

# Water Management Amendment Act 2014 No 48

[2014-48]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Water Management Amendment Act 2014 No 48



New South Wales

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# Water Management Amendment Act 2014 No 48



New South Wales

An Act to make miscellaneous amendments to the *Water Management Act 2000* and certain water sharing plans and to make consequential amendments to certain other legislation.

## 1 Name of Act

This Act is the *Water Management Amendment Act 2014*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 1.14 [1], 1.15 and 2 commence on the date of assent to this Act.

## Schedule 1 Amendment of *Water Management Act 2000 No 92*

### 1.1 Amendments concerning overland flow water and terminology

#### [1] Section 4A

Insert after section 4:

#### **4A Meaning of “overland flow water”**

- (1) In this Act, **overland flow water** means water (including floodwater, rainfall run-off and urban stormwater) that is flowing over or lying on the ground as a result of:
  - (a) rain or any other kinds of precipitation, or
  - (b) rising to the surface from underground, or
  - (c) any other process or action of a kind prescribed by the regulations.
- (2) Water is flowing over the ground for the purposes of subsection (1) even if it flows over the ground by means of artificial structures such as roads, canals or road gutters.

(3) However, subsection (1) does not include:

- (a) water that is collected from a roof (including water collected from a roof using a rainwater tank), or
- (b) water that is flowing over or lying on the bed of a river, lake or estuary, or
- (c) water flowing over or lying on the ground in such circumstances as may be prescribed by the regulations.

**[2] Sections 329 (4) (b) and 331 (a) (ii)**

Omit “rainwater run-off” wherever occurring. Insert instead “overland flow water”.

**[3] Section 392 State’s water rights**

Omit section 392 (1) (c). Insert instead:

- (c) all water occurring on or below the surface of the ground (including overland flow water flowing over or lying there for the time being) other than water referred to in subsection (1A),

**[4] Section 392 (1A)**

Insert after section 392 (1):

(1A) Subsection (1) (c) does not include any of the following:

- (a) water that is collected from a roof (including water collected from a roof using a rainwater tank),
- (b) water occurring on or below the surface of the ground in such other circumstances as may be prescribed by the regulations.

**[5] Dictionary**

Insert in alphabetical order:

***overland flow water***—see section 4A.

**[6] Dictionary, definition of “water source”**

Omit paragraph (b) of the definition. Insert instead:

- (b) one or more places where water occurs on or below the surface of the ground (including overland flow water flowing over or lying there for the time being),

**[7] Dictionary, definition of “water supply work”**

Insert “without limiting paragraphs (b)–(g),” before “a work” in paragraph (a) of the definition.

**[8] Dictionary, definition of “water supply work”**

Omit paragraph (b) of the definition. Insert instead:

(b) a work (such as a tank or dam) that is constructed or used for the purpose of capturing or storing water, or

## **1.2 Amendments concerning supplementary water access licences**

**[1] Section 8A Planned environmental water**

Omit “supplementary water access licence, and any other category or subcategory of licence prescribed by the regulations,” from section 8A (1).

Insert instead “category or subcategory of licence prescribed by the regulations”.

**[2] Section 60A Taking water without, or otherwise than authorised by, an access licence**

Omit “in accordance with the terms of an order in force under section 70” from section 60A (6).

Insert instead “in such circumstances as may be authorised by provisions of the relevant management plan that are made for the purposes of section 70”.

**[3] Section 70**

Omit the section. Insert instead:

### **70 Special provisions with respect to supplementary water**

A management plan may make provision for or with respect to the circumstances in which the taking of water pursuant to supplementary water access licences is authorised within the whole or any part of a water management area or specified water sources.

**[4] Section 77A Cancellation of access licences that can no longer be used or are no longer required**

Insert “unless the access licence is a regulated river supplementary water access licence” after “such an access licence” in section 77A (1).

**[5] Section 87 Compensation payable in certain circumstances for reductions in water**

**allocations arising during initial period for which management plan is in force**

Insert “that is not a regulated river supplementary water access licence” after “supplementary water access licence” in section 87 (1).

**[6] Section 87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force**

Insert after section 87AA (1) (f):

- (f1) floodplain harvesting (regulated river) access licences,
- (f2) floodplain harvesting (unregulated river) access licences,
- (f3) regulated river supplementary water access licences,

**[7] Section 87AA (1) (g)**

Omit “supplementary water access licences”.

Insert instead “excluded supplementary water access licences”.

**[8] Section 87AA (11)**

Insert after section 87AA (10):

(11) In this section:

***excluded supplementary water access licence*** means a supplementary water access licence other than a regulated river supplementary water access licence.

**[9] Dictionary**

Insert in alphabetical order:

***regulated river supplementary water access licence*** means a supplementary water access licence (including a subcategory of such a licence) that entitles its holder to shares of water from a water source that is a regulated river.

### **1.3 Amendments concerning harvestable rights**

**[1] Section 53**

Omit the section. Insert instead:

### **53 Harvestable rights**

- (1) An owner or occupier of a landholding within a harvestable rights area is entitled, without the need for any access licence, water supply work approval or water use approval, to do each of the following in accordance with the harvestable rights order by which the area is constituted:
  - (a) to construct and use one or more water supply works for the purpose of capturing and storing water of a kind specified by the harvestable rights order,
  - (b) to take and use that water.
- (2) One or more water supply works may be constructed and used under subsection (1) (a) for the storage of both water that has been captured in exercise of a harvestable right and other water that has been lawfully taken from a water source if the capacity of the work or works does not exceed the maximum harvestable right volume specified by the harvestable rights order.
- (3) The following provisions apply where the capacity of the water supply work or works by means of which water is to be captured or stored in exercise of a harvestable right exceeds the maximum harvestable right volume specified by the harvestable rights order for works constructed under the authority of this section:
  - (a) an access licence or water use approval is not required for water that is captured or stored by the work or works in exercise of a harvestable right,
  - (b) if water (other than water captured or stored in exercise of a harvestable right) is also captured or stored by the work or works—an access licence and water use approval is required to authorise the taking and use of water from that source for any volume taken and stored in excess of the maximum harvestable right volume unless the water is taken under the authority of a domestic and stock right or native title right,
  - (c) a water supply work approval for the water supply work or works is required despite subsection (1).
- (4) Without limiting subsection (1), a single water supply work may be used by 2 or more landholders regardless of who constructed it if the shared use is permitted by the harvestable rights order.
- (5) This section does not allow a landholder:
  - (a) to supply any other land with water that has been captured and stored in exercise of a harvestable right, or
  - (b) to construct or use a water supply work in a river unless the river is declared

by the relevant harvestable rights order to be a minor stream for the purposes of this Division.

(6) In this section:

**capture**, in relation to a water supply work, includes pumping water for the purposes of storage in another water supply work.

## [2] Section 54

Omit the section. Insert instead:

### 54 Harvestable rights orders

(1) The Minister, by order published on the NSW legislation website, may:

- (a) constitute any land as a harvestable rights area, and
- (b) name the area that is constituted, and
- (c) fix the boundaries of the area that is constituted.

#### Note—

An order under this section may be amended or repealed by a subsequent order (see section 43 of the [Interpretation Act 1987](#)).

(2) The order by which a harvestable rights area is constituted must specify:

- (a) the kinds of water (such as overland flow water) that may be captured and stored in the area in exercise of harvestable rights, and
- (b) the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area by reference to a proportion (not being less than 10%) of the average regional overland flow waters for that area.

(3) Without limiting subsection (2) (b), the kinds of ways in which a maximum harvestable right volume for landholdings in a harvestable rights area may be expressed include by reference to the capacity of water supply works or volumetric limits.

(4) The order may also deal with the following matters:

- (a) the types and locations of water supply works that may be used by a landholder to capture and store water,
- (b) the means by which the maximum capacity of a water supply work that may be constructed or used by a landholder to capture and store water is to be



calculated,

- (c) the arrangements that may be made by landholders for the shared use of a water supply work that straddles their landholdings,
  - (d) the method for accounting for water that is captured or stored in the circumstances referred to in section 53 (3),
  - (e) the procedures to be followed for calculating the average overland flow water for a landholding in the area,
  - (f) rules about the purposes for which water may be captured, taken, stored or used,
  - (g) such other matters as are necessary or convenient to give effect to the order.
- (5) For the purpose of calculating any matter under an order under this section, a reference in the order to an area of land is, in the case of a landholding, a reference to the area of the landholding.
- (6) An order under this section may deal with any matter by reference to a map held by the Department.
- (7) Any map that is referred to as provided by subsection (6) is to be available for public inspection, free of charge, by either or both of the following means:
- (a) at the appropriate regional office of the Department for the area to which the relevant order relates, during normal office hours,
  - (b) on the website of the Department or any other website that the Minister considers to be readily accessible by members of the public.

## **1.4 Amendments concerning the controlled allocation of access licences**

### **[1] Section 65 Controlled allocation of access licences**

Insert “(or part of such an area or source)” after “water source” in section 65 (2) (a).

### **[2] Section 65 (2) (c) and (d)**

Insert at the end of section 65 (2) (b):

, and

- (c) may set a minimum price for the acquisition of the right to apply for the access licence or licences concerned, and

- (d) may set a fee for participation in the auction, tender or other means specified by the order with respect to the access licence or licences concerned.

**[3] Section 65 (3)**

Insert after section 65 (2):

- (3) For the avoidance of doubt, the Independent Pricing and Regulatory Tribunal does not have jurisdiction under the *Independent Pricing and Regulatory Tribunal Act 1992* to investigate or determine minimum prices for the purposes of this section.

## **1.5 Amendments concerning term water allocation transfers**

**[1] Section 71M Transfer of access licences**

Insert after section 71M (8):

- (9) The transferee of an access licence is taken to hold the access licence subject to any term water allocation transfer, as referred to in section 71NA, that is in effect when, or is due to come into effect after, the licence is transferred.

**[2] Section 71NA**

Insert after section 71N:

### **71NA Term transfers of water allocation entitlements**

- (1) **Application of section** Without limiting section 71N, this section applies to access licences except local water utility access licences and major utility access licences.
- (2) **Creation of term water allocation transfers** The holder of an access licence to which this section applies (the **holder of the primary access licence**) may transfer, for a specified period, an entitlement for a water allocation to be credited to the water allocation account for the licence to another person holding an access licence (the **transferee**) to which this section applies.
- (3) A transfer referred to in subsection (2) (a **term water allocation transfer**) may provide for all or part of the entitlement for the water allocation concerned to be transferred.
- (4) The specified period for a term water allocation transfer:
  - (a) must not exceed a period of 10 years, and
  - (b) must commence on 1 July of a year and expire on 30 June of another year,

and

- (c) must not commence on 1 July of another year that is more than 5 years ahead (calculated from 1 July of the year the transfer is executed).
- (5) The consents of both the Minister and the proposed transferee to the term water allocation transfer are required.
- (6) **Effect of term water allocation transfers** A term water allocation transfer does not operate to transfer the share component of an access licence to the transferee, but only operates to transfer all or part (as the case requires) of the entitlement to be credited with a water allocation.
- (7) During the period for which a term water allocation transfer has effect:
  - (a) the transferee is taken to be entitled to have all or part of the water allocation (as the case requires) that the holder of the primary access licence would have been entitled to have credited to the water allocation account for the primary licence credited to the water allocation account for the transferee's access licence, and
  - (b) the holder of the primary access licence is taken not to be entitled to have any or that part (as the case requires) of the water allocation credited to the water allocation account for the primary access licence, and
  - (c) the transferee is taken to be the holder of the primary access licence concerned in relation to all or that part (as the case requires) of the water allocation, to the exclusion of the holder of the primary access licence, for the following purposes:
    - (i) the payment of charges with respect to the usage of water credited to the water allocation account for the licence,
    - (ii) any other purpose prescribed by the regulations.
- (8) **Termination and cancellation of term water allocation transfers** A term water allocation transfer may be terminated before its expiry:
  - (a) by agreement of both the holder of the primary access licence and the transferee, or
  - (b) by the holder of the primary access licence if the transferee does not comply with any obligation imposed on the transferee by the contract or other arrangement under which the transfer was effected.
- (9) If a term water allocation transfer is terminated:
  - (a) the holder of the primary access licence is not entitled to have recredited to

the water allocation account for the primary access licence any of the transferred water allocation that has already been credited to the water allocation account of the transferee's access licence, and

- (b) the transferee continues to be entitled to any of the transferred water allocation that has already been credited to the water allocation account of the transferee's access licence.
- (10) A term water allocation transfer may be cancelled before it commences by agreement of both the holder of the primary access licence and the transferee.
- (11) **Extension of term water allocation transfers** A term water allocation transfer may, with the consent of the Minister, be extended before it expires by agreement of both the holder of the primary access licence and the transferee, but not so as to result in an extended period that exceeds 10 years in total.
- (12) **Alteration of commencement date for term water allocation transfers** The commencement date for a term water allocation transfer may, by agreement of both the holder of the primary access licence and the transferee, be altered before the date on which the transfer is due to commence.
- (13) An application to record an alteration to the commencement date for a term water allocation transfer in the Access Register must be lodged before 31 March in the calendar year in which the transfer is to take effect.
- (14) **Time for making applications for Ministerial consent and registration** The holder of the primary access licence must lodge both an application for the consent of the Minister to any of the following dealings and an application for any such dealing to be registered in the Access Register before 31 March in the calendar year in which the dealing is to take effect:
- (a) the creation of a term water allocation transfer,
  - (b) the extension of the term for a term water allocation transfer.

**Note—**

See section 71L (2A), which enables an application for consent to a general dealing to be combined with an application for the dealing to be registered if consent is given. The 6-month or prescribed period referred to in section 71L (2) for registration of applications is taken to have been satisfied in cases of such joint applications.

- (15) **Regulation-making powers** The regulations may make provision for or with respect to the manner in which term water allocation transfers are to be terminated, extended, cancelled or altered for the purposes of this section.

**[3] Section 71X Dealings on default**

Omit "On" from section 71X (4).

Insert instead “Except as provided by subsection (4A), on”.

**[4] Section 71X (4A)**

Insert after section 71X (4):

(4A) If an access licence that is transferred is subject to a term water allocation transfer, as referred to in section 71NA, that has been registered (whether or not it has come into effect), the transferee is taken to hold the licence subject to the term water allocation transfer for the balance of the period for which it has effect unless it is sooner cancelled or terminated in accordance with this Act.

**[5] Section 71X (8), definition of “affected person”**

Omit the definition. Insert instead:

***affected person***, in relation to the transfer of an access licence or holding in an access licence under this section, means:

- (a) 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, or
- (b) any person who is a transferee under a term water allocation transfer, as referred to in section 71NA, in connection with the licence.

**[6] Section 74 Exit from co-held access licence**

Insert after section 74 (6):

(6A) An application may not be made under this section by a co-holder of an access licence if a term water allocation transfer, as referred to in section 71NA, has been granted with respect to the co-holder’s entitlements to a water allocation under the access licence.

**[7] Section 77 Surrender of access licences**

Insert after section 77 (2):

(2A) In the case of an access licence that is a primary access licence in connection with a term water allocation transfer, as referred to in section 71NA, the notice of surrender must be accompanied by documentary evidence that the transferee under the transfer consents to the licence being surrendered.

**[8] Section 78 Suspension and cancellation of access licences**

Insert at the end of section 78 (3) (d):

, and

- (e) any entitlement of the transferee under a term water allocation transfer, as referred to in section 71NA, in relation to the licence to have the water allocation account for the transferee's access licence credited with all or part of the water allocation of the suspended licence will continue.

**[9] Section 78A Notification of intention to suspend, cancel or require payment of penalty**

Omit section 78A (1) (a). Insert instead:

(a) has given written notice to:

- (i) the holder of the access licence, and
- (ii) if there are security holders in relation to the access licence—those security holders, and
- (iii) if the holder of another access licence is the transferee under a term water allocation transfer, as referred to in section 71NA, in relation to the access licence—that holder, and

**[10] Section 85 Keeping of water allocation accounts**

Omit "Water" from section 85 (2). Insert instead "Subject to section 71NA (7), water".

**[11] Dictionary**

Insert after paragraph (b) in the definition of ***general dealing***:

- (ba) the transfer of an entitlement to be credited with the water allocation of an access licence, as referred to in section 71NA,

**1.6 Amendments concerning metering**

**[1] Section 91H Failure to install or maintain metering equipment**

Omit section 91H (2). Insert instead:

- (2) A person is guilty of an offence if the person fails to ensure the proper operation of any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

**[2] Section 91J**

Omit the section. Insert instead:

**91J Failure to keep metering records**

A person is guilty of an offence if the person fails to keep metering records that the person is required under this Act to keep with respect to any metering equipment that has been installed in connection with a water supply work or drainage work.

Tier 2 penalty.

**1.7 Amendment concerning bore drilling**

**Section 346A**

Insert after section 346:

**346A Contravention of terms and conditions of bore driller's licence**

(1) The holder of a bore driller's licence must ensure that the terms and conditions of the licence are not contravened.

Tier 2 penalty.

(2) It is a defence to a prosecution under subsection (1) if the accused person establishes:

(a) that the contravention of the term or condition was caused by a person other than the holder of the bore driller's licence, and

(b) that the holder took all reasonable steps to prevent the contravention of the term or condition.

(3) A person who is a trainee driller carrying out bore drilling under the supervision of the holder of a bore driller's licence must not contravene the terms and conditions of the licence.

Tier 2 penalty.

(4) It is a defence to a prosecution under subsection (3) if the accused person establishes that the accused person took all reasonable steps to prevent the contravention of the term or condition.

**1.8 Amendments concerning water allocation accounts and the taking**

## **of water**

### **[1] Section 60C Taking water for which there is no, or insufficient, water allocation**

Insert “**Offences involving allocations under a single access licence**” as the heading to section 60C (1).

### **[2] Section 60C (5)-(10)**

Insert after section 60C (4):

(5) **Offences involving allocations under 2 or more access licences** A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this Part:

(a) who intentionally takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences, or

(b) who knows or has reasonable cause to believe that the taking of the water from the source or sources concerned is in excess of the combined water allocations for the access licences,

is guilty of an offence.

Tier 1 penalty.

(6) A holder of 2 or more access licences that nominate the same water supply work to take water from one or more water sources under this Part is guilty of an offence if the holder takes water by means of that work from the source or sources concerned in excess of the combined water allocations for the access licences.

Tier 2 penalty.

(7) A holder of 2 or more access licences that authorise the holder to take water from the same water source under this Part:

(a) who intentionally takes water from that water source in excess of the combined water allocations for the access licences, or

(b) who knows or has reasonable cause to believe that the taking of the water from that source is in excess of the combined water allocations for the access licences,

is guilty of an offence.

Tier 1 penalty.

(8) A holder of 2 or more access licences that authorise the holder to take water from



the same water source under this Part is guilty of an offence if the holder takes water from that source in excess of the combined water allocations for the access licences in relation to that source.

Tier 2 penalty.

(9) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (6), and the water supply work is nominated in relation to an access licence held by some other person, both persons are taken to have contravened that subsection.

(10) Either person referred to in subsection (9) may be proceeded against and convicted for an offence under subsection (6), as the case requires, whether or not the other person has been proceeded against or convicted for such an offence.

**[3] Section 60D, heading**

Omit “**from**”. Insert instead “**by**”.

**[4] Section 60G Minister may charge for water illegally taken**

Insert after section 60G (1):

(1A) If the person holds 2 or more access licences that authorise the holder to take water from the water source concerned, the Minister may, in accordance with criteria specified by the regulations, take the action referred to in subsection (1) (b) in relation to the water allocation accounts for each of the licences.

**[5] Section 85A Authorisation to take water from uncontrolled flows**

Omit section 85A (2)–(7). Insert instead:

(2) The management plan may make provision for or with respect to the circumstances in which 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 are authorised to take water from the water source that has not been credited to the water allocation accounts of those licences.

## **1.9 Amendments concerning nominated water supply works and water tagging zones**

**[1] Section 71W**

Omit the section. Insert instead:

**71W Access licence may nominate water supply works and extraction points**

- (1) On the application of the holder of an access licence made in accordance with the regulations, the Minister may consent to the amendment of the licence so as:
  - (a) to nominate a specified water supply work or extraction point in the water management area or water source nominated by the licence as a work or point by means of or from which water credited to the licence may be taken, or
  - (b) to nominate a specified water supply work or extraction point in another water management area or another water source as a work or point by means of or from which water credited to the licence may be taken, or
  - (c) to nominate a specified water supply work or extraction point in a NSW water tagging zone as a work or point by means of or from which water credited to the licence may be taken, or
  - (d) to nominate a specified extraction point in an interstate water tagging zone as an extraction point from which water credited to the licence may be taken,or so as to withdraw such a nomination.
- (2) For the avoidance of doubt, a water supply work may be nominated under subsection (1) even though no approval is required to be held in relation to the work.
- (3) The relevant notifier for a water supply work must notify the Minister, in accordance with the regulations, of any of the following:
  - (a) that the work has been nominated (whether by reference to the work itself or by reference to an extraction point at which it is located) as a work from which water credited to the interstate equivalent of an access licence may be taken,
  - (b) that such a nomination has been withdrawn.Tier 3 penalty.
- (4) The regulations may make provision for or with respect to:
  - (a) the making of nominations referred to in subsection (1), including:
    - (i) the identification of water supply works or extraction points for the purposes of nominations, and
    - (ii) the circumstances in which particular nominations are, or are not,

permitted under that subsection, and

(b) the giving of notifications to the Minister under subsection (3), including the form and timing of such notifications.

(5) In this section:

**relevant notifier** for a water supply work means:

(a) if an approval is in force for the work—the holder of the approval, or

(b) if there is no approval in force for the work—the owner of the work.

**water supply work** includes a reference to a group of such works.

## [2] Section 71Z Access licence dealing principles

Omit section 71Z (2). Insert instead:

(2) The access licence dealing principles may include provisions relating to any or all of the following:

(a) the establishment of interstate water tagging zones,

(b) the establishment of NSW water tagging zones,

(c) the criteria to be considered for the granting of an application with respect to a nomination referred to in section 71W (1) (b), (c) or (d).

## [3] Section 391A Interstate arrangements in relation to access licences and approvals

Omit “in cases referred to in section 71W (2) or 89 (2)” from section 391A (1).

Insert instead “pursuant to section 71W or 89”.

## [4] Dictionary

Insert in alphabetical order:

**interstate water tagging zone** means an interstate water tagging zone established by the access licence dealing principles.

**NSW water tagging zone** means a NSW water tagging zone established by the access licence dealing principles.

## 1.10 Amendments concerning the streamlining of licensing and

## **trading processes**

### **[1] Section 61 Applications for granting of access licences**

Insert after section 61 (6):

- (7) An applicant for an access licence may, by notice in writing to the Minister, amend or withdraw the application for the access licence at any time before the application is determined.

### **[2] Section 63 Determination of applications**

Insert after section 63 (1):

- (1A) An access licence may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under Division 3.

### **[3] Section 66A**

Insert after section 66:

#### **66A Imposition of conditions on granting of access licence**

A condition that is imposed when an access licence is granted takes effect on the day on which the licence takes effect.

### **[4] Section 67**

Omit the section. Insert instead:

#### **67 Imposition of conditions after access licence is granted**

- (1) The Minister may impose discretionary conditions on an access licence after it has been granted, but only if the Minister:
- (a) has given written notice to the holder of the access licence that the Minister proposes to impose such conditions, and
  - (b) has given the holder of the access licence a reasonable opportunity to make submissions to the Minister with respect to the proposed conditions, and
  - (c) has taken any such submissions into consideration.
- (2) Subsection (1) does not apply to conditions imposed on an access licence:
- (a) at the request of the holder of the access licence, or

- (b) as a result of action taken under section 66 (3), or
  - (c) when the access licence is amended under section 68B, or
  - (d) in connection with a dealing under Division 4.
- (3) Mandatory conditions of an access licence may be imposed, amended, revoked or suspended by the Minister whenever it is necessary to do so in order to enable compliance with or to give effect to this Act, the regulations or a relevant management plan.
- (4) The Minister must cause written notice of any conditions imposed, amended, revoked or suspended under this section to be served on the holder of the access licence concerned.
- (5) A condition imposed or a change 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 access licence or on such later day as may be specified in the notice in that regard.
- (6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

**[5] Section 71L How does a dealing take effect?**

Insert after section 71L (2):

- (2A) An application for the Minister's consent to a general dealing may also include an application for the Minister to record the dealing in the Access Register in the event that the Minister consents to the dealing. Any such application to record the dealing is taken to have been made in accordance with subsection (2) regardless of when the Minister's consent is given.

**[6] Section 77 Surrender of access licences**

Omit "The" from section 77 (1). Insert instead "Subject to subsection (2B), the".

**[7] Section 77 (2B)**

Insert before section 77 (3):

- (2B) The Minister may, by written notice served on the holder of the access licence, refuse to accept the surrender of the access licence if the Minister considers it appropriate to do so or in such other circumstances as may be prescribed by the regulations.

**[8] Section 77 (4)**

Omit the subsection. Insert instead:

(4) Without limiting section 77A or 78, the Minister may:

- (a) cancel a surrendered access licence, or
- (b) record in the Access Register that the Minister is the holder of the surrendered access licence.

**[9] Section 77 (5)**

Insert "(b)" after "Subsection (4)".

**[10] Section 92 Applications for approvals**

Insert after section 92 (7):

(8) An applicant for an approval may, by notice in writing to the Minister, amend or withdraw the application for the approval at any time before the application is determined.

**[11] Section 95 Determination of applications**

Insert after section 95 (1):

(1A) An approval may be granted unconditionally or subject to such conditions as are required or permitted to be imposed under Division 3.

**[12] Section 95 (5)**

Omit the subsection. Insert instead:

(5) An approval takes effect on the day on which notice of the decision to grant the approval has been given to the applicant.

**[13] Section 100A**

Insert after section 100:

**100A Imposition of conditions on granting of approval**

A condition that is imposed when an approval is granted takes effect on the day on which the approval takes effect.

**[14] Section 102 Imposition or change of conditions after approval is granted**

Insert after section 102 (5):

- (6) The regulations may make provision for or with respect to the manner in which written notices may be given for the purposes of this section.

**[15] Section 107 Amendment of approvals**

Omit section 107 (1). Insert instead:

- (1) Without limiting any other power conferred by another provision of this Act, the Minister may amend an approval:
  - (a) on the application of the holder of the approval, or
  - (b) to create 2 or more approvals from a single approval in such circumstances as may be prescribed by the regulations, or
  - (c) in such other circumstances as may be prescribed by the regulations.

**Note—**

Section 109 (2A) also enables the Minister to amend an approval to give effect to the suspension or cancellation of part of the approval.

- (1A) Action under subsection (1) (b) or (c) may not be taken in relation to an approval unless the Minister:
  - (a) has given written notice to the holder of the approval that the Minister proposes to take such action, and
  - (b) has given the holder of the approval a reasonable opportunity to make submissions to the Minister with respect to the proposed action, and
  - (c) has taken any such submissions into consideration.

**[16] Section 107 (2)**

Insert “remove,” after “alter,”.

**[17] Section 108 Surrender of approvals**

Omit “The” from section 108 (1). Insert instead “Subject to subsection (1A), the”.

**[18] Section 108 (1A)**

Insert after section 108 (1):

(1A) The Minister may, by written notice served on the holder of the approval, refuse to accept the surrender of the approval if the Minister considers it appropriate to do so or in such other circumstances as may be prescribed by the regulations.

**[19] Section 108 (3)**

Insert after section 108 (2):

(3) Without limiting section 109, the Minister may:

- (a) cancel a surrendered approval, or
- (b) transfer the surrendered approval to the Minister or to another person.

**[20] Section 109 Suspension and cancellation of approvals**

Insert “(or any part of an approval)” after “cancel an approval” in section 109 (1).

**[21] Section 109 (2A)**

Insert after section 109 (2):

(2A) If the Minister suspends or cancels a part of an approval, the Minister may amend the approval so as to give effect to that suspension or cancellation.

**[22] Section 113 Register of approvals**

Insert “transferred,” after “amended,” in section 113 (1) (b).

**[23] Section 368 Appeals to Land and Environment Court**

Insert after section 368 (1) (k):

(k1) a decision to amend an approval otherwise than on the basis of an application made by the holder of the approval,

**[24] Section 368 (1) (l)**

Insert “or part of an approval” after “approval”.

**[25] Section 368 (5A)**

Insert after section 368 (5):

(5A) If the Land and Environment Court directs that a decision under appeal is stayed, the decision does not operate until the stay ceases to have effect or the Land and Environment Court confirms the decision or the appeal is withdrawn, whichever first



occurs.

**[26] Schedule 1A Access Register**

Omit clause 1 (3). Insert instead:

- (3) The Minister must not register any Ministerial action (other than the grant of an access licence) until:
  - (a) the end of the time permitted by section 368 (3) for making an appeal with respect to the decision, or
  - (b) if an appeal is made against the decision within that time, at or after the time the appeal is finally disposed of.

**[27] Schedule 10 Conversion of former entitlements to access licences and approvals**

Omit clause 20 (2). Insert instead:

- (2) A replacement access licence or approval:
  - (a) is to include any mandatory conditions that are required to be imposed on the licence or approval, and
  - (b) may include such other conditions (***discretionary conditions***) as the Minister thinks fit, including (but not limited to) conditions relating to the protection of the environment.
- (2A) Notice of any mandatory or discretionary conditions of a replacement access licence or approval may be given in the written notice given under subclause (1) or by one or more subsequent written notices.
- (2B) Discretionary conditions imposed on a replacement access licence or approval before the commencement of this subclause are taken to have been validly imposed (and always to have been validly imposed) to the extent that the conditions would have been validly imposed had subclauses (2) and (2A) (as substituted or inserted by the [Water Management Amendment Act 2014](#)) been in force at the time that they were imposed.

## **1.11 Amendments concerning management plans**

**[1] Section 43A Extension of duration of management plan dealing with water sharing**

Omit “first anniversary” from section 43A (6). Insert instead “second anniversary”.

**[2] Section 45A**

Insert after section 45:

#### **45A Consolidation of management plans**

- (1) The Minister may, by order published on NSW legislation website, consolidate 2 or more management plans by:
  - (a) repealing one or more management plans and amending another management plan to make provision with respect to the matters dealt with by the repealed plan or plans, or
  - (b) amending a management plan to make provision with respect to the matters dealt with by one or more other plans that have expired (or are to expire) by operation of section 43.
- (2) A consolidated management plan may contain provisions of a savings or transitional nature consequent on the consolidation.
- (3) The provisions of Division 9 (Compensation relating to access licences) of Part 2 of Chapter 3 in relation to the consolidation of management plans under this section have effect subject to the following:
  - (a) subject to paragraph (b), the consolidation of the management plans does not affect any right to compensation that the holder of an access licence would have had under section 87 or 87AA had the consolidation not occurred,
  - (b) the commencement of the 10-year period referred to in section 87AA (6) (b) in its application to an expired or repealed plan is to be calculated by reference to the 10-year period commencing on the date on which the expired or repealed plan was due to expire rather than the date on which the plan into which the provisions were consolidated ceases to be in force.
- (4) Section 45 does not limit the circumstances in which the Minister may repeal or amend a management plan under this section (including a management plan that deals with water sharing).

#### **[3] Section 87AC**

Insert after section 87AB:

#### **87AC No compensation payable for reductions in water allocations under certain replacement management plans**

The holder of an access licence is not entitled to any compensation in respect of reductions in water allocations for the access licence resulting from provisions included in a management plan that replaces another management plan if the

replaced management plan authorised the inclusion of amendments containing provisions of that kind in the replaced management plan.

## **1.12 Amendments concerning combined approvals**

### **[1] Chapter 3, Part 3, Division 2, heading**

Insert “**and granting of**” after “**for**”.

### **[2] Section 95 Determination of applications**

Insert at the end of section 95 (1):

**Note—**

Section 99A enables the Minister to grant combined approvals at the time an application is granted for one or more of the approvals concerned or subsequently.

### **[3] Section 95 (2)**

Omit the subsection.

### **[4] Section 99A**

Insert after section 99:

#### **99A Granting of combined approvals**

- (1) The Minister may, on application or on the Minister’s own motion, grant 2 or more approvals by means of a single approval document (a ***combined approval***).
- (2) A combined approval may be granted:
  - (a) at the time an application for one or more of the approvals is granted, or
  - (b) by amending an existing approval (whether or not a combined approval) to include additional approvals.

**Note—**

Section 92 (4) provides that an application may relate to more than one approval, whether of the same or of a different kind, unless the Minister requires a separate application to be made in relation to one or more of them.

- (3) A combined approval that is granted by amending an existing approval must provide for a common expiry date for all of the approvals.
- (4) A combined approval may:
  - (a) deal with approvals with respect to the same or different kinds of approvals

- or the same or different kinds of uses, works or activities, and
- (b) provide for common terms and conditions, or different terms and conditions, for some or all of the approvals granted.
- (5) A combined approval is taken to have effect for the purposes of this Act as if it were:
- (a) to the extent it contains an approval for water use—a water use approval, or
- (b) to the extent it contains an approval for the construction and use of a water supply work—a water supply work approval, or
- (c) to the extent that it contains an approval for the construction and use of a drainage work—a drainage work approval, or
- (d) to the extent that it contains an approval for the construction and use of a flood work—a flood work approval, or
- (e) to the extent that it contains approval for the carrying out of a controlled activity—a controlled activity approval, or
- (f) to the extent that it contains approval for the carrying out of an aquifer interference activity—an aquifer interference approval.
- (6) Each approval granted by means of a combined approval takes effect as provided by section 95 (5).
- (7) Section 98 (Notice of decision) does not apply with respect to a determination to grant a combined approval that is made on the Minister's own motion.
- (8) Nothing in this section:
- (a) permits the Minister to grant an approval, or to impose or alter terms or conditions of an approval, by means of a combined approval otherwise than in accordance with the requirements of this Act for that kind of approval, or
- (b) limits any right of appeal against a decision made with respect to each kind of approval granted.

## **1.13 Amendments concerning floodplain harvesting access licences**

### **[1] Section 57 Categories of licence**

Insert after section 57 (1) (k):

- (k1) floodplain harvesting (regulated river) access licences,
- (k2) floodplain harvesting (unregulated river) access licences,

**[2] Section 57A**

Insert after section 57:

**57A Special provisions relating to floodplain harvesting access licences**

- (1) The regulations may make provision for or with respect to the conversion of actual or proposed floodplain water usage by landholders into any of the following categories or subcategories of floodplain harvesting access licences (***replacement floodplain harvesting access licences***):
  - (a) floodplain harvesting (regulated river) access licences,
  - (b) floodplain harvesting (unregulated river) access licences,
  - (c) any other categories or subcategories of floodplain harvesting access licences prescribed for the purposes of section 57 (1) (l) or (2).
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) the circumstances in which actual or proposed floodplain water usage by landholders will give rise to replacement floodplain harvesting access licences,
  - (b) the terms and conditions of replacement floodplain harvesting access licences,
  - (c) the share components of replacement floodplain harvesting access licences (including the process for the determination of such share components),
  - (d) the determination of applications for approvals for flood works or other works (whether made under this Act or the [Water Act 1912](#)) in connection with floodplains in respect of which replacement floodplain harvesting access licences will arise,
  - (e) the establishment, functions and procedure of advisory committees to provide advice to the Minister on matters in connection with any scheme prescribed by the regulations for the creation of replacement floodplain harvesting access licences (including providing for the application of section 397 to the acts or omissions of such committees or their members).
- (3) Regulations made for the purposes of this section have effect despite any provisions of this Act (including Schedule 10) that are specified by the regulations.
- (4) A floodplain harvesting (regulated river) access licence, or other category or

subcategory of floodplain harvesting access licence, that nominates a regulated river water source is taken to authorise the taking of water from the floodplain for the river and, accordingly, any water taken under that licence from that floodplain is to be treated as having been taken from the regulated river water source for the purposes of this Act or any management plan that applies to the river.

**Note—**

For example, the taking of water from a floodplain under a floodplain harvesting (regulated river) access licence otherwise than in accordance with the water allocation for the licence will be an offence under section 60C even though it was not directly taken from the regulated river to which the licence relates.

(5) In this section:

**floodplain water usage** by landholders means the taking or use of water by landholders (whether or not under an approval, licence or other authority) from land that is, or is to become, a floodplain.

**Note—**

The Dictionary defines **floodplain** to mean land declared by the regulations to be a floodplain.

## 1.14 Amendments concerning the conversion of former entitlements into access licences

[1] (Repealed)

[2] Schedule 10, clause 25

Omit the clause. Insert instead:

### 25 Water allocation accounts

(1) **Water allocation accounts where appointed day before clause re-enactment day**

Subclauses (2)–(5) apply with respect to a replacement access licence if the appointed day in relation to the licence occurred before the day on which this clause was substituted by the [Water Management Amendment Act 2014](#) (the **clause re-enactment day**).

(2) The **first reconciliation balance** for the water allocation account for a replacement access licence is the balance determined for the account as at 1 July of the next water year following the water year in which the appointed day occurred.

**Note—**

A first reconciliation balance will usually have been determined after the 1 July concerned following the collection of relevant information such as, for example, meter readings.

- (3) Subject to subclause (4), any balance (including a zero balance) that appeared on the clause re-enactment day in the water accounting system of the Department as the first reconciliation balance for the water allocation account for a replacement access licence is taken to be (and always to have been) the correct first reconciliation balance.

**Note—**

This subclause extends to first reconciliation balances that may have been revised or corrected after the appointed day but before the clause re-enactment day.

- (4) The Minister may amend the first reconciliation balance referred to in subclause (3) after the clause re-enactment day if:
- (a) the Minister is satisfied, based on later and more accurate information, that the balance was not correctly determined or displayed, and
  - (b) the clause re-enactment day occurred no later than 2 years after the appointed day.
- (5) Without limiting section 367, a certificate issued by the Minister that states that a specified balance (including a zero balance):
- (a) was, or was not, the first reconciliation balance for the water allocation account for the purposes of subclause (3), or
  - (b) was, or was not, the first reconciliation balance for the water allocation account for the purposes of subclause (3), as amended under subclause (4),
- is admissible in any legal proceedings and is evidence of the fact or facts so stated.
- (6) **Water allocations accounts where appointed day on or after clause re-enactment day**  
Subclauses (7)–(9) apply with respect to an access licence if the appointed day in relation to the licence occurs on or after the clause re-enactment day.
- (7) On the appointed day, the balance for the water allocation account for a replacement access licence or licences is taken to be zero unless the regulations provide otherwise.
- (8) The regulations may make provision for or with respect to the balances to be allocated to the water allocation accounts for replacement access licences (whether generally or for the purposes of the relevant management plan).
- (9) Without limiting subclause (8), the regulations may make provision for or with respect to the following:
- (a) the allocation, calculation or determination of balances for water allocation accounts for replacement access licences,

- (b) the use of balances from existing water accounts for former entitlements and other information in connection with the allocation, calculation or determination of balances for water allocation accounts for replacement access licences,
- (c) the correction or re-calculation of balances for water allocation accounts for replacement access licences.

(10) **Definition** In this clause:

**existing water account**, in relation to a former entitlement, means the water account that, in accordance with the administrative practices followed by the Director-General before the appointed day in relation to the entitlement, was kept in relation to the entitlement.

**water year** means a year commencing on 1 July.

## **1.15**

(Repealed)

## **Schedule 2 (Repealed)**

## **Schedule 3 Consequential amendment of other legislation**

### **3.1 Water Management Amendment Act 2008 No 73**

#### **Schedule 4 Amendments relating to access licences**

Omit Schedule 4 [5], [6], [10] and [11].

### **3.2 Water Management (General) Regulation 2011**

#### **[1] Clause 4 Categories of access licence**

Omit clause 4 (1) (c).

#### **[2] Schedule 3 Categories and subcategories of licences**

Omit the matter relating to Floodplain harvesting.