



New South Wales

Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023

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 *Constitution Act 1902* to ensure the continued public ownership of Water NSW and certain local water utilities and their main undertakings.

It is also an object of the Bill to prohibit certain water corporations from leasing critical assets from non-public entities, or entering agreements or arrangements with non-public entities for the use of critical assets, without the authorisation of an Act of Parliament.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Constitution Act 1902 No 32

Schedule 1[5] and [6] make amendments to the *Constitution Act 1902* to provide that section 57, which prohibits the sale or disposal of certain water corporations and their main undertakings, extends beyond the Sydney Water Corporation and the Hunter Water Corporation to other bodies that exercise water functions or hold assets in connection with the exercise of water functions, including the following bodies—

- (a) Water NSW,
- (b) a water supply authority within the meaning of the *Water Management Act 2000*,

- (c) a local council or county council exercising water supply functions under the *Local Government Act 1993*, Chapter 6, Part 3, Division 2, but only in relation to the exercise of water functions.

Schedule 1[4] inserts a provision to make it clear that a partial acquisition by a water corporation of an asset, being an asset necessary to enable the water corporation to carry out its principal functions under an Act as a water corporation, if the remainder is owned by an entity that is not a public entity, is also taken to be a sale or disposal of a main undertaking of the water corporation.

Schedule 1[7] inserts proposed section 58 to provide that a water corporation must not, unless authorised by an Act of Parliament—

- (a) lease a critical asset from an entity that is not a public entity, or
(b) enter into an agreement or arrangement with an entity that is not a public entity for the use of a critical asset owned by the entity.

Schedule 1[1]–[3] make consequential amendments.



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Constitution Amendment (Water NSW and Local Water Utilities) Bill 2023

No. , 2023

A Bill for

An Act to amend the *Constitution Act 1902* to ensure the continued public ownership of Water NSW and certain local water utilities and their main undertakings; and for related purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Constitution Amendment (Water NSW and Local Water Utilities) Act 2023*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Constitution Act 1902 No 32	1
[1]	Part 10, heading	2
	Omit the heading. Insert instead—	3
	Part 10 Public ownership of water utilities and undertakings	4
		5
[2]	Section 57, heading	6
	Omit the heading. Insert instead—	7
	57 Water utilities and undertakings to remain in public ownership	8
[3]	Section 57(3)	9
	Insert “as a water corporation” after “under an Act”.	10
[4]	Section 57(3A)	11
	Insert after section 57(3)—	12
	(3A) To avoid doubt, a partial acquisition by a water corporation of an asset, being an asset necessary to enable the water corporation to carry out its principal functions under an Act as a water corporation, if the remainder is owned by an entity that is not a public entity, is also taken to be a sale or disposal of a main undertaking of the water corporation.	13 14 15 16 17
[5]	Section 57(6)	18
	Insert in alphabetical order—	19
	<i>public entity</i> includes the following—	20
	(a) the Crown in right of the State,	21
	(b) a Minister,	22
	(c) a State owned corporation within the meaning of the <i>State Owned Corporations Act 1989</i> ,	23 24
	(d) a public or local authority,	25
	(e) a water corporation,	26
	(f) a subsidiary of an entity referred to in paragraphs (a)–(e).	27
[6]	Section 57(6), definition of “water corporation”	28
	Omit the definition. Insert instead—	29
	<i>water corporation</i> means a public or local body that exercises water functions or holds assets in connection with the exercise of water functions, and includes the following—	30 31 32
	(a) the Sydney Water Corporation,	33
	(b) the Hunter Water Corporation,	34
	(c) Water NSW,	35
	(d) a water supply authority within the meaning of the <i>Water Management Act 2000</i> ,	36 37
	(e) a local council or county council exercising water supply functions under the <i>Local Government Act 1993</i> , Chapter 6, Part 3, Division 2, but only in relation to the exercise of water functions.	38 39 40

<i>water functions</i> means the following—	1
(a) the storage or supply of water,	2
(b) the provision of sewerage services,	3
(c) the provision of stormwater drainage systems,	4
(d) the disposal of waste water.	5
[7] Section 58	6
Insert after section 57—	7
58 Water corporations not to lease or use private critical assets	8
(1) A water corporation must not, unless authorised by an Act of Parliament—	9
(a) lease a critical asset from an entity that is not a public entity, or	10
(b) enter into an agreement or arrangement with an entity that is not a public entity for the use of a critical asset owned by the entity.	11
(2) Subsection (1) does not apply to a renewal of a lease, agreement or arrangement that was in effect at the commencement of this section.	13
(3) In this section—	14
<i>critical asset</i> means any real property, plant or equipment necessary to enable a water corporation to carry out its principal functions under an Act as a water corporation.	15
<i>public entity</i> has the same meaning as in section 57.	16
<i>water corporation</i> has the same meaning as in section 57.	17
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