

[Act 1998 No 171]



New South Wales

Sydney Water Catchment Management Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to constitute the Sydney Catchment Authority and to confer and impose on it certain functions with respect to certain matters, including in particular the management and protection of catchment areas, the supply of bulk water, and the regulation of certain activities in catchment areas.

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

Outline of provisions

Part 1 Preliminary

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 defines certain words and expressions used in the proposed Act.

Clause 4 makes it clear that the proposed Act will not affect the operation of the *Catchment Management Act 1989* or any other Act, except where the proposed Act otherwise provides.

Clause 5 provides for the proposed Act to bind the Crown in all its capacities.

Part 2 Constitution of Sydney Catchment Authority

Clause 6 constitutes a corporation known as the Sydney Catchment Authority (the *Authority*), which is to be a statutory body representing the Crown.

Clause 7 establishes a Sydney Catchment Authority Board (the *Board*) comprising a Chief Executive and between 4 and 7 ministerial appointees with the expertise necessary for the Authority to achieve its objectives.

Clause 8 gives the Board the function, within certain parameters, of efficiently and economically determining the policies of the Authority.

Clause 9 provides for the appointment of the Chief Executive of the Authority.

Clause 10 states that the affairs of the Authority are to be managed and controlled by the Chief Executive.

Clause 11 subjects the Authority to ministerial directions, with certain exceptions in relation to reports and recommendations. However, provision is made for reimbursement from the public revenue to be made to the Authority for directions that are not in the commercial interests of the Authority.

Clause 12 allows the Authority to employ staff.

Part 3 Role, objectives and functions of Authority

Division 1 Role and objectives

Clause 13 provides that the role of the Authority is to manage and protect the catchment areas and the catchment infrastructure works, to be a supplier of bulk water, and to regulate activities within or affecting the catchment areas.

Clause 14 sets out the principal and special objectives of the Authority, which emphasise the protection of public health and public safety and the protection of the environment.

Division 2 Functions

Clause 15 is a general provision conferring and imposing functions on the Authority, subject to the Authority's licence.

Clause 16 sets out the specific functions of the Authority, which include the supply, management, protection and enhancement of the quality of water, as well as a research role and an educative role.

Clause 17 empowers the Authority to exercise concurrence and other roles under environmental planning instruments.

Clause 18 empowers the Authority to exercise concurrence and other roles conferred or imposed on it by the regulations in connection with the grant of licences under other legislation.

Clause 19 provides for regulations to confer or impose on the Authority certain functions by reference to powers under other legislation relevant to activities carried out in the catchment areas.

Division 3 Area of operations

Clause 20 provides for the area of operations of the Authority. Initially, this will be so much of the area of operations of Sydney Water Corporation Limited (the *Corporation*) as is specified in the operating licence of the Authority. Provision is also made for the variation of the area of operations by way of orders.

Clause 21 makes transitional arrangements in relation to such orders.

Division 4 Arrangements with Sydney Water Corporation

Clause 22 requires the Authority to enter into arrangements with the Corporation regarding the supply of water by the Authority to the Corporation, and outlines the process of altering such arrangements.

Clause 23 requires the Authority and the Corporation to enter into negotiations with regard to the arrangements, and provides a mechanism for resolving disagreements.

Clause 24 provides a role for the Independent Pricing and Regulatory Tribunal in relation to the arrangements. The Tribunal is given the oversight of the arrangements and may report to the Minister. The clause also contains a provision making it clear that the supply of water can be declared a government monopoly service for the purposes of the *Independent Pricing and Regulatory Tribunal Act 1992*.

Part 4 Control and accountability of Authority

Division 1 Operating licences

Clause 25 allows the grant of an operating licence to enable the Authority to provide, construct, operate, manage or maintain systems or services for the purpose of the exercise of its functions in accordance with the proposed Act, whether within or outside the area of operations. The operating licence has the effect of authorising the Authority to exercise, on behalf of the Water Administration Ministerial Corporation, rights to the use and flow and control of water.

Clause 26 provides that the terms and conditions of the operating licence are to be as determined by the Governor, but must include certain types of terms and conditions specified in the clause.

Clause 27 enables the Governor to amend the operating licence.

Clause 28 provides for the duration and renewal of the operating licence.

Clause 29 enables the Minister to require the Authority to rectify a contravention by it of the operating licence, and provides for the imposition of a monetary penalty for such a contravention.

Clause 30 sets out a process for the cancellation of the operating licence.

Division 2 Licence Regulator

The Licence Regulator constituted under the *Water Board (Corporatisation) Act 1994* is given additional functions under the proposed Act.

Clause 31 outlines the functions of the Licence Regulator under the proposed Act, in terms of auditing, monitoring and reporting to the Minister.

Clause 32 provides for the Licence Regulator to make a report to the Minister on each operational audit prepared in relation to the Authority.

Clause 33 requires such reports to be presented to Parliament.

Division 3 Statement of financial framework

Clause 34 requires the Minister and the Treasurer to enter into arrangements for a statement of financial framework, which is to include a statement of financial purpose and provisions for the payment by the Authority of dividends, tax-equivalents and guarantee fees.

Division 4 Memoranda of understanding

Clause 35 contains a definition of *regulatory agencies*, which include various government departments, government agencies, and local authorities.

Clause 36 requires the Authority to enter into memoranda of understanding with the Director-General of the Department of Health, the Water Administration Ministerial Corporation and the Environment Protection Authority as soon as practicable after the granting of the operating licence to the Authority.

Clause 37 enables the Minister to direct the Authority to enter memoranda of understanding with other regulatory agencies.

Clause 38 requires public consultation to be undertaken in relation to proposed memoranda of understanding and proposed amendments of memoranda of understanding.

Division 5 Reports to Parliament

Clause 39 requires the Authority to prepare reports for presentation to Parliament on subjects and at times specified by the operating licence.

Part 5 Catchment areas

Division 1 Catchment areas

Clause 40 empowers the Governor to declare that an area of land is part of the inner catchment area or the outer catchment area of the Authority.

Division 2 Special areas

Clause 41 contains definitions of expressions used in the proposed Division.

Clause 42 empowers the Governor, on the recommendation of the Minister, to declare land to be a special area where it is necessary to do so in order to protect water and the ecological integrity of land.

Clause 43 restricts the transfer or lease of, or other dealings with, land in a special area.

Clause 44 restricts the way in which Crown land in a special area is to be dealt with.

Clause 45 restricts the exercise by public agencies of their functions in relation to land within a special area. This involves the requirement for notice to be given to the Authority of the proposed exercise of such functions.

Clause 46 empowers the making of regulations regarding special areas.

Clause 47 makes provision for plans of management in connection with special areas, involving joint action by the Authority and the National Parks and Wildlife Service and the respective Ministers.

Clause 48 requires the Authority to comply with the plans of management prepared for special areas.

Division 3 Controlled areas

Clause 49 allows the declaration of controlled areas by the Governor. A controlled area can only cover land owned by or vested in the Authority.

Clause 50 provides for the making of regulations regarding controlled areas.

Part 6 Provisions relating to works and land

Clause 51 places ownership in the Authority of works installed by the Authority, and gives the Authority power to deal with such works.

Clause 52 allows certain persons connected with the Authority to enter and occupy land for a number of specified purposes.

Clause 53 provides for the issue of certificates of authority to such persons.

Clause 54 sets out limitations and restrictions on the powers of entry under the proposed Part.

Clause 55 relates to compensation payable by the Authority for damage caused by it in the exercise of functions under the proposed Part.

Clause 56 relates to compensation payable to the Authority by persons for loss or damage caused by those persons in certain circumstances.

Clause 57 provides for the acquisition of land by the Authority.

Clause 58 allows the Minister to approve the carrying out of certain activities in the area of operations of the Authority provided they are certified to be required for the protection of water quality, and required in the interests of public health or public safety, and required to be carried out urgently. Such an approval obviates the need for approval under other legislation.

Clause 59 applies certain specified provisions of the *Water Board (Corporatisation) Act 1994* to the Authority relating to the opening of roads, the alteration of the position of conduits, and the protection of works.

Part 7 Offences

Clause 60 creates an offence of illegally taking water or altering a meter.

Clause 61 creates an offence of discharging any substance into a work of the Authority.

Clause 62 provides a system of penalty notices for offences under the proposed Act and under other legislation, being offences identified under the regulations for the purpose of the clause.

Clause 63 maintains the Authority's right to take civil proceedings against persons who have been prosecuted for offences under the proposed Act.

Clause 64 makes it an offence to cause the commission of an offence in a number of ways.

Clause 65 states that proceedings for offences under the proposed Act are to be dealt with summarily before a Local Court or the Supreme Court.

Clause 66 provides that proceedings for an offence under the proposed Act may be brought within 2 years after the commission of the alleged offence or within 2 years after the alleged offence first came to the attention of any authorised officer of the Authority.

Part 8 Miscellaneous

Clause 67 gives effect to a Schedule containing provisions for the transfer of staff, assets, rights and liabilities of the Corporation to the Authority.

Clause 68 gives effect to a Schedule of amendments to the *Water Board (Corporatisation) Act 1994*.

Clause 69 gives effect to a Schedule of amendments to other Acts.

Clause 70 gives effect to a Schedule containing savings, transitional and other provisions.

Clause 71 creates a general regulation-making power.

Clause 72 provides for the proposed Act to be reviewed after 5 years.

Schedule 1 Constitution and procedure of Board

Schedule 1 provides for the constitution and procedure of the Board.

Schedule 2 Provisions relating to Chief Executive

Schedule 2 provides for the employment of the Chief Executive, and the appointment of an acting Chief Executive.

Schedule 3 Transfer of staff, assets, rights and liabilities to Authority

Schedule 3 provides for the transfer of staff, assets, rights and liabilities of the Corporation to the Authority by way of order of the Governor.

Schedule 4 Amendment of Sydney Water Act

Schedule 4 amends the *Water Board (Corporatisation) Act 1994* to insert certain provisions consequential on the enactment of the proposed Act.

Schedule 4 [1] and [5]–[10] omit provisions that are to be replaced by provisions in the proposed Act.

Schedule 4 [2] and [3] enable the operating licence of the Corporation to be amended to adjust the functions of the Corporation in consequence of the conferral of functions on the Authority.

Schedule 4 [4] allows the Minister to approve the carrying out of certain activities in the area of operations of the Corporation provided they are certified to be required for the protection of water quality, and required in the of public health or public safety, and required to be carried out urgently. Such an approval obviates the need for approval under other legislation.

Schedule 5 Amendment of other Acts

Schedule 5 makes amendments to a number of other Acts.

Schedule 6 Savings, transitional and other provisions

Schedule 6 makes provision for regulations of a savings or transitional nature. and makes a number of savings and transitional provisions consequent on the enactment of the proposed Act.