

Natural Resources Access Regulator Act 2017

No 64

[2017-64]



New South Wales

Status Information

Currency of version

Current version for 13 January 2023 to date (accessed 7 February 2025 at 16:58)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 January 2023

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Natural Resources Access Regulator Act 2017 No 64



New South Wales

An Act to constitute and confer functions on the Natural Resources Access Regulator.

Part 1 Preliminary

1 Name of Act

This Act is the *Natural Resources Access Regulator Act 2017*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act—

Board means the Board of the Regulator established under this Act.

enforcement powers, in relation to the natural resources management legislation, means any powers that may be exercised under that legislation in connection with the enforcement of that legislation, including—

- (a) powers that may be exercised for the purposes of determining whether there has been compliance with or a contravention of that legislation, or
- (b) the issuing of any notice, order or direction, or the imposition of any penalty or charge, under that legislation.

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

natural resources management legislation means any of the following Acts and the regulations and other instruments made under those Acts—

- (a) this Act,
- (b) *Water Management Act 2000*,

(c) *Water Act 1912*,

(d) any other Act or part of an Act administered by a relevant Minister that is prescribed by the regulations.

Regulator means the Natural Resources Access Regulator constituted under this Act.

relevant Minister means any of the following—

(a) the Minister for Primary Industries,

(b) the Minister for Regional Water,

(c) the Minister for Lands and Forestry.

Note—

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

(2) Any regulation prescribing an Act or part of an Act for the purposes of the definition of **natural resources management legislation** may only be made with the concurrence of the relevant Minister administering that Act or part.

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

Part 2 Natural Resources Access Regulator

Division 1 Constitution and management of Regulator

4 Constitution of Regulator

(1) There is constituted by this Act a body corporate with the corporate name of the Natural Resources Access Regulator.

(2) The Regulator is a NSW Government agency.

Note—

See section 13A of the *Interpretation Act 1987* in relation to the status, privileges and immunities of statutory bodies declared to be NSW Government agencies.

(3) The Regulator is not subject to the control and direction of the Minister except to the extent specifically provided for under this or any other Act.

5 Board of Regulator

(1) There is to be a Board of the Regulator.

(2) The Board is to consist of at least 3, but not more than 5, members appointed by the Minister.

- (3) The members of the Board are to be persons who together have experience and expertise in law, natural resources management, compliance and regulation and any other areas the Minister considers relevant.
- (4) The Board may establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board. It does not matter that some or all of the members of any committee are not members of the Board.
- (5) Schedule 1 contains provisions relating to the members and procedure of the Board.

6 Role of Board

- (1) Any decision relating to the functions of the Regulator is to be made by or under the authority of the Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Regulator by or under the authority of the Board is taken to have been done by the Regulator.

7 General directions by Minister

- (1) The Minister may give the Regulator a written direction with respect to the functions of the Regulator if the Minister is satisfied that it is necessary to do so in the public interest.
- (2) A direction by the Minister may be of a general nature only and may not relate to a specific matter that is being considered or determined by the Regulator.
- (3) In particular, a direction by the Minister under this section may not be made in relation to the following—
 - (a) the content of any advice or report given by the Regulator,
 - (b) any determination by the Regulator whether proceedings for offences under the natural resources management legislation should be instituted.
- (4) The Regulator must ensure that any direction given to it under this section is complied with.
- (5) Any direction given to the Regulator under this section is, as soon as practicable after it is given, to be published on the website of the Public Service agency in which persons are employed to enable the Regulator to exercise its functions. The Regulator must also include in its annual report particulars of each direction given under this section during the year to which the report relates.

8 Chief Regulatory Officer

- (1) The Chief Regulatory Officer of the Regulator is the person employed in the Public Service as the Chief Regulatory Officer.

(2) The Chief Regulatory Officer—

- (a) is responsible for the day to day management of the activities of the Regulator, and
- (b) is to report to the Board on those activities.

(3) The Chief Regulatory Officer is entitled to attend and to participate in discussions at meetings of the Board but is not entitled to vote at any such meeting.

9 Staff of Regulator

Persons may be employed in the Public Service to enable the Regulator to exercise its functions.

Note—

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Regulator makes use of) may be referred to as officers or employees, or members of staff, of the Regulator. Section 47A of the [Constitution Act 1902](#) precludes the Regulator from employing staff.

Division 2 Objectives and functions of Regulator

10 Principal objectives of Regulator

The principal objectives of the Regulator are—

- (a) to ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation, and
- (b) to maintain public confidence in the enforcement of the natural resources management legislation.

11 Functions of Regulator

(1) The Regulator has the following functions—

- (a) to prepare strategies, policies and procedures relating to enforcement powers under the natural resources management legislation,
- (b) to advise and report to the Minister or any relevant Minister on any matter relating to the administration of the natural resources management legislation,
- (c) to provide the Minister or any relevant Minister with such other advice or reports as the Minister or relevant Minister may, by instrument in writing, request,
- (d) to publish details of convictions in prosecutions for offences under the natural resources management legislation,
- (e) such functions under the natural resources management legislation as are specified in Schedule 2,

- (f) any other functions conferred or imposed on the Regulator (including by way of delegation) by or under the natural resources management legislation or any other Act.
- (2) A function specified in Schedule 2 (a **specified function**) that is conferred on the Regulator by subsection (1) (e) may, despite that conferral, also be exercised by the person (the **relevant person**) on whom the function is conferred under the natural resources management legislation referred to in that Schedule.
- (3) The regulations may amend Schedule 2 by—
 - (a) adding a function under the natural resources management legislation, or
 - (b) amending or removing a specified function,but only with the concurrence of the relevant Minister administering the natural resources management legislation (other than this Act) under which the function is conferred.
- (4) The regulations may make provision for dealing with matters that are incidental to or consequential on the conferral of a specified function on the Regulator.
- (5) In particular, the regulations may—
 - (a) require a reference in the natural resources management legislation to the relevant person or any other person to be construed as (or as including) a reference to the Regulator, and
 - (b) deal with matters arising in connection with the exercise of a specified function by both the Regulator and the relevant person.
- (6) If a person has a right to appeal against, or to apply for a review of, a decision of the relevant person in exercising a specified function, the right extends to any decision of the Regulator in exercising that function.

12 Regulator to determine whether proceedings for offences should be instituted

- (1) The Regulator is to determine whether proceedings for offences under the natural resources management legislation should be instituted by the Crown.
- (2) The Regulator may not determine that any such proceedings should be instituted unless the determination is supported by legal advice.
- (3) In this section, **the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes any officer, employee or agent of the Crown.
- (4) Criminal proceedings may not be challenged on the ground that they were instituted in contravention of this section.

12A Register of information about water enforcement action

- (1) The Regulator may keep, and may make publicly available, a register of information about enforcement actions taken by or on behalf of the Regulator under the *Water Management Act 2000*.
- (2) The register may include the following information—
 - (a) the identities of persons on whom penalties have been imposed under sections 60G, 78 and 109 of the *Water Management Act 2000* and the penalties imposed,
 - (b) the identity of any person to whom a penalty notice has been issued in respect of an offence under that Act and particulars of the offence,
 - (c) particulars of any direction issued by the Regulator under Part 1 of Chapter 7 of that Act and the identities of any persons to whom the direction is given,
 - (d) particulars of any decision to suspend or cancel an access licence under section 78 of that Act or to suspend or cancel an approval under section 109 of that Act,
 - (e) any other information prescribed by the regulations for the purposes of this section.
- (3) Regulations may be made for or with respect to the register kept under this section.
- (4) 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)).
- (5) No liability (including liability for defamation) is incurred by a person or the Crown for publishing in good faith information in a register under this section.

13 Annual report

- (1) The Regulator is, as soon as practicable after 30 June in each year, to prepare and forward to the Minister a report of its work and activities for the 12 months ending on that 30 June.
- (2) Without limiting subsection (1), the report must include the following—
 - (a) details of notices, orders and directions issued under the natural resources management legislation in connection with the enforcement of that legislation,
 - (b) such other particulars as may be prescribed by the regulations.
- (3) The Regulator is to make copies of its annual report publicly available at no cost.
- (4) Any annual report of the Regulator (whether required under this section or under any

other Act) may be included in the annual report of the Public Service agency in which the staff of the Regulator are employed.

14 Delegation

The Regulator may delegate any of its functions (other than this power of delegation) to any of the following—

- (a) a member of the Board,
- (b) a committee of the Board,
- (c) the Chief Regulatory Officer or any other Public Service employee,
- (d) any person, or any class of persons, authorised for the purposes of this section by the regulations.

Part 3 Miscellaneous

15 Transfer of certain Water NSW staff

(1) In this section—

relevant Public Service agency means—

- (a) the Public Service agency in which persons are employed to enable the Regulator to exercise its functions, or
- (b) any other Public Service agency in which persons are employed in connection with the administration of the natural resources management legislation.

transferred employee means an employee of Water NSW who is the subject of an order under this section.

(2) The Minister may, by order in writing, transfer to the relevant Public Service agency any person who—

- (a) is employed by Water NSW, and
- (b) is designated by the Minister as a person who—
 - (i) is required to enable the Regulator to exercise its functions, or
 - (ii) is to exercise enforcement powers under the natural resources management legislation.

(3) A transfer under this section does not require the consent of the transferred employee.

(4) On the day specified in the order, the transferred employee—

- (a) ceases to be employed by Water NSW, and
 - (b) is employed as a Public Service employee under the *Government Sector Employment Act 2013* in the relevant Public Service agency specified in the order.
- (5) A transferred employee—
- (a) retains any rights to annual leave, extended leave, sick leave or other forms of leave accrued or accruing immediately before the transfer, and
 - (b) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the person ceases to be employed by Water NSW, and
 - (c) is not entitled to claim, both under this Act or any other Act or law, dual benefits of the same kind for the same period of service.
- (6) Without limiting subsection (5), a transferred employee is not, despite any other provision of this or any other Act or law, entitled to elect, because of the transfer, to be paid the money value of any annual leave or extended leave accrued by the transferred employee.
- (7) Water NSW is liable for the cost of any annual leave or extended leave accrued by a transferred employee immediately before the transfer.
- (8) Water NSW is taken to be a government sector agency for the purposes of Part 2 of Schedule 2 to the *Government Sector Employment Regulation 2014* in respect of the calculation of a transferred employee's extended leave.

16 Exchange of information and records between relevant agencies

- (1) In this section—

administration of the natural resources management legislation includes the following—

- (a) the granting of licences or other authorities under the natural resources management legislation and the suspension or revocation of any such licence or other authority,
- (b) the issuing of any notice, order or direction under the natural resources management legislation,
- (c) the exercising of enforcement powers under the natural resources management legislation,
- (d) the institution of proceedings for offences under the natural resources management legislation.

records includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

relevant agency means any of the following—

- (a) the Regulator,
- (b) the person, statutory body or Public Service agency responsible for the administration of any natural resources management legislation,
- (c) Water NSW,
- (d) any other person or body (including an officer or agency of the Commonwealth or another State or Territory) prescribed by the regulations for the purposes of this definition.

relevant information or records means—

- (a) information or records obtained by the Regulator in connection with the administration of the natural resources management legislation, or
- (b) information or records obtained by, or otherwise in the possession of, any other relevant agency to the extent that the information or records relate to the administration of the natural resources management legislation,

and includes any database or other system containing such information or records.

- (2) Relevant information or records held by a relevant agency may be provided to another relevant agency for the purposes of the administration of the natural resources management legislation or the administration or enforcement of the [Water Act 2007](#) of the Commonwealth.
- (3) Without limiting subsection (2), the Regulator may, by notice in writing given to Water NSW, require Water NSW, within the time and in the manner specified in the notice, to provide the Regulator with any relevant information or records specified in the notice or with access to any such relevant information or records. Water NSW is required to comply with a notice under this subsection.

Note—

Under section 28 (2) of the [Water NSW Act 2014](#) the Minister may transfer ownership of any specified assets of Water NSW (which would include records and databases) to the Regulator.

- (4) A relevant agency may rely on relevant information or records provided to it under this section for the purposes of the administration of the natural resources management legislation.

17 Exclusion of personal liability

- (1) Any matter or thing done or omitted to be done by a person who is—

- (a) a member of the Board or a committee of the Board, or
- (b) the Chief Regulatory Officer or any other Public Service employee, or
- (c) acting under the direction of the Board,

does not, if the matter or thing was done or omitted to be done in good faith in connection with exercising the functions of the Regulator under the natural resources management legislation, subject the person personally to any action, liability, claim or demand.

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

18 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 contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (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.

19 (Repealed)

Schedule 1 Members and procedure of Board

(Section 5 (5))

Part 1 General

1 Definitions

In this Schedule—

Chairperson means the Chairperson of the Board.

member means any member of the Board.

Part 2 Members

2 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Members hold office on a part-time basis.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member (or a vacancy in the office of the member) and, while so acting, the person has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may remove a person from the office to which the person was appointed under this clause.
- (3) For the purposes of this clause, the requirement under clause 9 that a member must not be present at a meeting of the Board is to be regarded as an absence from office of the member.

6 Vacancy in office of member

- (1) The office of a member becomes vacant if the member—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

7 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Chairperson

(1) The Minister may, in a member's instrument of appointment or by subsequent instrument, appoint a member to be Chairperson.

(2) The Chairperson vacates office as Chairperson if the person—

- (a) is removed from that office by the Minister under this clause, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the Board.

(3) The Minister may at any time remove the Chairperson from office as Chairperson.

9 Disclosure of pecuniary interests

(1) If—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a member at a meeting of the Board that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines—
- (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

10 Effect of certain other Acts

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made—
- (a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

11 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

12 Quorum

The quorum for a meeting of the Board is 3 members of the Board.

13 Presiding member

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

14 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

15 Transaction of business outside meetings or by telephone etc

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board made at a meeting of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of—
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by

electronic means.

16 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

Schedule 2 Additional functions of Regulator

(Section 11 (1) (e))

1 Ministerial functions under [Water Management Act 2000](#)

The functions of the Minister administering the [Water Management Act 2000](#) or the Water Administration Ministerial Corporation under any of the following provisions of that Act—

- (a) section 60G (Minister may charge for water illegally taken),
- (b) section 78 (Suspension and cancellation of access licences),
- (c) section 78A (Notification of intention to suspend, cancel or require payment of penalty),
- (d) section 91I (Taking water when metering equipment not working),
- (e) section 109 (Suspension and cancellation of approvals),
- (f) section 325 (Directions concerning waste of water),
- (g) section 326 (Directions to install and maintain metering equipment),
- (g1) section 326A (Compliance audits),
- (g2) section 326B (Use of information),
- (h) section 327 (Stop work order regarding unlawful construction or use of water management work),
- (i) section 328 (Stop work order regarding unlawful controlled activity or aquifer interference activity),
- (j) section 329 (Removal of unlawful water management works),
- (j1) section 330 (Temporary stop work to protect public interest),
- (k) section 331 (Directions to holders of basic landholder rights),
- (l) section 332 (Directions concerning damage caused by straying stock),
- (m) section 333 (Directions to protect water sources),

- (n) section 334 (Directions to prepare reports),
- (o) section 335 (Land and Environment Court may grant injunctions),
- (o1) section 336 (Restraint of breaches of this Act),
- (p) section 336A (Remedial measures may be taken by Minister),
- (p1) section 336D (Prior notice of direction not required),
- (p1a) section 336E (Enforcement of undertakings),
- (p1b) section 336F (Notice of decision and reasons for decision),
- (q) section 338A (Powers of authorised officers to require information and records),
- (r) section 338B (Power of authorised officers to require answers),
- (s) section 339E (Assistance to be given to authorised officers),
- (s1) section 339G (Compensation),
- (t) section 340C (Revocation or variation),
- (t1a) section 362C (Unpaid fees, charges and civil penalties),
- (t1) section 365 (Penalty notices),
- (u) section 367 (Evidentiary certificates),
- (v) section 390 (Authorised officers and analysts).