

[Act 1999 No 98]



New South Wales

# Water Legislation Amendment Bill 1999

## Explanatory note

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

### Overview of Bill

The objects of this Bill are as follows:

- (a) to enable the Water Administration Ministerial Corporation (the **Ministerial Corporation**) to modify riparian rights held under section 7 of the *Water Act 1912* (ie the rights of occupiers of land forming the bank of a river or lake to take or use water, or to construct a dam or other work, without the need to obtain a licence under Part 2 of the Act) or to declare that any such riparian right ceases to have effect,
- (b) to provide that the modification of a riparian right may provide for the restriction of the purposes for which water may be taken or used without a licence, or for the reduction of the permitted storage capacity of an unlicensed riparian dam, or for the reduction of the amount of water that may be pumped from a river or lake without a licence,

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

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- (c) to provide a streamlined procedure, including exemption from application fees, in relation to the licensing of existing works (ie works such as dams that are currently not licensed but will need to be licensed once they are declared by the Ministerial Corporation to be a work requiring a licence),
- (d) to enable the Ministerial Corporation to place an embargo on applications for licences in respect of dams,
- (e) to enable the Ministerial Corporation to fix charges in relation to the management by the State of water that is stored or conserved in licensed dams,
- (f) to enable the Ministerial Corporation to make orders giving owners of land certain rights to capture rainwater run-off, and to construct and use impoundments, and other works, for the purpose of capturing rainwater run-off, without the need to obtain a licence,
- (g) to provide that artesian bores that are managed and operated by trusts constituted under Part 3 of the Act are required to be licensed under Part 5 of the Act,
- (h) to provide that applications for licences under Part 5 of the Act for existing artesian bores will not need to be advertised,
- (i) to make other miscellaneous amendments to the *Water Act 1912*.

The Bill also makes minor amendments to the *Land and Environment Court Act 1979*, the *Rivers and Foreshores Improvement Act 1948* and the *Water Administration Act 1986*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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

**Clause 3** is a formal provision giving effect to the amendments to the *Water Act 1912* set out in Schedules 1–4.

**Clause 4** is a formal provision giving effect to the amendments to the Acts set out in Schedule 5.

## **Schedule 1 Amendments to Part 2 of Water Act 1912 relating to riparian rights**

At present under section 7 of the *Water Act 1912*, occupiers of land forming the bank of a river or lake have certain rights to take and use water, or to construct and use works (eg pumps) or dams, without having to obtain a licence under the Act. This so-called “riparian right” is restricted to certain thresholds (eg an unlicensed riparian dam cannot exceed 7 megalitres) that may be reduced or restricted by the regulations. Also at present, the Ministerial Corporation may under section 22B of the Act restrict or suspend riparian rights during periods of water shortage.

**Schedule 1 [8]** inserts proposed section 7A which allows the Ministerial Corporation, by order published in the Gazette, to modify a riparian right or declare that any such right ceases to have effect. Such an order may reduce riparian pump or dam capacities, or restrict the purposes for which occupiers can take and use water without a licence.

**Schedule 1 [6]** provides that the right to construct and use a 7 megalitre riparian dam without a licence applies only in relation to existing dams (such dams will, however, still be subject to an order under proposed section 7A to reduce the dam capacity).

The other amendments in Schedule 1 are largely consequential (eg **Schedule 1 [9]–[12]** amend section 22B of the Act to reflect the consolidation, into proposed section 7A, of the Ministerial Corporation’s power to restrict or cancel riparian rights).

## **Schedule 2 Miscellaneous amendments to Part 2 of Water Act 1912**

**Schedule 2 [5]** provides that the Ministerial Corporation may by order declare existing unlicensed works (such as dams) that were constructed before 1 January 1999 to be works that are required to be licensed (or be subject to some other type of entitlement) under Part 2 of the *Water Act 1912*. **Schedule 2 [1]** is a consequential amendment, and **Schedule 2 [4]** enables the Ministerial Corporation to declare by order any other work as being (or as not being) a work to which Part 2 extends (and which is therefore required, or not required, to be licensed).

The amendments made by **Schedule 2 [6]–[15]** provide for a streamlined process in relation to the licensing of such existing works. For example, an application for a licence for an existing work does not need to be accompanied by a prescribed security deposit or application fee, and notification of the application under section 11 of the Act is not applicable.

At present, the definition of *river* in section 5 of the Act includes anything prescribed by the regulations as being a river. A “river” is also defined as not including anything prescribed by the regulations as not being a river. **Schedule 2 [2]** and **[3]** enable the Ministerial Corporation to declare, by order, anything to be a river (or not to be a river) instead of the regulations doing so.

**Schedule 2 [16]** allow applications under Division 4C of Part 2 of the Act for the transfer of water allocations to be made by prospective holders of licences or other entitlements under Part 2.

**Schedule 2 [17]** provides that the Ministerial Corporation is able to reject and invalidate applications for licences under Part 2 in respect of dams.

**Schedule 2 [18]–[23]** enable the Ministerial Corporation to fix charges in relation to the management by the State of water that is stored or conserved in licensed dams.

**Schedule 2 [24]** enables regulations to be made for or with respect to a scheme for the transfer of licensees’ rights to store or conserve water in dams.

### **Schedule 3 Amendment to Water Act 1912 relating to water harvesting rights**

**Schedule 3 [2]** inserts Part 10 in the Act, which provides for water harvesting rights.

The proposed Part gives the Ministerial Corporation power to make an order (a *harvestable rights order*) providing for the rights of owners of land to capture rainwater run-off. An owner of land will have a right, without obtaining a licence, permit or other authority under Part 2 of the Act, to capture rainwater run-off and to construct and use an impoundment, or other work, for the purpose of capturing rainwater run-off in accordance with a harvestable rights order that applies to the land. A harvestable rights order may apply to any part of the State, and different orders may be made in respect of different parts of the State.

The matters for which a harvestable rights order may make provision include the following:

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- (a) the amount of the average rainwater run-off in any period that may be captured by owners of land,
- (b) a description of the area (*the catchment area*) in respect of which the average rainwater run-off is to be calculated,
- (c) the apportionment of the amount of average rainwater run-off that may be captured by owners of land in the catchment area between those owners according to the size of their parcels of land, or by reference to some other criteria the Ministerial Corporation considers appropriate,
- (d) the types of impoundments that may be used for the purpose of capturing rainwater run-off, the maximum storage capacity of impoundments and the locations in which impoundments may be constructed and used,
- (e) arrangements for the use of impoundments by more than one owner of land,
- (f) the rights of owners of land to use other works, besides impoundments, for the purpose of capturing rainwater run-off.

Part 10 will not permit an owner of land:

- (a) to construct or use an impoundment that obstructs a river (other than a minor stream),
- (b) to construct or use an impoundment that, in the opinion of the Ministerial Corporation, detrimentally affects or will detrimentally affect the interests of any person or the environment.

If the Ministerial Corporation is of the opinion that an impoundment or other work detrimentally affects or will detrimentally affect the interests of a person or the environment, the Ministerial Corporation may direct the owner of the land on which it is situated to carry out specified work, such as the removal or modification of the impoundment or work. Failure to comply with such a direction will be an offence and may result in the Ministerial Corporation carrying out the work and recovering the cost of doing so from the landowner. A landowner will have the right to appeal to the Land and Environment Court against such a direction.

**Schedule 3 [1]** is a consequential amendment.

## **Schedule 4   Miscellaneous amendments to Water Act 1912**

At present, a trust that is constituted under Part 3 of the Act in respect of a work to which Part 5 applies (eg an artesian bore) is not required to hold a licence under Part 5 of the Act in respect of the bore. **Schedule 4 [1]** removes that exemption.

**Schedule 4 [2]** makes it clear that the requirement for artesian bores to be licensed under Part 5 of the Act extends to bores that were in existence before 1912.

**Schedule 4 [3]** provides that applications for licences under Part 5 of the Act for existing artesian bores will not need to be advertised by the Ministerial Corporation in accordance with section 113 of the Act.

**Schedule 4 [4]** allows savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## **Schedule 5   Amendment of other Acts**

**Schedule 5.1** amends the *Land and Environment Court Act 1979* to allocate proceedings for appeals under proposed section 211 of the *Water Act 1912* (as inserted by **Schedule 3**) to the class 1 jurisdiction of the Land and Environment Court. Such an appeal may be made by a person who is aggrieved by a direction of the Ministerial Corporation under proposed section 208 to carry out specified work in relation to an impoundment.

**Schedule 5.2** amends the *Rivers and Foreshores Improvement Act 1948* to provide that a person does not commit an offence under section 22B of that Act (being an offence of excavating, or removing of material from, protected land, or of obstructing the flow of protected waters, without the authority of a permit) if the activity concerned relates to a work declared by the Ministerial Corporation.

**Schedule 5.3** amends the *Water Administration Act 1986* to make it clear that the right to the use and flow, and to the control, of water that is currently vested in the Ministerial Corporation prevails over riparian rights held under section 7 of the *Water Act 1912*.