

Water Management Amendment Act 2014 No 48

[2014-48]



New South Wales

Status Information

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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**

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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*

1.1-1.4

(Repealed)

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 reccredited 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

(Repealed)

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]-[3] (Repealed)

[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] (Repealed)

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]-[4] (Repealed)

[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]-[14] (Repealed)

[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], [21] (Repealed)

[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], [25] (Repealed)

[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] (Repealed)

1.11-1.13

(Repealed)

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

(Repealed)