

Water Supply (Critical Needs) Act 2019 No 16

[2019-16]



New South Wales

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Water Supply (Critical Needs) Act 2019 No 16



New South Wales

An Act to facilitate the delivery of emergency water supplies to certain towns and localities; to declare certain development relating to dams to be critical State significant infrastructure; and for related purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Water Supply (Critical Needs) Act 2019*.

2 Commencement

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

3 Definitions

(1) In this Act—

critical town or locality water supply—see section 5.

development and the **carrying out of development** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

modification includes addition, exception, omission or substitution.

Planning Secretary has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

public authority has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Application of Act

(1) This Act does not apply to the following—

- (a) land within a special area within the Sydney catchment area within the meaning of the *Water NSW Act 2014*,
- (b) land within the Sydney metropolitan area.

(2) In this section—

Sydney metropolitan area means the area constituted by the local government areas of Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby and Woollahra.

Part 2 Declaration of critical town or locality water supply

5 Critical water supplies declared by Act

(1) The following are declared to be **critical town or locality water supplies**—

- (a) the water supply for the following towns or localities—
 - (i) the locality that includes Dubbo, Wellington, Warren, Nyngan and Cobar,
 - (ii) the locality that includes Tamworth, Moonbi and Kootingal,
 - (iii) the locality that includes Orange, Spring Hill, Lucknow and Molong and the area serviced by the Central Tablelands Water County Council water supply system,
 - (iv) the locality that includes Cobar and Nyngan,
 - (v) the locality that includes Walgett,
 - (vi) the locality that includes Bourke,
 - (vii) the locality that includes Bourke and the Darling River between Bourke and its junction with the Murray River,
 - (viii) the locality that includes Warren,
- (b) any water supply for a town or locality described in Schedule 1.

- (2) The regulations may amend Schedule 1 to insert, alter or omit a description of a town or locality.
- (3) Before making a recommendation to the Governor for the making of a regulation of a kind referred to in subsection (2), the Minister is required to obtain the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.

Part 3 Authorisation of critical town or locality water supply development

6 Meaning of development control legislation

- (1) For the purposes of this Part, **development control legislation**—
 - (a) means provisions of or made under the *Environmental Planning and Assessment Act 1979* or any other Act (other than the *Water Management Act 2000*) that prohibit the carrying out of development or that require the approval of any person or body before development is carried out, and
 - (b) extends to the provisions of other Acts (other than the *Water Management Act 2000*) referred to in section 5.23 of the *Environmental Planning and Assessment Act 1979* (Approvals etc legislation that does not apply) relating to requirements for authorisations or to the making or giving of orders or notices.
- (2) In subsection (1)—

approval includes permit, licence, consent or other authority (however described).

prohibit includes prohibit temporarily or in part, or authorise a person or body to prohibit.

7 Approval requirements under other Acts

- (1) Development described in Schedule 2 carried out by or on behalf of a public authority is exempt from development control legislation if the carrying out of the development is the subject of an authorisation of the Minister under this Part.
- (2) The regulations may amend Schedule 2 to insert, alter or omit a description of development for the purposes of a critical town or locality water supply.
- (3) Before making a recommendation to the Governor for the making of a regulation of a kind referred to in subsection (2), the Minister is required to—
 - (a) consult with the following Ministers—
 - (i) the Minister administering the *Environmental Planning and Assessment Act 1979*,
 - (ii) the Minister administering the *Fisheries Management Act 1994*,

- (iii) the Minister administering the *Heritage Act 1977*, and
- (b) obtain the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.
- (4) A regulation of a kind referred to in subsection (2) may not amend Schedule 2 to insert or alter a description of development that relates to the following—
 - (a) the construction of a new dam or new weir (other than a temporary weir),
 - (b) the increase in storage capacity of an existing dam.
- (5) The repeal of a regulation made under this section does not affect the continuation of anything validly done before that repeal.

8 Authorisation of Minister to carry out water supply development

- (1) This section applies to the carrying out of development described in Schedule 2.
- (2) The public authority proposing to carry out the development (or a person on behalf of the authority) may apply to the Planning Secretary for an authorisation to carry out the development.
- (3) The application must be in writing and include the following information—
 - (a) a description of the proposed development,
 - (b) a description of the land on which the proposed development is to be carried out,
 - (c) the date when any construction for the proposed development is to be commenced and the anticipated date of completion of the construction,
 - (d) the measures proposed to be taken to avoid, minimise or offset the environmental or other impacts of the proposed development,
 - (e) any other information relating to the proposed development that the regulations, or the Planning Secretary, requires to be included.
- (4) The Planning Secretary is to—
 - (a) consult with other relevant public authorities regarding the proposed authorisation, and
 - (b) have regard to any issues raised by those authorities in those consultations, and
 - (c) forward the application, and a report on those consultations, to the Minister.
- (5) The Minister may authorise a specified public authority to carry out the development subject to any conditions set out or referred to in the authorisation.

- (6) Before giving an authorisation under this section, the Minister is required to obtain the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.
- (7) The Minister may, by notice in writing to the public authority carrying out the development, amend or revoke the conditions of an authorisation before the development has been carried out.
- (8) The conditions of an authorisation to carry out development may (without limitation) include conditions relating to any of the following—
 - (a) the time within which the development must be completed by,
 - (b) requiring specified environmental assessment to be undertaken before the development is permitted to be carried out,
 - (c) hours and other conditions of operation of the carrying out of the development,
 - (d) reporting requirements,
 - (e) public notification requirements in relation to the carrying out of the development.
- (9) An authorisation to carry out development for the purposes of a critical town or locality water supply is taken to be a State significant infrastructure approval under Division 5.2 of the *Environmental Planning and Assessment Act 1979* (or an amendment to a State significant infrastructure approval) for the purposes of—
 - (a) Part 2 of the *Biodiversity Conservation Act 2016* with respect to threatened species, and
 - (b) Part 7A of the *Fisheries Management Act 1994*, and
 - (c) the *Local Land Services Act 2013*, and
 - (d) any other Act (or provision of any other Act) prescribed by the regulations for the purposes of this subsection.
- (10) The Minister may, if the Minister is of the opinion that a public authority is failing to comply with the conditions of an authorisation, direct the authority to comply with those conditions.
- (11) Before giving a direction under subsection (10), the Minister is required to obtain the concurrence of the Minister responsible for the public authority concerned.

9 Application of *Environmental Planning and Assessment Act 1979*

- (1) The object of this section is to clarify the operation of the *Environmental Planning and Assessment Act 1979* in relation to development that is the subject of an authorisation of the Minister under this Part (subject to the terms of the authorisation).

- (2) An environmental planning instrument under that Act cannot prohibit, require development consent for or otherwise restrict the carrying out of the development.

Note—

The exclusion of the need for development consent also excludes any requirement for the payment of development contributions under that Act.

- (3) Division 5.1 of that Act does not apply in respect of the carrying out of the development.
- (4) A development control order does not have effect to the extent that it prevents or interferes with the carrying out of the development.
- (5) Subsection (2) applies to an environmental planning instrument made before or after the commencement of this section.

Note—

See section 20 (Regulations), which authorises regulations to restore the operation of the *Environmental Planning and Assessment Act 1979* in relation to development carried out under this Act.

10 Notification of exemptions and authorisations

- (1) The Minister may provide a copy of an authorisation under this Part to the local council of the local government area in which any development to which the authorisation relates is to be carried out.
- (2) In that case, a planning certificate under section 10.7 of the *Environmental Planning and Assessment Act 1979* in relation to any land concerned is to include advice about the authorisation.

Part 4 Application of *Water Management Act 2000*

11 Regulations may disapply or modify *Water Management Act 2000*

- (1) The regulations may make provision for or with respect to the disapplication or modification of the provisions of the *Water Management Act 2000*, or the regulations or any instrument made under that Act, in relation to critical town or locality water supplies.
- (2) Without limiting subsection (1), the regulations under this section modifying the operation of provisions of the *Water Management Act 2000* may provide that—
 - (a) the Minister administering that Act has a function of directing a specified public authority in relation to critical town or locality water supplies, and
 - (b) a specified public authority must comply with that direction.
- (3) The Minister is not to recommend the making of a regulation under this section unless—

- (a) if the Minister is not the Minister administering the *Biodiversity Conservation Act 2016*—the Minister certifies that the regulation is made with the concurrence of that Minister, and
- (b) if the Minister is not the Minister administering the *Water Management Act 2000*—the Minister certifies that the regulation is made with the concurrence of that Minister.

Part 5 Co-ordination and co-operation of public authorities

12 Obligations of public authorities

A public authority has the following obligations in respect of development for the purposes of a critical town or locality water supply—

- (a) to co-operate with the public authority responsible for the development for the purposes of a critical town or locality water supply (**responsible authority**) in the exercise of the public authority's functions, including complying with any reasonable request of the responsible authority for information to enable the responsible authority to exercise its functions,
- (b) to notify the responsible authority of any proposed exercise of the public authority's functions that may impact adversely on the exercise of the responsible authority's functions.

13 Powers of public authorities

Despite the provisions of any other Act or law, a public authority is—

- (a) authorised to exercise any of its functions in order to comply with a request, direction or decision of a public authority made or given under this Act, and
- (b) authorised and empowered to enter into agreements for the purposes of this Act with a public authority and may do or suffer anything necessary or expedient for carrying any such agreement into effect.

14 Minister may direct public authorities to co-operate

- (1) The Minister may, by notice in writing given to a prescribed public authority, direct the authority to comply with a request, direction or decision of a public authority responsible for development for the purposes of a critical town or locality water supply that is made or given under this Act.
- (2) Before giving a direction under this section, the Minister is required to obtain the concurrence of the Minister responsible for the prescribed public authority concerned.
- (3) In this section—

prescribed public authority means a public authority prescribed by the regulations

for the purposes of this section.

15 Dispute resolution

- (1) If there is a dispute between the public authority responsible for development for the purposes of a critical town or locality water supply and a public authority concerning the operation of any provision of this Act and the parties have after reasonable efforts been unable to resolve the dispute themselves, either party may request a review of the matter by the responsible Ministers (namely, the Minister responsible for the authority and the Minister responsible for the public authority concerned).
- (2) If the same Minister is responsible for both the authority and the public authority concerned, the review is to be by that Minister.
- (3) If the dispute is not resolved by the responsible Ministers or Minister, the dispute is to be referred to the Premier.
- (4) The authority and the public authority concerned are to give effect to any decision of the responsible Ministers, Minister or the Premier in resolution of the dispute.
- (5) A reference in this section to the Minister responsible for a public authority is, in the case of a public authority that is a local council, a reference to the Minister administering the *Local Government Act 1993*.

Part 6 Miscellaneous

16 Delegation

- (1) The Minister or Planning Secretary may delegate the exercise of any function of the Minister or Planning Secretary under this Act (other than this power of delegation) to—
 - (a) any person employed in the Department of Planning, Industry and Environment, or
 - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Planning Secretary may subdelegate any function delegated to the Planning Secretary by the Minister if authorised to do so by the Minister by instrument in writing.

17 Compensation not payable in respect of critical water supply-related matters

- (1) Compensation is not payable by or on behalf of—
 - (a) the State, or
 - (b) a public authority, or
 - (c) a local council, or

(d) an officer, employee or agent of the State, a public authority or a local council, for an act or omission that is a critical water supply-related matter or that arises (directly or indirectly) from a critical water supply-related matter.

(2) Subsection (1)—

(a) applies only in respect of acts done or omitted to be done in good faith, and

(b) does not apply to acts or omissions that cause personal injury to a person or the death of a person.

(3) In this section—

compensation includes damages and any other form of monetary compensation.

critical water supply-related matter means the following—

(a) development carried out, works conducted or other things done under an authorisation given under this Act or the regulations,

(b) the administration or purported administration of this Act,

(c) the exercise or purported exercise of functions under this Act.

this Act includes provisions of the [Water Management Act 2000](#), or of any regulations or other instruments under that Act, that apply to a matter, with or without modification, by operation of Part 4.

(4) This section has effect despite anything in the [Water Management Act 2000](#).

18 No liability in nuisance

(1) Anything done or omitted to be done by any person—

(a) in the exercise of functions under this Act or the regulations, or

(b) pursuant to any of the provisions of this Act or the regulations,

does not constitute a nuisance.

(2) In this section, **this Act** includes provisions of the [Water Management Act 2000](#), or of any regulations or other instruments under that Act, that apply to a matter, with or without modification, by operation of Part 4.

19 Personal liability

(1) A matter or thing done or omitted to be done by a person acting under the direction of the Minister or Planning Secretary does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the person so acting personally to any action, liability, claim or demand.

(2) However, any such liability attaches instead to the Crown.

20 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may make provision for or with respect to restoring the operation of the *Environmental Planning and Assessment Act 1979* and any other Act in relation to development that would otherwise be exempted from those Acts by this Act and, in particular, for or with respect to—
 - (a) declaring an authorisation of development by the Minister to be a development consent or other approval under the *Environmental Planning and Assessment Act 1979* and applying the provisions of that Act (with any specified modifications) to any such consent or approval, and
 - (b) the operation of provisions relating to existing uses and the continuance of lawful uses in relation to development for the purposes of critical town or locality water supply.

21 Expiry of provisions of Act

- (1) Parts 2-5 of, and Schedules 1-3 to, this Act expire on the date that is 2 years after the date of assent to this Act.
- (2) The regulations may, from time to time, before an expiry under this section takes effect, postpone by one year the date on which those Parts of, and Schedules to, this Act expire.
- (3) The Minister must not recommend the making of a regulation under this section unless the Minister is satisfied that risks to the critical town or locality water supplies continue or new risks exist.

Schedule 1 Critical town or locality water supplies

The locality that includes Bathurst, Raglan, Eglinton and Perthville and the area serviced by the Bathurst water supply system.

Schedule 2 Declared water supply development

Development	Critical town or locality water supply
Burrendong Dam access point relocation project	the locality that includes Dubbo, Wellington, Warren, Nyngan and Cobar
Chaffey Dam to Dungowan Village pipeline	the locality that includes Tamworth, Moonbi and Kootingal

Macquarie River to Orange pipeline	the locality that includes Orange, Spring Hill, Lucknow and Molong and the area serviced by the Central Tablelands Water County Council water supply system
Works to connect the Cobar and Nyngan town water supplies to alternative available groundwater sources	the locality that includes Cobar and Nyngan
Walgett weir and Walgett water treatment plant project	the locality that includes Walgett
Bourke weir, bore water supply and water treatment project	the locality that includes Bourke
Re-establishment of natural rock weirs on the Darling River between Bourke and its junction with the Murray River	the locality that includes Bourke and the Darling River between Bourke and its junction with the Murray River
Works for the Warren town water supply, including bores, connecting piping and associated infrastructure for the Warren bore field	the locality that includes Warren
Works for the Bathurst water supply system, including a pumping station on the Macquarie River, a pre-treatment plant, pipelines, processing ponds, storage ponds and additional pumping stations to transfer water to the existing Bathurst water filtration plant	the locality that includes Bathurst, Raglan, Eglinton and Perthville and the area serviced by the Bathurst water supply system

Schedule 3 Declaration of certain dam-related development as critical State significant infrastructure

Part 1 Declaration of development

1 Critical State significant infrastructure

- (1) The development described in Part 2 of this Schedule—
 - (a) is taken for the purposes of the *Environmental Planning and Assessment Act 1979* to be State significant infrastructure and critical State significant infrastructure, and
 - (b) may be carried out without development consent under Part 4 of that Act.
- (2) The regulations may amend Part 2 of this Schedule as follows—
 - (a) to insert or alter a description of development that relates to the construction of a new dam or the increase in storage capacity of an existing dam,
 - (b) to omit a description of development.
- (3) Before making a recommendation to the Governor for the making of a regulation of a

kind referred to in subclause (2)(a), the Minister is required to obtain the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.

Part 2 Description of development

2 Wyangala Dam wall raising project

- (1) Development for the purposes of raising the Wyangala Dam in the Cowra local government area, including—
 - (a) raising the embankment and appurtenant structures to increase the storage capacity of the dam, and
 - (b) relocating and reinstalling services and structures such as access bridges, and
 - (c) storing water using the new dam structures.
- (2) Development that is ancillary to other development in this clause (including the upgrading or construction of access roads, utilities infrastructure, construction accommodation and construction compounds).
- (3) In this clause—

development does not include—

 - (a) the following for the purposes of the assessment of the dam wall raising project—
 - (i) surveys,
 - (ii) test drilling,
 - (iii) test excavations,
 - (iv) geotechnical investigations,
 - (v) other tests, surveys, sampling or investigations, or
 - (b) the relocation of the Wyangala Waters Holiday Park and associated works, including the construction of a water treatment plant and access roads and the relocation and reinstallation of utilities infrastructure.

3 Mole River Dam

- (1) Development for the purposes of a new dam located at Mole River in the Tenterfield local government area.
- (2) Development that is ancillary to other development in this clause (including the upgrading or construction of access roads, utilities infrastructure, construction accommodation and construction compounds).

4 **Dungowan Dam**

- (1) Development for the purposes of a new dam located at Ogunbil in the Tamworth Regional local government area, including—
 - (a) the construction of a bulk water pipeline from the new dam to intersect with the pipeline from Chaffey Dam, and
 - (b) decommissioning the existing Dungowan Dam and related infrastructure and services, and
 - (c) rehabilitating the storage area of the existing Dungowan Dam.
- (2) Development that is ancillary to other development in this clause (including the upgrading or construction of access roads, utilities infrastructure, construction accommodation and construction compounds).
- (3) In this clause—

development does not include the following for the purposes of the assessment of the new dam—

 - (a) surveys,
 - (b) test drilling,
 - (c) test excavations,
 - (d) geotechnical investigations,
 - (e) other tests, surveys, sampling or investigations.

5 **Western Weirs program**

- (1) Development for the purposes of regulating the flows of water in the Barwon-Darling unregulated river system from the Queensland border to Menindee Lakes, and the Lower Darling regulated river system from downstream of the Menindee Lakes to the junction with the Murray River at Wentworth, including the following—
 - (a) the construction of new regulating structures,
 - (b) the removal or decommissioning of existing weirs,
 - (c) the construction of structures to enable the passage of fish.
- (2) Development that is ancillary to other development in this clause (including the upgrading or construction of access roads, utilities infrastructure, construction accommodation and construction compounds).

Schedule 4 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on—
 - (a) the enactment of this Act or any Act that amends this Act, or
 - (b) the expiry of any Part of, or Schedule to, this Act.
- (2) Before making a recommendation to the Governor for the making of a regulation of a kind referred to in subclause (1), the Minister is required to obtain the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*.
- (3) Any such provision—
 - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
 - (b) has effect despite anything to the contrary in this Schedule.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (5) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.