant to an order of a court in proceedings that have been commenced within that period and of which notice has been given to the Minister within that period, then on registration:
- (a) it ranks, with respect to any other security interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919* or section 36 of the *Real Property Act 1900*, or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be, and
- (b) it ranks before any other security interest in the licence that arises after the appointed day, regardless of when that other security interest is registered.
- (4) A security interest in a replacement access licence in respect of which a document in the approved form is not lodged for registration in the Access Register within the time allowed by subclause (3) is taken to have been extinguished.
- (5) As soon as practicable after the commencement of this Part, the Director-General is to cause a notice containing the following matters to be published in a newspaper circulating generally in New South Wales, and in any other manner the Director-General thinks fit:

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- (a) that security interests in replacement access licences may be registered in the Access Register, 1
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- (b) that security interests registered in the Access Register will retain their current priority relative to other security interests, 3
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- (c) that the Director-General will act for any person claiming a security interest, at no cost to the person, in relation to the registration of the interest in the Access Register, 6
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- (d) that, before the Director-General will take action under this clause with respect to a person's security interest, the person claiming the interest must lodge with the Director-General a written notice stating that the person has, at least 90 days before lodging the notice, advised the holder of the licence, in the form approved by the Director-General, as to the existence of the security interest claimed. 10
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- (6) As soon as practicable after receiving written notice of a claimed security interest, the Director-General must forward the claim to the Minister for registration in the Access Register. 18
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- (7) If an objection is received in relation to the claimed security interest, the Director-General may nevertheless forward the claim to the Minister but, in that event: 22
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 - (a) the Director-General must indicate to the Minister that the claim is disputed, and 25
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 - (b) the Minister must ensure that, when the interest is registered, a note to the effect that the claim is disputed is included in the Access Register in relation to the interest. 27
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- (8) Subclause (7) (b) does not prevent the Minister from including in the Access Register such other notes as he or she considers appropriate in relation to a claimed security interest. 31
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- (9) Duty is not chargeable under Chapter 7 of the *Duties Act 1997* on any security interest arising under this clause. 34
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- (10) Despite subclause (9), duty may become chargeable on a security interest under section 210 (2) of the *Duties Act 1997* in relation to any advance or further advance referred to in that 36
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	subsection that occurs after the security interest is registered in the Access Register.	1 2
(11)	In this clause, <i>prescribed period</i> , in relation to an interest in a replacement access licence, means the period of 24 months beginning on the appointed day for that licence.	3 4 5
Division 3	General	6
20	Notification of licences	7
(1)	The Minister must cause written notice of the terms of each access licence or approval arising by operation of this Schedule to be given to the holder of each such access licence or approval.	8 9 10 11
(2)	A replacement access licence or approval is to include any mandatory conditions that are required to be imposed on the licence.	12 13 14
(3)	A replacement access licence or approval is to be in such form as the Minister may determine.	15 16
21	Duration of new access licence or approval	17
(1)	A replacement access licence continues in force until it is cancelled.	18 19
(2)	Unless it is sooner cancelled, a replacement approval has effect for:	20 21
(a)	except as provided by paragraph (b):	22
(i)	2 years from the appointed day, or	23
(ii)	for the balance of the period for which its former entitlement would (but for this Schedule) have remained in force,	24 25 26
	whichever is the longer, or	27
(b)	if its former entitlement would (but for this Schedule) have remained in force for an indefinite period, 10 years.	28 29 30
(3)	Any suspension of an entitlement under the 1912 Act, the 1948 Act or the 1994 Act that was in force immediately before the appointed day continues in force under this Act, and may accordingly be revoked at any time.	31 32 33 34

(4)	This clause does not limit the operation of section 105.	1
22	Water management work approvals arising from certain permits	2 3
	A water supply work approval or water use approval replacing a permit granted under section 18H of the 1912 Act or Part 3A of the 1948 Act has effect for the balance of the period for which the permit would (but for the this Schedule) have remained in force.	4 5 6 7 8
23	Entitlements held by 2 or more co-holders	9
(1)	Subject to subclause (2), 2 or more co-holders of a replacement access licence are taken to hold the access licence:	10 11 12
(a)	if the Minister has a record of the shares in which the former entitlement was held immediately before the appointed day, in the same shares as the former entitlement was so held, or	13 14 15 16
(b)	in any other case, as tenants in common with the entitlements conferred by the licence under section 56 apportioned equally between them.	17 18 19
(2)	If within 2 months after receiving a written request from the Minister to make such an election the co-holders notify the Minister in writing of the shares in which they elect to hold the access licence, the co-holders are taken to hold the access licence in the shares so notified.	20 21 22 23 24
24	Right of access continued temporarily	25
	In the case of a licence under section 13A or an authority under section 20CA of the 1912 Act, the holder of the replacement water management work approval may continue to exercise the rights conferred by section 13A (7) or 20CA (8) of that Act, as the case requires, but only until the approval ceases to have effect, or until the date of the first extension of the approval, as the case requires.	26 27 28 29 30 31 32
	Note. After that time, the continued exercise of those rights will need to be supported by an easement or other arrangement, whether negotiated by agreement between the respective landholders or imposed by means of an order under section 88K of the <i>Conveyancing Act 1919</i> .	33 34 35 36

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- 25 Water allocations** 1
- (1) On the appointed day, the balance of the water allocation account for an access licence is taken to be the balance of the water account for the former entitlement. 2
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- (2) If more than one access licence arises from a former entitlement, the balance of the water account for the former entitlement is to be apportioned between the water allocation accounts for the access licences in accordance with the accounting practices that applied to water accounts immediately before the appointed day. 5
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- (3) As soon as practicable after the appointed day, the Director-General must reduce the water allocation for a replacement access licence by an amount not exceeding the amount by which the water allocation for the entitlement from which the licence arises would have been reduced under section 17A, 20H, 20S, 20XA, 20XC, 117A, 117G or 189 of the 1912 Act, or under section 53, 54 or 60 of the 1994 Act, had that entitlement continued in force under the 1912 Act or the 1994 Act, as the case may be. 11
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- (4) If the appointed day is not 1 July in any year, the Minister may, at any time before the next 1 July, make such adjustments to the water allocations standing to the credit of a replacement access licence as could have been made, in accordance with the accounting practices that applied to water accounts immediately before the appointed day, to the water allocations standing to the credit of the water account for the former entitlement. 20
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- (5) In this clause, *water account*, in relation to an entitlement, means the water account that, in accordance with the administrative practices followed by the Director-General before the appointed day, was kept in relation to the entitlement. 28
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- 26 Nominated works** 33
- (1) Each work specified in a replacement water supply work approval is taken to have been nominated under section 71W in relation to each replacement access licence arising from the same entitlement, including any supplementary water access licence arising from or in relation to that entitlement. 34
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(2)	Such a nomination may be withdrawn under section 71W in the same way as any other nomination under that section.	1 2
27	Replacement licences under former Acts	3
	A document that is issued for the purposes of the 1912 Act, the 1948 Act or the 1994 Act to replace an entitlement that has been partially superseded by an access licence or approval is not a new entitlement but merely a restatement of the remaining entitlement.	4 5 6 7 8
Part 3	Modified application of this and other Acts	9 10
Division 1	Modified application of this Act	11
28	Application of section 341	12
	Section 341 (1) applies only to the taking of water from those water sources to which Part 2 of Chapter 3 applies in relation to access licences.	13 14 15
29	Application of section 342	16
	Section 342 (1) applies only to the use of water to which Part 3 of Chapter 3 applies in relation to water use approvals.	17 18
30	Application of section 343	19
(1)	Section 343 (1) (a) and (a1) apply only to the construction and use of a water supply work to which Part 3 of Chapter 3 applies in relation to water supply work approvals.	20 21 22
(2)	Section 343 (1) (b) applies only to the construction and use of a drainage work to which Part 3 of Chapter 3 applies in relation to drainage work approvals.	23 24 25
(3)	Section 343 (1) (c) applies only to the construction and use of a flood work to which Part 3 of Chapter 3 applies in relation to flood work approvals.	26 27 28
31	Application of section 344	29
(1)	Section 344 (1) (a) applies only to the carrying out of an activity to which Part 3 of Chapter 3 applies in relation to controlled activity approvals.	30 31 32

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- (2) Section 344 (1) (b) applies only to the carrying out of an activity to which Part 3 of Chapter 3 applies in relation to aquifer interference approvals. 1
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- 32 Construction of certain references** 4
- A reference in section 118, 141, 199, 216 (3), 222 or 284 to an access licence or approval includes, in the case of any act, matter or thing to which the 1912 Act, the 1948 Act or the 1994 Act applies, a reference to the applicable entitlement under the 1912 Act, the 1948 Act or the 1994 Act. 5
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- Division 2 Modification of amendments to other Acts made by this Act** 10
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- 33 Effect of amendments and repeals of other statutory provisions** 12
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- (1) This clause applies to the following statutory provisions referred to in Schedule 8: 14
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- (a) item 25 of Table 1 in Schedule 1 to the *Criminal Procedure Act 1986*, 16
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- (b) sections 91 and 120A of the *Environmental Planning and Assessment Act 1979*, 18
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- (c) sections 16 and 16A (5) of the *Farm Water Supplies Act 1946*, 20
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- (d) sections 17, 18, 19, 20 and 21 of the *Land and Environment Court Act 1979*, 22
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- (e) section 124 of the *Local Government Act 1993*, 24
- (f) sections 5 and 47J of the *National Parks and Wildlife Act 1974*, 25
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- (g) section 12 of the *Native Vegetation Conservation Act 1997*, 27
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- (h) sections 19 and 52 of the *Plantations and Reafforestation Act 1999*, 29
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- (i) section 32 of the *Snowy Hydro Corporatisation Act 1997*, 31
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- (j) section 14 of the *Soil Conservation Act 1938*. 33
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- (2) The statutory provisions referred to in subclause (1) operate in relation to:
- (a) an entitlement under the 1912 Act, or
 - (b) a permit under Part 3A of the 1948 Act, or
 - (c) a licence under Division 3 of Part 4 of the 1994 Act,
- as if those provisions had not been amended or repealed by Schedule 8.
- (3) This clause does not limit or otherwise affect the operation of a statutory provision referred to in subclause (1), as amended by Schedule 8, in relation to:
- (a) an access licence to which Part 2 of Chapter 3 applies, or
 - (b) an approval to which Part 3 of Chapter 3 applies.

Division 3 Modification of other Acts

34 Application of 1912 Act

- (1) Part 2 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.
- (2) Part 5 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.
- (3) Part 8 of the 1912 Act does not apply to or in respect of any flood work, use of water or activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that work, use or activity.
- (4) Part 9 of the 1912 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.
- Note.** Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1912 Act. Matters to which those provisions do not apply continue to be dealt with under the 1912 Act.

35	Application of 1948 Act	1
	Part 3A of the 1948 Act does not apply to or in respect of any activity to the extent to which Part 3 of Chapter 3 applies to or in respect of that activity.	2 3 4
	Note. Proclamations under section 88A apply the provisions of Part 3 of Chapter 3 to particular matters formerly dealt with under the 1948 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1948 Act.	5 6 7 8
36	Application of 1994 Act	9
	The 1994 Act does not apply to or in respect of any water source, work, use of water or activity to the extent to which Part 2 or 3 of Chapter 3 applies to or in respect of that water source, work, use or activity.	10 11 12 13
	Note. Proclamations under sections 55A and 88A apply the provisions of Parts 2 and 3 of Chapter 3 to particular matters formerly dealt with under the 1994 Act. Matters to which those provisions do not apply will continue to be dealt with under the 1994 Act.	14 15 16 17
Part 4	General	18
37	Enforcement of debts	19
	(1) On and from the appointed day, sections 78 and 109, and Part 4 of Chapter 7, have effect with respect to any debt under the 1912 Act, the 1948 Act or the 1994 Act in the same way as they have effect with respect to any debt under this Act.	20 21 22 23
	(2) Enforcement action that has been commenced in relation to an entitlement under the 1912 Act, the 1948 Act or the 1994 Act before the day on which that entitlement is replaced under this Act may be completed under the 1912 Act, the 1948 Act or the 1994 Act, as the case requires.	24 25 26 27 28
38	Pending applications	29
	(1) Any application for or in relation to an entitlement that was made under the provisions of the 1912 Act, the 1948 Act or the 1994 Act before the appointed day is to be dealt with under those provisions as if this Act had not been enacted.	30 31 32 33
	(2) Any decision in relation to any such application with respect to an entitlement, including any decision in relation to an application for the renewal of an entitlement, is to be implemented in relation to the relevant access licence or	34 35 36 37

approval that has arisen from the entitlement with respect to which the application was made.	1 2
(3) In relation to each entitlement arising from an application dealt with under this clause, the provisions of this Schedule apply to the entitlement, as from the date on which it arises, in the same way as they apply to an entitlement that was in force immediately before the appointed day.	3 4 5 6 7
39 Replacement of recently-expired entitlements	8
(1) For the purposes of section 61, the holder of an entitlement that expired not more than 2 years before the appointed day is entitled to apply for an access licence to replace that entitlement.	9 10 11 12
(2) An embargo under section 112 does not apply to an application for an approval to replace an entitlement that expired not more than 2 years before the appointed day.	13 14 15
(3) An application referred to in subclause (1) or (2) is to be dealt with as if it had been made when the entitlement expired, and (subject to due payment of any fees payable under section 14 (1A) of the 1912 Act) the entitlement is taken to continue in force until the application is determined.	16 17 18 19 20
(4) This clause does not apply to an application made more than 2 years after the appointed day.	21 22
40 Access licences arising from management plans	23
(1) On the appointed day, there are taken to have been granted to the Minister such access licences in relation to adaptive environmental water as any management plan, as in force on that day, requires to be granted to the Minister.	24 25 26 27
(2) Any such access licence is subject to such conditions as the management plan concerned requires to be imposed on the licence.	28 29 30

Schedule 11 Categories of access licence

(Section 403)

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Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
Water Act 1912			
Section 12 or section 13 licence	Town water supply (held otherwise than by local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river
	Recreation (low security)	Regulated river (general security)	Unregulated river
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Railway	Regulated river (high security)	Unregulated river
	Industrial	Regulated river (high security)	Unregulated river
Industrial (low security)	Regulated river (general security)	Unregulated river	

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Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
	Industrial (sand and gravel)	Regulated river (high security)	Unregulated river
	Power generation	Regulated river (high security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Mining (low security)	Regulated river (general security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	Farming	Regulated river (high security)	Unregulated river
	Feedlot	Regulated river (high security)	Unregulated river
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
	Pisciculture	Regulated river (high security)	Unregulated river
	Aquaculture	Regulated river (high security)	Unregulated river
	Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]
	Teaching	Regulated river (general security)	Unregulated river

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
	Commercial	Regulated river (general security)	Unregulated river
Section 13A licence	Irrigation	Regulated river (general security)	Unregulated river
	Stock and domestic	Domestic and stock	Domestic and stock
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
Section 20B authority (not high flow)	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Recreation (high security)	Regulated river (high security)	Unregulated river
	Recreation (low security)	Regulated river (general security)	Unregulated river
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river

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Schedule 6 Savings and transitional amendments

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	Farming	Regulated river (high security)	Unregulated river
	Horticulture (including citrus, grapes, pecans)	Regulated river (high security)	Unregulated river
	Pisciculture	Regulated river (high security)	Unregulated river
	Aquaculture	Regulated river (high security)	Unregulated river
	Experimental/research	Regulated river (high security) [Research]	Unregulated river [Research]
	Teaching	Regulated river (general security)	Unregulated river
	Commercial	Regulated river (general security)	Unregulated river
Section 20CA authority	Stock	Domestic and stock [Stock]	Nil

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
Section 20L licence	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Domestic and stock [Town water supply]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Stock and domestic	Domestic and stock	Domestic and stock
	Industrial	Regulated river (high security)	Unregulated river
	Industrial (low security)	Regulated river (general security)	Unregulated river
	Mining	Regulated river (high security)	Unregulated river
	Irrigation	Regulated river (general security)	Unregulated river
	Horticulture	Regulated river (high security)	Unregulated river
	Citrus	Regulated river (high security)	Unregulated river
Section 38B authority	Stock	Domestic and stock [Stock]	Nil

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Schedule 6 Savings and transitional amendments

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
	Domestic	Domestic and stock [Domestic]	Nil
	Stock and domestic	Domestic and stock	Nil
	Irrigation	Regulated river (general security)	Nil
	Horticulture (including citrus and grapes)	Regulated river (high security)	Nil
	Town water supply	Regulated river (high security) [Town water supply]	Nil
	Industrial	Regulated river (high security)	Nil
Section 112 (1) (a) licence	Domestic	Not applicable	Domestic and stock [Domestic]
	Stock	Not applicable	Domestic and stock [Stock]
	Stock and domestic	Not applicable	Domestic and stock
	Town water supply (held otherwise than by local water utility)	Not applicable	Aquifer [Town water supply]

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
	Experimental/ research	Not applicable	Aquifer [Research]
	Any other purpose	Not applicable	Aquifer
Section 112 (1) (b) right	Any purpose other than stock or domestic	Nil	Aquifer
Section 188 licence	Urban water	Major utility [Urban water]	Major utility [Urban water]
	Power generation	Major utility [Power generation]	Major utility [Power generation]
Water supply works pursuant to a written agreement or approval under section 8	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Any other purpose	Regulated river (general security)	Unregulated river

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Schedule 6 Savings and transitional amendments

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
Irrigation Corporations Act 1994			
Irrigation corporation licence	Recreation (high security)	Regulated river (high security)	Nil
	Recreation (low security)	Regulated river (general security)	Nil
	Stock and domestic	Domestic and stock	Nil
	Town water supply (other than local water utility)	Regulated river (high security) [Town water supply]	Nil
	Conveyance	Murrumbidgee Irrigation (conveyance), Coleambally Irrigation (conveyance), Regulated river (conveyance)	Nil
	Industrial	Regulated river (high security)	Nil
	Irrigation	Regulated river (general security)	Nil
	Horticulture	Regulated river (high security)	Nil

Column 1	Column 2	Column 3	Column 4
Entitlement	Purpose	Regulated river	Unregulated river, estuary, lake or aquifer
Water Administration Act 1986			
Water supply works pursuant to a written agreement or approval under section 12	Stock	Domestic and stock [Stock]	Domestic and stock [Stock]
	Domestic	Domestic and stock [Domestic]	Domestic and stock [Domestic]
	Stock and domestic	Domestic and stock	Domestic and stock
	Any other purpose	Regulated river (general security)	Unregulated river

Schedule 7 Amendment of other Acts and instrument	1
(Section 4)	2
7.1 Catchment Management Authorities Act 2003 No 104	3
[1] Section 14 General functions	4
Insert “(for example, functions under section 389A of the <i>Water Management Act 2000</i>)” after “under other Acts” in the note to section 14.	5 6
[2] Section 20 Contents of draft plans	7
Insert after section 20 (1):	8
(1A) A draft plan:	9
(a) may also include provisions that relate to water quality or other non-regulatory water management issues, and	10 11
(b) must include any provisions relating to environmental water functions that are required by section 30A.	12 13
[3] Section 30 Funds of authorities	14
Insert after section 30 (4):	15
(5) This section does not apply to money that is required to be paid into, or that is paid from, the Environmental Water Trust Fund of an authority under section 30A.	16 17 18
[4] Section 30A	19
Insert after section 30:	20
30A Environmental Water Trust Funds	21
(1) For the purposes of this section, the <i>environmental water functions</i> of an authority are any of the following functions of the authority:	22 23 24
(a) the acquisition and management of adaptive environmental water under the <i>Water Management Act 2000</i> (including the acquisition of and dealing in access licences under that Act),	25 26 27 28
(b) the improvement of water quality,	29
(c) the carrying out of works to conserve water,	30
(d) any other environment protection functions relating to water that are prescribed by the regulations.	31 32

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- (2) For the purposes of its environmental water functions, an authority may, with the approval of the Minister, establish an Environmental Water Trust Fund, to be called “[*Name of authority*] Environmental Water Trust Fund”.
- (3) The money in an Environmental Water Trust Fund may be kept in one or more financial institutions (including the Special Deposits Account). An Environmental Water Trust Fund does not form part of the Consolidated Fund or any other Funds of authorities.
- (4) There is to be paid into an Environmental Water Trust Fund:
- (a) all money received by or on account of the relevant authority for payment into the Fund, and
 - (b) any gift or bequest of money to the relevant authority for the purposes of its environmental water functions, and
 - (c) the proceeds of any dealing with respect to a water access licence held by the relevant authority, and
 - (d) the proceeds of any investment of money in the Fund.
- (5) There may be paid from an Environmental Water Trust Fund amounts required to meet expenditure incurred by the relevant authority in the exercise of its environmental water functions.
- (6) An authority is to include in any draft catchment action plan it prepares under this Act provisions relating to the environmental water functions for which it has established an Environmental Water Trust Fund, including:
- (a) the assets of the authority that will be subject to the Fund, and
 - (b) the actions for the protection or improvement of those assets, and
 - (c) the targets for measuring the success of its environmental water functions.
- The provisions of the draft catchment action plan are to be consistent with the State Water Management Outcomes Plan and any management plan under the *Water Management Act 2000*.

- (7) The regulations may make provision for or with respect to an Environmental Water Trust Fund, including for or with respect to the making of decisions affecting the Fund and the disclosure of pecuniary or other interests of persons involved in making those decisions. 1
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7.2 Conveyancing Act 1919 No 6 6

[1] Section 115A Appointment of receivers 7

Insert after section 115A (4): 8

- (5) This section extends to a registered security interest within the meaning of the *Water Management Act 2000* as if: 9
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(a) a reference in this section to a mortgage were a reference to a registered security interest, and 11
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(b) a reference to mortgaged property were a reference to the access licence over which a registered security interest is held. 13
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- (6) Subsection (5) does not give a receiver any power with respect to a registered security interest that could not be exercised by the holder of the registered security interest. 16
17
18

[2] Section 184C General Register of Deeds 19

Omit section 184C (2) (h1). 20

7.3 Land and Environment Court Act 1979 No 204 21

[1] Section 18 Class 2—local government and miscellaneous appeals and applications 22
23

Insert after section 18 (a2): 24

- (a3) proceedings under section 71X (5) of, or Schedule 1A to, the *Water Management Act 2000*, 25
26

[2] Section 19 Class 3—land tenure, valuation, rating and compensation matters	1
	2
Insert after section 19 (g3):	3
(g4) claims for compensation under section 71X of the <i>Water Management Act 2000</i> ,	4
	5
7.4 Privacy and Personal Information Protection Regulation 2000	6
	7
Clause 5 Exemptions in relation to public registers	8
Insert after clause 5 (3):	9
(4) The Minister administering the <i>Water Management Act 2000</i> is exempt from the provisions of Part 6 of the Act with respect to the Water Access Licence Register and the register of approvals kept under section 113 of that Act.	10
	11
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