



New South Wales

Sydney Water Amendment (Water Restrictions) Bill 2003

Explanatory note

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

Overview of Bill

Under clause 17 of the *Sydney Water Regulation 2000*, the Minister may, by notice, impose restrictions on the use of water in the Sydney Water Corporation's area of operations. It is an offence under that clause for a person to use water contrary to such a notice (*a water restriction offence*).

The object of this Bill is to facilitate the enforcement of water restriction offences:

- (a) by providing that each person who is an owner or occupier of land on which a water restriction offence occurs is taken to have committed the offence if the identity of the actual offender cannot be ascertained at the relevant time, and
- (b) by empowering persons who are authorised to issue penalty notices for water restriction offences to enter land for the purposes of investigating suspected offences.

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 *Sydney Water Act 1994* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Land and Environment Court Act 1979* and the *Sydney Water Regulation 2000* set out in Schedule 2.

Schedule 1 Amendment of Sydney Water Act 1994

Schedule 1 [1] increases the maximum penalty for an offence against section 48 of the Act (which essentially deals with the theft of water) from 100 penalty units (or 200 penalty units in the case of a corporation) to 200 penalty units (or 400 penalty units in the case of a corporation).

Schedule 1 [3] provides that proceedings for offences against the Act and the regulations are to be disposed of summarily before the Land and Environment Court instead of the Supreme Court. **Schedule 1 [2]** is an amendment by way of statute law revision.

Schedule 1 [4] inserts a new Division 6A into Part 6 of the Act that deals with the enforcement of water restriction offences and related matters. Under proposed section 53B, if a water restriction offence occurs on any land but the identity of the person who committed the offence cannot be ascertained by the authorised person who witnessed the offence, each person who was an owner or occupier of the land at the relevant time is taken to be guilty of the offence.

Exceptions are provided to the presumption of liability that is created under proposed section 53B. For example, a person who was an owner of the land on which the offence occurs will not be liable if the person provides a statutory declaration stating the name and address of the person who committed the offence or who was an occupier of the land at the relevant time. Similarly, an occupier will not be liable if the occupier provides the name and address of the person who committed the offence.

Proposed section 53D empowers an authorised person to enter any land if the authorised person suspects that a water restriction offence is being committed on the land. An authorised person is not authorised to enter any dwelling or other enclosed structure on the land or to use any force to enter land.

Proposed section 53A contains definitions for the purposes of the new Division and proposed section 53C deals with evidentiary matters.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Land and Environment Court Act 1979* to confer jurisdiction on the Land and Environment Court to hear and dispose of offences against the *Sydney Water Act 1994* and the regulations under that Act.

Schedule 2.2 [1] and [3] amend the *Sydney Water Regulation 2000* to provide that an offence against section 48 of the *Sydney Water Act 1994* may be dealt with by way of a penalty notice issued under section 50 of that Act. Water restriction offences are already prescribed as penalty notice offences. **Schedule 2.2 [2]** deletes a provision as a consequence of the repeal of the *Justices Act 1902*.

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No. , 2003

A Bill for

An Act to amend the *Sydney Water Act 1994* to make further provision with respect to the enforcement of water restriction offences; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Sydney Water Amendment (Water Restrictions) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Sydney Water Act 1994 No 88	8
The <i>Sydney Water Act 1994</i> is amended as set out in Schedule 1.	9
4 Amendment of other legislation	10
The Act and regulation specified in Schedule 2 are amended as set out in that Schedule.	11 12

Schedule 1 Amendment of Sydney Water Act 1994

(Section 3)

[1] Section 48 Illegal diversion of water

Omit the penalty at the end of the section. Insert instead:

Maximum penalty: 200 penalty units (or 400 penalty units in the case of a corporation).

[2] Section 53 Disposal of proceedings for offences

Omit “constituted by a Magistrate sitting alone” from section 53 (1) (a).

[3] Section 53 (1) (b) and (3)

Omit “Supreme Court” wherever occurring.

Insert instead “Land and Environment Court”.

[4] Part 6, Division 6A

Insert after Division 6:

Division 6A Special provisions relating to water restriction offences

53A Definitions

In this Division:

authorised person has the same meaning as in section 50.

occupier of land includes any person occupying the land under a lease.

penalty notice means a penalty notice under section 50.

relevant time, in relation to a water restriction offence, means the time that the offence is committed and the time immediately after the commission of the offence.

water restriction offence means an offence of using water contrary to a notice by the Minister under the regulations regulating or restricting the use of water.

53B Liability for water restriction offences in certain circumstances

(1) Offence

If a water restriction offence occurs on any land and the identity of the person who committed the offence cannot be ascertained at the relevant time by an authorised person who witnessed the commission of the offence, the following are, subject to this section, taken to be guilty of the offence:

- (a) each person who was an owner of the land at the relevant time,
- (b) each person who was an occupier of the land at the relevant time.

(2) Liability of actual offender not affected

Subsection (1) does not affect the liability of the person who committed the water restriction offence but, if a penalty has been recovered from any person in relation to the offence, no further penalty may be imposed on or recovered from any other person.

(3) Exception for owner

Subsection (1) (a) does not apply if a person who was an owner of the land at the relevant time:

- (a) gives notice in accordance with subsection (5) of the name and address of the person who the owner has reasonable grounds to believe:
 - (i) committed the offence, or
 - (ii) was an occupier of the land at the relevant time, or
- (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the owner did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who was an occupier of the land at the relevant time.

- (4) Exception for occupier**

Subsection (1) (b) does not apply if a person who was an occupier of the land at the relevant time:

 - (a) gives notice in accordance with subsection (5) of the name and address of the person who the occupier has reasonable grounds to believe committed the offence, or
 - (b) satisfies the person specified in the penalty notice or the court dealing with the offence (as the case requires) that the occupier did not commit the offence and did not know, and could not with reasonable diligence have ascertained, the name and address of the person who committed the offence.

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- (5) Notice given by owner or occupier**

A notice for the purposes of subsection (3) (a) or (4) (a) must be verified by statutory declaration and:

 - (a) if a penalty notice has been given for the water restriction offence—the notice must be given to the person specified in the penalty notice within 21 days after service of the penalty notice, or
 - (b) if a court is dealing with the offence—the notice must be given to the informant within 21 days after service of the court attendance notice for the offence.

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- 53C Evidentiary provision**

A notice under section 53B (3) (a) or (4) (a), if produced in any proceedings against the person named in the notice for a water restriction offence, is evidence that the named person committed the offence, or was an occupier of the land at the relevant time, as the case may be.

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- 53D Power of authorised persons to enter land to investigate water restriction offences**

(1) If an authorised person reasonably suspects that a water restriction offence is being committed on any land (including any land used for residential purposes), the authorised person may:

 - (a) enter the land for the purposes of investigating the offence, and

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Schedule 1 Amendment of Sydney Water Act 1994

- (b) take photographs in connection with the investigation. 1
- (2) The power conferred by this section to enter any land may not 2
be exercised unless the authorised person: 3
 - (a) exercises the power at a reasonable time, and 4
 - (b) produces, if requested to do so by the occupier of the 5
land, the authorised person's identification as an 6
authorised person. 7
- (3) An authorised person may not, in exercising the power to 8
enter land: 9
 - (a) enter any dwelling or enclosed structure on the land, or 10
 - (b) use any force, or 11
 - (c) remain on the land for a longer period than is 12
reasonably necessary in the circumstances. 13

Schedule 2 Amendment of other legislation	1
(Section 4)	2
2.1 Land and Environment Court Act 1979 No 204	3
Section 21 Class 5—environmental planning and protection summary enforcement	4
Insert after section 21 (gb):	5
(gc) proceedings under section 53 of the <i>Sydney Water Act 1994</i> ,	6
	7
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2.2 Sydney Water Regulation 2000	9
[1] Clause 35	10
Omit the clause. Insert instead:	11
35 Penalty notice offences	12
For the purposes of section 50 of the Act:	13
(a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and	14
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(b) the penalty prescribed for such an offence if dealt with under that section is the amount specified in relation to the offence in Column 2 of that Schedule.	16
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[2] Clause 36 Short description of offence	19
Omit the clause.	20

[3] Schedule 1

Insert after clause 37:

Schedule 1 Penalty notice offences

(Clause 35)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 48	\$550
Offences under this Regulation	
Clause 17 (3)	\$220