

Water Management Amendment Act 2018 No 31

[2018-31]



New South Wales

Status Information

Currency of version

Historical version for 28 June 2018 to 9 August 2018 (accessed 2 December 2023 at 0:28)

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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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File last modified 8 August 2018

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Water Management Amendment Act 2018 No 31



New South Wales

An Act to amend the *Water Management Act 2000* with respect to management plans, approvals and access licences, Murray-Darling Basin water resources, metering equipment, enforcement and liability, the provision of information and managing environmental water; and for other purposes.

1 Name of Act

This Act is the *Water Management Amendment Act 2018*.

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 [1]-[7], [9]-[25], [28], [30], [31], [34]-[36], [38]-[42], [45]-[51], [53], [54], [56]-[59], [61]-[70], [73]-[76], [78]-[80], [85], [88]-[90], [92] (except to the extent that it inserts the definition of **individual daily extraction component**), [93]-[96], 2.1-2.3 and 2.5 commence on the date of assent to this Act.

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

[1]-[7] (Repealed)

[8] Section 44 (2)

Omit the subsection. Insert instead:

- (2) An audit under this section is to be carried out by the Natural Resources Commission.

[9]-[25] (Repealed)

[26] Section 71 Water Access Licence Register

Omit section 71 (3) and (4).

[27] Section 71QA

Insert after section 71Q:

71QA Assignment of individual daily extraction component

- (1) For the purposes of this section, an ***individual daily extraction component*** means an entitlement of the holder of an access licence to take a specified volume of water on a specified day, whether or not it is limited to specified rates or in specified circumstances.
- (2) The holders of 2 or more access licences may apply to the Minister for consent to the assignment of the rights to individual daily extraction components between one or more of the licences.
- (3) An application may be made to assign an individual daily extraction component for a specified day or a specified period, or in specified circumstances, or any or all of them, and may relate to the whole or part of an individual daily extraction component.
- (4) The Minister may consent to the assignment of rights between the access licences concerned by:
 - (a) a reduction or removal of the whole or part of one or more individual daily extraction components of one or more of the licences, and
 - (b) a corresponding increase in the individual daily extraction components of the others.
- (5) A reduction or increase may be specified by the Minister to have effect for a specified period, or in specified circumstances, or both.
- (6) The assignment of a right to an individual daily extraction component does not entitle the assignee to take water in excess of the volume the assignee is otherwise authorised to take.
- (7) A holder of an access licence may acquire a right to an individual daily extraction component whether or not the holder has any available water allocation credited to the holder's water allocation account.
- (8) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero extraction component for the time being.
- (9) This section is taken to authorise the amendment of a management plan to provide for access licence dealing rules relating to dealings under this section as if the amendment were authorised by the plan and section 45 (1) (b) applies accordingly.

[28] (Repealed)

[29] Section 71Y General

Insert “71QA,” before “71T” in section 71Y (1).

[30], [31] (Repealed)

[32] Section 84 Register of available water determinations

Omit “the form in which such a register is to be kept and” from section 84 (2).

[33] Section 85AA

Insert after section 85:

85AA Daily extraction accounts

- (1) Individual daily extraction components imposed on an access licence are to be recorded in the water allocation account.
- (2) For each access licence, the Minister is to cause an account to be kept of:
 - (a) any individual daily extraction component that is acquired under section 71QA, and
 - (b) any individual daily extraction component that is assigned under section 71QA.
- (3) The regulations may make provision for or with respect to the particulars that are to be recorded in a water allocation account for the purposes of this section.

[34]-[36] (Repealed)

[37] Section 87D

Insert after section 87C:

87D Information about rights to take water from water sources

- (1) The Minister may authorise the publication of the following information about a water source on a publicly accessible website approved by the Minister:
 - (a) whether or not water can be taken by access licence holders from a particular part of the water source on a particular day or at a particular time on a particular day in accordance with an applicable management plan, a particular condition of an access licence or any other specified requirement of or under this Act,

- (b) the amount of water that can be taken from a particular part of the water source on a particular day or at a particular time on a particular day, in accordance with an applicable management plan, a particular condition of an access licence or any other specified requirement of or under this Act,
 - (c) information relating to water flows and levels of a particular part of a water source, including gauge readings and other measurements, on a particular day or at a particular time on a particular day.
- (2) For the purposes of this Act, a person is taken to be permitted to take water in accordance with a management plan or a condition of an access licence if the person:
- (a) is entitled to take water under that plan or licence, and
 - (b) takes water in accordance with information published under this section.
- (3) This section does not:
- (a) permit a person to take water if to do so would contravene a condition of an access licence that is not the subject of information published under this section, or
 - (b) prevent a person from taking water if the person is otherwise permitted to do so under an access licence or by or under this Act.

[38]-[42] (Repealed)

[43] Section 91I Taking water when metering equipment not working

Omit section 91I (3). Insert instead:

- (3) Subsections (1) (b) and (2) do not apply if the person who takes the water complies with any requirements set out in the regulations for the purposes of this subsection.

[44] Section 91IA

Insert after section 91I:

91IA Failure to report metering equipment not working

A person is guilty of an offence if:

- (a) the person is the holder of an approval for a work in connection with which any metering equipment has been installed, and
- (b) the person fails to give notice, in accordance with regulations made for the purposes of this section, that the metering equipment is not operating properly,

or is not operating, within 24 hours of becoming aware of that fact.

Tier 2 penalty.

[45]-51 (Repealed)

[52] Section 101A

Insert after section 101:

101A Metering equipment condition

- (1) It is a mandatory condition of a water supply work approval that metering equipment is installed, used and properly maintained in connection with the work.
- (2) The holder of a water supply work approval is taken to have complied with a particular aspect of the condition imposed by this section if the holder has complied with the applicable requirements (if any) prescribed by the regulations.
- (3) The regulations may provide that the condition does not apply to holders of approvals, or works, specified by the regulations, or in circumstances specified by the regulations.

[53], [54] (Repealed)

[55] Section 113 Register of approvals

Omit “the form in which such a register is to be kept and” from section 113 (2).

[56]-[59] (Repealed)

[60] Section 324 Temporary water restrictions

Omit “such as to cope with a water shortage or threat to public health or safety” from section 324 (1).

Insert instead “such as (but not limited to) to cope with a water shortage, threat to public health or safety or to manage water for environmental purposes”.

[61]-[70] (Repealed)

[71] Section 367 Evidentiary certificates

Insert at the end of section 367 (2) (v):

or

(w) information specified in the certificate was, or was not, published under section

87D on a website approved by the Minister, or

- (x) water flows or levels of a particular part of a specified water source, or gauge readings or other specified measurements in relation to a particular part of a specified water source, were as specified in information published under section 87D, or
- (y) water was or was not taken in accordance with information published under section 87D, or
- (z) a quantity of water taken was determined by the Minister in accordance with section 60G (3),

[72] Section 367B Rebuttable presumptions

Insert after section 367B (1) (e):

- (e1) the fact that water is being or has been taken from a water source by the holder of an access licence gives rise to a rebuttable presumption that the water was not taken pursuant to a basic landholder right, and

[73]-[76] (Repealed)

[77] Section 391B

Insert after section 391A:

391B Administration and transparency of water information

- (1) Information that under this Act is required to be kept in a register is to be kept in one public register in the form and manner determined by the Minister.
- (2) Different parts of the register may be kept in different forms and manners determined by the Minister.
- (3) The register is to include information published under section 12A of the *Natural Resources Access Regulator Act 2017*.
- (4) Regulations may be made for or with respect to the following:
 - (a) the disclosure of information held on a register established under this Act,
 - (b) the keeping of registers of information authorised to be disclosed under this Act,
 - (c) the disclosure of information about water allocation accounts of individuals or corporations who hold access licences or approvals under this Act,

(d) the disclosure of information about the taking of water from particular water sources or from within a particular part of the State,

(e) the fees payable for access to information held in the register.

(5) Information may be disclosed in accordance with a regulation made under this section despite any prohibition in, or the need to comply with a requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* (other than Part 6 of that Act)).

[78]-[80] (Repealed)

[81] Section 398 Exclusion of Crown liability

Insert at the end of section 398 (1) (b):

or

(c) from the release of water for environmental purposes,

[82] Section 398 (2A)

Insert after section 398 (2):

(2A) The Crown is not subject to any action, liability (including liability for defamation), claim or demand arising as a consequence of anything done under or for the purposes of section 391B or a regulation made under that section.

Note—

The liability of other persons for any such thing is dealt with under section 397.

[83] Section 398 (3) (d)

Insert at the end of section 398 (3) (c):

, or

(d) a NSW government agency.

[84] Sections 399A and 399B

Insert after section 399:

399A Transfer of ownership of metering equipment

(1) The regulations may make provision for or with respect to the transfer of the ownership of metering equipment and associated property, rights, assets and

liabilities from Water NSW or the Ministerial Corporation to holders of approvals or other persons.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) matters that are ancillary to any such scheme,
 - (b) the removal of metering equipment where a transfer offer is not taken up.

399B Consultation about environmental water releases

- (1) The regulations may make provision for or with respect to a scheme to facilitate consultation and negotiations with owners and occupiers of land, and other persons, who may be affected by proposed releases of water for environmental purposes.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the circumstances in which the scheme will apply,
 - (b) notification of proposed releases,
 - (c) mediation of disputes, in cases where agreement is required to resolve legal or other issues relating to a proposed release.

[85] (Repealed)

[86] Schedule 1B Provisions relating to exit from co-held access licence

Insert after clause 3 (2):

- (3) If an individual daily extraction component was imposed on the original licence, the water allocation accounts for the original access licence and the new access licence are to be adjusted to reflect the provisions made by this clause.

[87] Schedule 9 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Water Management Amendment Act 2018

Definition

In this Part:

amending Act means the *Water Management Amendment Act 2018*.

Existing audits and audit panels

An audit panel appointed under section 44 (2) before the substitution of that subsection by the amending Act may continue in office for the purpose of completing an audit commenced before that substitution.

Existing registers

- (1) A register kept under this Act immediately before the commencement of section 391B, as inserted by the amending Act, is taken to be in a form and manner determined by the Minister under that section.
- (2) This clause does not prevent the Minister from making a further determination under that section about any such register.

Defence

Section 91I (3), as inserted by the amending Act, does not apply to proceedings for offences commenced before the commencement of that subsection.

[88]-[90] (Repealed)

[91] Dictionary

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

- (c) an assignment of the whole or part of one or more individual daily extraction components as referred to in section 71QA.

[92] Dictionary

Insert in alphabetical order:

Basin management area means a water management area that is part of a water resource plan area under the *Water Act 2007* of the Commonwealth.

Basin management plan means a management plan that applies to a Basin management area or to part of the Basin water resources.

duly qualified person means a person who has the qualifications, skills and experience to carry out work in connection with metering equipment that are prescribed by the regulations.

extreme event means any of the following events:

- (a) an extreme dry period,

- (b) a water quality event of an intensity, magnitude and duration that is sufficient to render water acutely toxic or unusable for established local uses and values,
- (c) any other type of event that has resulted in the suspension of a water management plan under this Act or in the last 50 years of a plan that deals with water allocation and is made under any other Act.

individual daily extraction component—see section 71QA (1).

[93]-[96] (Repealed)

Schedule 2 Amendment of other Acts

2.1-2.3

(Repealed)

2.4 Water Act 1912 No 44

[1] Section 118A Drillers to be licensed

Omit the section.

[2] Section 129 Regulations

Omit section 129 (1) (g).

[3] Section 129A Application of Part

Omit “(section 118A excepted)”.

2.5

(Repealed)