

Water Management Amendment Act 2002 No 138

[2002-138]



New South Wales

Status Information

Currency of version

Repealed version for 22 July 2003 to 26 November 2003 (accessed 18 September 2024 at 21:24)

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.

Notes—

- **Repeal**

The Act was repealed by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2003 No 82](#), Sch 3 with effect from 27.11.2003.

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 27 November 2003

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Water Management Amendment Act 2002 No 138



New South Wales

An Act to amend the *Water Management Act 2000* with respect to management plans, access licences, approvals and other matters; to make consequential amendments to other Acts; and for other purposes.

1 Name of Act

This Act is the *Water Management Amendment Act 2002*.

2 Commencement

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

3 Amendment of *Water Management Act 2000 No 92*

The *Water Management Act 2000* is amended as set out in Schedules 1–4.

4 Amendment of other Acts

Each Act referred to in Schedule 5 is amended as set out in that Schedule.

Schedule 1 Amendment of *Water Management Act 2000* in relation to management plans

(Section 3)

[1] Section 18 Matters for consideration

Insert at the end of the section:

- (2) Due regard may also be had, in the formulation of the plan's proposals, to the effect within each water management area or water source to which the plan applies of activities occurring, or likely to occur, outside each such area or water source.

[2] Sections 19, 22, 25, 28 and 31

Omit "water management plan" wherever occurring.

Insert instead “management plan”.

[3] Section 19 Application of Division

Insert at the end of the section:

- (2) The water sharing provisions of a management plan may apply to the whole or any part of a water management area, or to the whole or any part of one or more water sources within a water management area.

[4] Sections 20 and 21

Insert “or water source” after “area” wherever occurring (except where occurring in section 21 (a), (b) and (d)).

[5] Section 20 (1) (b)

Insert “, or from the water source,” after “within the area”.

[6] Section 20 (1) (d) and (e)

Omit the paragraphs. Insert instead:

- (d) the establishment of access licence dealing rules for the area or water source,
- (e) the establishment of a bulk access regime for the extraction of water under access licences, having regard to the rules referred to in paragraphs (a) and (d) and the requirements referred to in paragraphs (b) and (c).

[7] Section 20 (2)

Omit “subsection (1) (d)”. Insert instead “subsection (1) (e)”.

[8] Section 20 (2) (d)

Omit “access licences”. Insert instead “water allocations”.

[9] Section 20 (2) (e) and (f)

Insert after section 20 (2) (d):

, and

- (e) may contain provisions with respect to the conditions that must (as mandatory conditions) be imposed on access licences under section 66 (1), including conditions providing for the variation, from time to time, of the share and extraction components of access licences, and

(f) must be consistent with the water management principles.

[10] Section 20 (4)

Omit the subsection. Insert instead:

(4) The access licence dealing rules established under subsection (1) (d):

(a) must comply with the access licence dealing principles, and

(b) subject to those principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.

[11] Section 22 Application of Division

Insert at the end of the section:

(2) The water use provisions of a management plan may apply to the whole or any part of a water management area.

[12] Section 25 Application of Division

Insert at the end of the section:

(2) The drainage management provisions of a management plan may apply to the whole or any part of a water management area.

[13] Section 28 Application of Division

Insert at the end of the section:

(2) The floodplain management provisions of a management plan may apply to the whole or any part of a water management area.

[14] Section 31 Application of Division

Insert at the end of the section:

(2) The controlled activity and aquifer interference activity provisions of a management plan may apply to the whole or any part of a water management area.

[15] Section 32 Core provisions

Insert "must" before "deal".

[16] Section 34 Environmental protection provisions

Insert “, or any part of a water management area,” after “a water management area” in section 34 (1).

[17] Section 50 Minister’s plan

Insert “or water source” after “area” wherever occurring in section 50 (1) (b) and (c).

[18] Section 50 (1A)

Insert after section 50 (1):

(1A) A Minister’s plan may be made for more than one water management area or water source or for parts of more than one water management area or water source.

[19] Section 50 (2)

Insert “in general terms” after “must”.

Schedule 2 Amendment of [Water Management Act 2000](#) in relation to access licences

(Section 3)

[1] Section 55A

Insert before section 56:

55A Application of Part

(1) This Part applies to:

- (a) each part of the State, and
- (b) each water source within that part of the State, and
- (c) each category or subcategory of access licence that relates to that part of the State and that water source,

that is declared by proclamation to be a part of the State, water source and category or subcategory of access licence to which this Part applies.

(2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

[2] Section 56 Access licences

Omit subsections (5) and (6) of section 56 (but not the note following subsection (6)).

[3] Section 57 Categories of licence

Omit section 57 (f). Insert instead:

(f) supplementary water access licences,

[4] Section 58 Priorities between different categories of licence

Omit section 58 (1) (b) and (c). Insert instead:

(b) regulated river (high security) access licences have priority over all other access licences (other than those referred to in paragraph (a)),

(c) access licences (other than those referred to in paragraphs (a), (b) and (d)) have priority between themselves as prescribed by the regulations,

(d) supplementary water access licences have priority below all other licences.

[5] Section 59 Available water determinations

Omit “a specified water management area or water source” from section 59 (1).

Insert instead “one or more specified water management areas or water sources”.

[6] Section 61 Applications for granting and renewal of access licences

Omit section 61 (2).

[7] Section 63 Determination of applications

Omit “major utility, and” from section 63 (3) (b).

Insert instead “major utility.”.

[8] Section 63 (3) (c)

Omit the paragraph.

[9] Section 63 (4), (5), (6), (7), (8), (9) and (10)

Insert after section 63 (3):

(4) An access licence must specify:

(a) in relation to its share component, the water management area or water source

to which it relates, and

- (b) in relation to its extraction component, the times, rates or circumstances in which, and the areas or locations from which, water may be taken under the licence.
- (5) An access licence may be issued with a zero share component or zero extraction component (or both) but, even if it is issued with a zero share component, must still specify the water management area or water source to which it relates.
- (6) Two or more co-holders of an access licence granted under this section are taken to hold the access licence:
 - (a) as provided by the application for the access licence, or
 - (b) if the application makes no such provision, as tenants in common in equal shares.
- (7) An access licence is to be in such form as the Minister may determine.
- (8) In the case of an access licence that is a renewal of a former access licence, any interest that subsisted in the former access licence, as in force immediately before it was renewed, becomes an equivalent interest in the renewed access licence.
- (9) An application for the renewal of an access licence is not to be refused on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are registered in the General Register of Deeds, that the application will be refused unless arrangements satisfactory to the Minister have been made for the payment of those fees.
- (10) An access licence takes effect:
 - (a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the licence, or
 - (b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

[10] Section 64 Notice of decision

Insert at the end of the section:

- (2) The Minister must also cause notice of the granting of an access licence to be given, in accordance with the regulations, to the Registrar-General.
- (3) A notification under subsection (1) must be given within 7 days of the determination.

[11] Section 65 Controlled allocation of access licences

Insert after section 65 (1):

(1A) Such an order may apply to the whole of a water management area or water source, or any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.

[12] Section 66 Conditions of access licence

Insert “, including conditions to give effect to any agreement between an applicant and objector under section 62 (5) and conditions relating to the protection of the environment” after “access licence” in section 66 (1) (b).

[13] Section 66 (3A)

Insert after section 66 (3):

(3A) In subsection (3), **associated commercial activities** means activities within the following categories recognised in the *Australian and New Zealand Standard Industry Classification (ANZSIC)*, 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):

- (a) construction (category E),
- (b) wholesale trade (category F),
- (c) retail trade (category G),
- (d) accommodation, cafes and restaurants (category H),
- (e) communication services (category J),
- (f) finance and insurance (category K),
- (g) property and business services (category L),
- (h) government administration and defence (category M),
- (i) education (category N),
- (j) health and community services (category O),
- (k) cultural and recreational services (category P),
- (l) personal and other services (category Q).

[14] Section 67 Imposition of conditions after access licence is granted

Insert “, or to conditions imposed on an access licence in connection with a dealing under Division 4” after “the access licence” in section 67 (2).

[15] Section 67 (2A)

Insert after section 67 (2):

(2A) Mandatory conditions are to be imposed on an access licence whenever it becomes necessary to do so in order to give effect to a relevant management plan.

[16] Section 67 (3) and (4)

Omit “discretionary” wherever occurring.

[17] Section 69 Duration of access licence

Omit “or (c)” from section 69 (1) (a).

[18] Section 69 (1) (b)

Omit “access licence, or”. Insert instead “access licence.”.

[19] Section 69 (1) (c)

Omit the paragraph.

[20] Chapter 3, Part 2, Division 4

Omit the Division. Insert instead:

Division 4 Dealings with access licences

71A Transfers of access licences

- (1) Access licences may be transferred in accordance with this section.
- (2) The prospective transferor and transferee of an access licence may apply to the Minister for consent to the transfer and the Minister may grant, or refuse to grant, consent to the transfer.
- (3) Despite subsection (2):
 - (a) consent to the transfer of a local water utility access licence may only be granted if the transferee is a local water utility, and
 - (b) consent to the transfer of a major utility access licence may only be granted if the transferee is a major water utility.

- (4) On completing a transfer to which consent has been given under this section, the parties to the transfer must cause notice of that fact to be given to the Minister.
- (5) The transfer takes effect when details of the transfer are entered on the register of access licences.
- (6) Two or more co-holders of an access licence that is transferred under this section are taken to hold the access licence:
 - (a) as provided by the notice of transfer referred to in subsection (4), or
 - (b) if the notice makes no such provision, as tenants in common in equal shares.

71B Conversion of access licence to new category

- (1) On the application of the holder of an access licence, the Minister may cancel the licence and issue a new access licence of a different category or subcategory.
- (2) Subsection (1) does not apply to a local water utility access licence or to a supplementary water access licence.
- (3) An access licence arising under this section may only be granted:
 - (a) subject to the mandatory conditions applicable to the category or subcategory of licence to which it belongs, and
 - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) An access licence arising under this section may only be granted in relation to the same water management area or water source as the cancelled access licence.
- (5) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.
- (6) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

71C Subdivision and consolidation of access licences

- (1) On the application of the holder of the access licence or access licences concerned, the Minister:
 - (a) may subdivide an access licence, by cancelling it and issuing two or more access licences in its place, or

- (b) may consolidate two or more access licences that relate to the same water management area or water source and are of the same category or subcategory, by cancelling them and issuing a single access licence in their place.
- (2) Access licences arising from a subdivision referred to in subsection (1) (a) may only be granted:
 - (a) with combined share components and combined extraction components no greater than the corresponding components of the cancelled access licence, and
 - (b) subject to the same mandatory conditions as those to which the cancelled access licence was subject, and
 - (c) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
 - (3) Access licences arising from a consolidation referred to in subsection (1) (b) may only be granted:
 - (a) with combined share components and combined extraction components no greater than the sum of the corresponding components of the cancelled access licences, and
 - (b) subject to conditions consistent with those to which the cancelled access licences were subject, and
 - (c) for a period no greater than the residue of the period for which the earliest expiring of the cancelled access licences would have had effect if they had not been cancelled.
 - (4) An access licence arising from a subdivision or consolidation may only be granted in relation to the same water management area or water source as the cancelled access licence or licences.
 - (5) Any interests that subsisted in the cancelled access licences, as in force immediately before they were cancelled, become equivalent interests in the new access licences.
 - (6) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

71D Assignment of rights under access licence

- (1) Rights under an access licence may be assigned in accordance with this section.
- (2) The holders of two or more access licences of the same category with respect to

the same water management area or water source may apply to the Minister for consent to:

- (a) the reduction of the share or extraction component, or both, of one or some of the licences, and
 - (b) the increase, by a corresponding amount, of the share or extraction component, or both, of the others.
- (3) On completing an assignment to which consent has been given under this section, the parties to the assignment must cause notice of that fact to be given to the Minister.
 - (4) The assignment takes effect when details of the assignment are entered on the register of access licences.
 - (5) This section does not authorise the reduction of the share or extraction component, or both, of a local water utility access licence.
 - (6) An access licence whose share or extraction component is varied under this section is to be made subject to the mandatory conditions applicable to an access licence with a share or extraction component as so varied.
 - (7) An access licence is not cancelled merely because, as a result of an assignment under this section, it has a zero share component or zero extraction component (or both) for the time being.

71E Amendment of share component of access licence

- (1) On the application of the holder of an access licence, the Minister may cancel the licence and issue a new access licence with a share component specifying a different water management area or water source.
- (2) Subsection (1) does not apply to a local water utility access licence or supplementary water access licence.
- (3) An access licence arising under this section may only be granted:
 - (a) subject to the mandatory conditions applicable to an access licence of the same category or subcategory for the water management area or water source specified in its share component, and
 - (b) for a period no greater than the residue of the period for which the cancelled access licence would have had effect if it had not been cancelled.
- (4) Any interests that subsisted in the cancelled access licence, as in force immediately before it was cancelled, become equivalent interests in the new access licence.

- (5) The Minister must cause notice of the granting of the new access licence to be given, in accordance with the regulations, to the Registrar-General.

71F Amendment of extraction component of access licence

- (1) On the application of the holder of an access licence, the Minister may amend the extraction component of the licence so as:
 - (a) to vary the times, rates or circumstances specified in the licence with respect to the taking of water under the licence, or
 - (b) to vary the areas or locations specified in the licence as the areas or locations from which water may be taken under the licence.
- (2) The area or location arising from a variation referred to in subsection (1) (b) must relate to the same water management area or water source as that to which the original area or location related.
- (3) An access licence that is amended under this section is subject to the mandatory conditions applicable to the licence as so amended.

71G Assignment of water allocations between access licences

- (1) Water allocations may be assigned from one access licence to another in accordance with this section.
- (2) The holders of two or more access licences may apply to the Minister for consent to the assignment of water allocations between the water allocation accounts for their respective access licences.
- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.
- (4) On completing an assignment to which consent has been given under this section, the parties to the assignment must cause notice of that fact to be given to the Minister.
- (5) The assignment takes effect when details of the assignment are entered in the relevant water allocation accounts.

71H Interstate transfer of access licences

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate transfer of access licences and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may grant

or revoke an access licence to give effect to such a transfer.

- (3) In respect of each access licence arising under this section, the Minister:
 - (a) must impose on the licence such mandatory conditions as any relevant management plan may require to be imposed on the licence, and
 - (b) must cause notice of the new access licence to be given, in accordance with the regulations, to the Registrar-General.
- (4) The provisions of section 63 (4), (5), (6) and (7) apply to an access licence arising under this section in the same way as they apply to an access licence granted under section 63.

71I Interstate assignment of water allocations

- (1) The Minister may enter into an agreement with a Minister of any other State or Territory for the interstate assignment of water allocations and their corresponding interstate equivalents.
- (2) On an application made pursuant to such an agreement, the Minister may credit water allocations to an access licence, or debit water allocations from an access licence, to give effect to such an assignment.
- (3) Such an application may only be made with respect to water allocations currently credited to the access licence from which water allocations are to be assigned.

71J Access licence may nominate water supply works

On the application of the holder of an access licence, the Minister may amend the licence so as:

- (a) to nominate a specified water supply work, or group of water supply works, as a work or group of works by means of which water allocations under the licence may be taken, or
- (b) to withdraw any such nomination.

71K General

- (1) An application under this Division is to be dealt with in accordance with:
 - (a) the water management principles, and
 - (b) the access licence dealing principles, and
 - (c) the access licence dealing rules established by any relevant management plan.

- (2) An application under this Division must not be granted unless:
- (a) for all applications, each co-holder of the access licence or access licences concerned, and
 - (b) for all applications other than those under section 71G or 71I, each person in whose name there is registered in the General Register of Deeds, in relation to the access licence or access licences concerned, a security interest or an interest of a kind prescribed by the regulations,
- consent to the granting of the application.
- (3) In the case of an application under section 71E:
- (a) the management plan for the water management area or water source to which the share component of the licence currently relates, and
 - (b) the management plan for the water management area or water source to which the share component of the licence is intended to relate if the application is granted,
- are each relevant management plans.
- (4) Except to the extent to which the regulations so provide, Division 2 does not apply to or in respect of an application under this Division.
- (5) Subject to the regulations, notice of the Minister's determination of an application under this Division is to be given to the applicant or applicants as soon as practicable after the determination is made.

71L Access licence dealing principles

The Minister may, by order published in the Gazette, establish access licence dealing principles:

- (a) to regulate or prohibit the kinds of access licence dealing rules that may be established by a management plan, and
- (b) subject to any such rules, to regulate or prohibit the kinds of dealings that may be effected under this Division, and
- (c) subject to any such rules, to establish conversion factors applicable to the share components of access licences in respect of which dealings are effected under this Division.

[21] Section 78 Suspension and cancellation of access licences

Insert after section 78 (3):

- (4) Action under this section may not be taken in relation to an access licence on the ground that fees due under the licence have not been paid unless the Minister has given written notice, to all persons in whose names any interests in the licence are registered in the General Register of Deeds, that such action will be taken unless arrangements satisfactory to the Minister have been made for the payment of those fees.

[22] Section 80 Temporary embargo

Insert after section 80 (1):

- (1A) Such an order may apply to the whole of a water management area or water source or to any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.

[23] Section 81 Permanent embargo

Insert after section 81 (1):

- (1A) Such a proclamation may apply to the whole of a water management area or water source or to any specified part of a water management area or water source, and to access licences generally or to any specified category or subcategory of access licences.

[24] Section 82 Operation of embargo

Omit section 82 (1) (d). Insert instead:

- (d) any application under Division 4, or

[25] Section 82 (3)

Insert after section 82 (2):

- (3) Subject to the terms of the order or proclamation by which it is declared, an embargo:
- (a) in relation to a water source that is a regulated river, applies to all surface waters that may flow into the embargoed water source, including any unregulated reaches of the river or its tributaries, and
 - (b) in relation to a water source that is an unregulated river, applies to all surface waters that may flow into the embargoed water source, and

- (c) in relation to a groundwater system, applies to any aquifer that may be part of that groundwater system.

[26] Chapter 3, Part 2, Division 8, heading

Omit the heading. Insert instead:

Division 8 **Registers and accounts**

[27] Sections 83 and 83A

Omit section 83. Insert instead:

83 Registration of access licences

- (1) The Minister is to cause a register of access licences to be kept.
- (2) Particulars of the following transactions are to be recorded in the register:
 - (a) the granting or renewal of an access licence, as referred to in section 63,
 - (b) the transfer of an access licence from one person to another, as referred to in section 71A,
 - (c) the conversion of an access licence from one category or subcategory to another, as referred to in section 71B,
 - (d) the subdivision of an access licence, and the consolidation of two or more access licences, as referred to in section 71C,
 - (e) the assignment of rights under an access licence, as referred to in section 71D,
 - (f) the amendment of the share component of an access licence, as referred to in section 71E,
 - (g) the amendment of the extraction component of an access licence, as referred to in section 71F,
 - (h) the assignment of water allocations between access licences, as referred to in section 71G,
 - (i) the granting of an access licence following an interstate transfer, as referred to in section 71H,
 - (j) the crediting or debiting of water allocations following an interstate assignment, as referred to in section 71I,
 - (k) the nomination of a water supply work or group of water supply works by an access licence or the withdrawal of such a nomination, as referred to in

section 71J,

- (l) the surrender of an access licence, as referred to in section 77,
 - (m) the suspension or cancellation of an access licence, as referred to in section 78,
 - (n) the compulsory acquisition of an access licence, as referred to in section 79,
 - (o) such other transactions as are prescribed by the regulations.
- (3) Subject to subsection (2), the regulations may make provision for or with respect to the form in which the register is to be kept and the particulars that are to be recorded in the register.
- (4) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

83A Registration of interests in access licence in General Register of Deeds

- (1) An access licence may become the subject of a security interest.
- (2) An interest in an access licence that is registered in the General Register of Deeds (a **registered interest**) has priority, for all purposes, over an interest that is not so registered (an **unregistered interest**).
- (3) An earlier registered interest in an access licence has priority, for all purposes, over a later registered interest.
- (4) Nothing in this section affects the priority between two or more unregistered interests in an access licence.
- (5) Subsections (2) and (3) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Chapters 2K and 5 of that Act.

Note—

Subsection (5) ensures that the priorities established by subsections (2) and (3) are not over-ridden by the provisions of the *Corporations Act 2001* with respect to the distribution of assets of a corporation that is being wound up under that Act.

- (6) Subject to subsections (2) and (3), registration in the General Register of Deeds of an instrument purporting to create, modify, transfer or extinguish an interest in an access licence gives the instrument no greater effect than it would have had if it had not been so registered.
- (7) For the purposes of this Act, a person is not taken to hold a legal or equitable interest in an access licence held by a corporation merely because the person is a shareholder in the corporation.

[28] Section 84 Register of available water determinations

Omit section 84 (3). Insert instead:

- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

[29] Section 85 Water allocation accounts

Omit “used” from section 85 (1) (b). Insert instead “taken”.

[30] Section 85 (1) (c)

Insert after section 85 (1) (b):

, and

- (c) the water allocations that are recredited to the licence from time to time under section 76.

[31] Section 85 (1A) and (1B)

Insert after section 85 (1):

- (1A) Water allocations are to be credited to an access licence in accordance with any relevant available water determination.
- (1B) Water allocations that have been carried over from one accounting period to the next may be withdrawn by the Minister, by reason of evaporation or dam spill, but only to the extent provided by the relevant management plan, as referred to in section 21 (c).

[32] Section 87 Compensation payable for reductions in water allocations arising from Minister’s amendment of management plan

Omit “regulated river (supplementary water) access licence” from section 87 (1).

Insert instead “supplementary water access licence”.

[33] Section 341 Unlawful taking of water

Omit section 341 (1). Insert instead:

- (1) A person must not take water from a water source otherwise than:
- (a) in accordance with an access licence, and

- (b) from a water allocation credited to that access licence, and
- (c) by means of a water supply work nominated by that access licence as a work by means of which water allocations credited to the licence may be taken.

[34] Section 341 (2A)

Insert after section 341 (2):

- (2A) This section does not prevent a person from taking water from a water source pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.

[35] Section 342 Using water without a water use approval

Omit section 342 (1). Insert instead:

- (1) A person must not use water on land for any purpose:
 - (a) otherwise than in accordance with a water use approval that authorises the use of water on that land for the purpose for which the water is used, and
 - (b) if the access licence authorising the taking of the water specifies the purposes for which water taken under the licence may be used, unless the purpose for which the water is used is a purpose so specified.

[36] Section 342 (2A)

Insert after section 342 (2):

- (2A) This section does not prevent a person from using water on land for any purpose pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.

[37] Section 343 Constructing or using water management work without a water management work approval

Omit section 343 (1) (a). Insert instead:

- (a) construct a water supply work otherwise than in accordance with a water supply work approval that authorises the construction of that work, or
- (a1) use a water supply work to take water:
 - (i) otherwise than in accordance with a water supply work approval that authorises the use of that work, and

- (ii) if the access licence authorising the taking of the water specifies the purposes for which water taken under the licence may be used, unless the purpose for which the water is used is a purpose so specified, or

[38] Section 343 (4)

Insert after section 343 (3):

- (4) This section does not prevent a person from constructing or using a water supply work, drainage work or flood work pursuant to an entitlement in force under the [Water Act 1912](#), where **entitlement** has the same meaning as it has in clause 9 of Schedule 9.

[39] Schedule 9 Savings, transitional and other provisions

Insert “, in its application to any act, matter, thing or circumstance arising under this Part (except clause 3 and Divisions 2 and 3),” before “means” in the definition of **appointed day** in clause 2.

[40] Schedule 9, clause 2

Insert before the existing definition of **appointed day**:

appointed day, in its application to any act, matter, thing or circumstance arising under clause 3 or under Division 2 or 3, means:

- (a) in relation to a provision of the [Water Act 1912](#) or the [Rivers and Foreshores Improvement Act 1948](#), the day on which that provision ceases to have effect in relation to that act, matter, thing or circumstance, and
- (b) in relation to a provision of this Act, the day on which that provision comes into effect in relation to that act, matter, thing or circumstance.

Note—

Pursuant to sections 55A and 88A of this Act, and complementary provisions in the 1912 Act and 1948 Act, the provisions of Parts 2 and 3 of Chapter 3 of this Act may come into operation, and the provisions of the 1912 Act and 1948 Act may cease to have effect, at different times for different purposes.

[41] Schedule 9, clause 9

Insert after clause 9 (4):

- (4A) Two or more co-holders of an access licence arising under this clause are taken to hold the access licence:
- (a) as notified by them by instrument in writing lodged with the Minister before the

appointed day, or

(b) if no such instrument is lodged before the appointed day, as tenants in common in equal shares.

(4B) An access licence arising under this clause is to include any mandatory conditions that are required by any relevant management plan to be imposed on the licence.

(4C) The Minister is to cause notice of the terms of any access licence or approval arising under this clause to be given to the holder of that approval.

(4D) An access licence or approval arising under this clause is to be in such form as the Minister may determine.

[42] Schedule 9, clause 9

Insert after clause 9 (7) (e):

, or

(f) any arrangement for the supply of water to the Inverell Shire Council by the Ministerial Corporation.

[43] Schedule 9, clauses 9A, 9B and 9C

Insert after clause 9:

9A Registration of interests in replacement access licences

- (1) To the extent to which, immediately before the appointed day, a person had an interest in an entitlement, that person is taken to have an equivalent interest in the access licence arising from the entitlement under clause 9.
- (2) If the interest in the entitlement included a mortgage of land under the provisions of the *Real Property Act 1900*, the equivalent interest in the access licence is taken to include a power of sale with respect to the licence.
- (3) Subject to the regulations, the *Real Property Act 1900* applies to the exercise of a power of sale with respect to an access licence pursuant to subclause (2) in the same way as it applies to the exercise of a power of sale with respect to land under the provisions of that Act.
- (4) If such an interest is registered in the General Register of Deeds within 12 months after the appointed day:
 - (a) it ranks, with respect to any other such interest, in the same priority as it previously ranked under section 184G of the *Conveyancing Act 1919* or

section 36 of the *Real Property Act 1900*, or under Part 2K.3 of the *Corporations Act 2001* of the Commonwealth, as the case may be, and

- (b) it ranks before any interest in the licence that arises after the appointed day, regardless of when that other interest is registered.
- (5) The Registrar-General must cause notice of the effect of subclause (4) to be recorded in the index of registers kept under section 198 of the *Conveyancing Act 1919* in connection with each entry in the index that relates to an access licence.
- (6) The regulations may make provision with respect to the procedures to be followed in connection with the registration of interests referred to in subclause (4).

9B Conversion of volumetric shares to proportional shares

- (1) This clause applies to any access licence that arises from an entitlement, as referred to in clause 9 (a ***replacement access licence***).
- (2) The Minister, by order in writing, may at any time, do either or both of the following:
 - (a) convert the share components of access licences from a volumetric basis (as referred to in section 56 (2) (a)) to a proportional basis (as referred to in section 56 (2) (b) or (c)),
 - (b) apply uniform extraction components to access licences, but having regard to the existing conditions of those licences,for access licences generally, or for access licences of a specified category or subcategory, with respect to one or more water sources.
- (3) The Minister must cause notice of the order to be given, in accordance with the regulations, to the holder of each access licence affected by the order and to the Registrar-General.
- (4) No compensation is payable in relation to an order made by the Minister under this section.

9C Off-allocation water

Without limiting clause 1, the regulations may provide that the following persons or classes of persons are taken to hold supplementary water access licences:

- (a) specified persons or classes of persons who, immediately before the appointed day, held entitlements to which a direction under section 20AA of the 1912 Act had related at any time during the previous 5 years, and

- (b) specified persons or classes of persons who, immediately before the appointed day, held additional licences referred to in section 18 (2) of the 1912 Act.

[44] Dictionary

Insert in alphabetical order:

access licence dealing principles means principles established under section 71L.

access licence dealing rules means the rules established by the water sharing provisions of a management plan, as referred to in section 20 (1) (d).

General Register of Deeds means the General Register of Deeds maintained under Part 23 of the [Conveyancing Act 1919](#).

security interest, in relation to an access licence, means an interest in the licence, or a power with respect to the licence, that, in the instrument from which it arises, is expressed to secure the payment of a debt or the performance of some other obligation under a contract or other legally enforceable arrangement.

[45] Dictionary, definition of “bulk access regime”

Omit “section 20 (1) (d)”. Insert instead “section 20 (1) (e)”.

[46] Dictionary, definition of “local transfer rules”

Omit the definition.

[47] Dictionary, definition of “transfer principles”

Omit the definition.

[48] Dictionary, definition of “water allocation”

Insert “, as recorded in the account for the licence referred to in section 85 (1)” after “the licence”.

[49] Dictionary, definition of “water source”

Omit the definition. Insert instead:

water source means the whole or any part of:

- (a) one or more rivers, lakes or estuaries, or
- (b) one or more places where water occurs naturally on or below the surface of the ground,

and includes the coastal waters of the State.

Schedule 3 Amendment of [Water Management Act 2000](#) in relation to approvals

(Section 3)

[1] Section 88A

Insert before section 89:

88A Application of Part

- (1) This Part applies to:
 - (a) each part of the State, and
 - (b) each type or kind of approval within that part of the State, that is declared by proclamation to be a part of the State, and type or kind of approval, to which this Part applies.
- (2) Despite subsection (1), specified provisions of this Part may be declared by proclamation to apply to the whole of the State, and apply accordingly.

[2] Section 95 Determination of applications

Omit “water management work or activity” wherever occurring in section 95 (2).

Insert instead “use, work or activity”.

[3] Section 95 (2)

Insert “type or” before “kind”.

[4] Section 95 (4) and (5)

Insert after section 95 (3):

- (4) An approval is to be in such form as the Minister may determine.
- (5) An approval takes effect:
 - (a) at the end of the time permitted by section 368 (3) for making an appeal with respect to the decision to grant the approval, or
 - (b) if an appeal is made against the decision within that time, at the time the appeal is finally disposed of.

[5] Section 97 Grounds of refusal of certain applications

Insert after section 97 (5) (b):

, or

- (c) that the applicant is otherwise entitled (whether under this or any other Act or under an agreement applying to the land) to construct and use such a work.

[6] Section 100 Conditions of approval generally

Insert “, including conditions to give effect to any agreement between an applicant and objector under section 93 (5) and conditions relating to the protection of the environment” after “approval” in section 100 (1) (b).

[7] Section 101

Omit the section. Insert instead:

101 Conditions of approval for joint schemes

- (1) This section applies to a water management work approval granted in relation to a joint scheme, that is, a scheme under which landholders of different parcels of land hold a single water management work approval for a water management work located on, passing through or otherwise benefiting or affecting those parcels.
- (2) A water management work approval for a water management work the subject of a joint scheme is subject to such conditions as the regulations require and to such other conditions as the landholders concerned agree.
- (3) A regulation referred to in subsection (2) may impose conditions, in relation to the rights and duties of the landholders concerned in the joint scheme, with respect to the following matters:
 - (a) the granting of access to the work,
 - (b) the operation of the work,
 - (c) the apportionment of water supplied by means of the work,
 - (d) the apportionment of the cost of constructing and maintaining the work,
 - (e) the apportionment of such other costs with respect to work as are prescribed by the regulations,
 - (f) the exclusion of land from the joint scheme.

[8] Section 102 Imposition of conditions after approval is granted

Insert after section 102 (2):

(2A) Mandatory conditions are to be imposed on an approval whenever it becomes necessary to do so in order to give effect to a relevant management plan.

[9] Section 102 (3) and (4)

Omit “discretionary” wherever occurring.

[10] Section 106 Land benefited by water use approval or water management work approval

Omit “any other such landholder” from section 106 (2) (b).

Insert instead “any co-holder of the approval”.

[11] Section 106 (2) (b)

Omit “that other landholder’s”. Insert instead “that co-holder’s”.

[12] Section 109 Suspension and cancellation of approvals

Insert after section 109 (1) (d):

(e) that the approval was granted as a result of false, misleading or materially inaccurate information supplied by or on behalf of the applicant.

[13] Section 110 Temporary embargo

Insert after section 110 (1):

(1A) Such an order may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.

[14] Section 111 Permanent embargo

Insert after section 111 (1):

(1A) Such a proclamation may apply to the whole of a water management area or to any specified part of a water management area, and to approvals generally or to any specified type or kind of approvals.

[15] Section 113 Register of approvals

Omit section 113 (3). Insert instead:

- (3) The register must be made available for public inspection during normal business hours at such places as may be prescribed by the regulations.

[16] Dictionary

Insert “maintain, repair,” after “install,” in the definition of **construct**.

[17] Dictionary, definition of “drainage work”

Insert “sluiceways,” after “sluices,”.

[18] Dictionary, definition of “flood work”

Omit “a significant effect” from paragraph (b). Insert instead “an effect”.

[19] Dictionary, definition of “use”

Omit paragraph (a) (i) of the definition. Insert instead:

- (i) to operate the work for any purpose referred to in paragraph (a), (b) or (c) of the definition of **water supply work**, or

[20] Dictionary, definition of “water supply work”

Insert “(other than a water supply work under the control or management of the Sydney Water Corporation, the Hunter Water Corporation or a local water utility)” after “any work” in paragraph (f).

Schedule 4 Amendment of [Water Management Act 2000](#) in relation to other matters

(Section 3)

[1] Section 5 Water management principles

Omit “the basic landholder rights of owners of land” from section 5 (3) (b).

Insert instead “basic landholder rights”.

[2] Section 5 (4) (c)

Omit “considered and”. Insert instead “avoided or”.

[3] Section 143 Constitution of private irrigation districts

Insert “under section 142” after “a petition” wherever occurring.

[4] Section 283 Definitions

Insert in alphabetical order:

drainage service means that part of drainage pipework up to its point of connection to a water supply authority's drainage system.

drainage service pipe means a pipe connecting a drainage service to a water supply authority's drainage system, and includes the plumbing fittings connected to the pipe.

plumbing fitting includes any pipe, apparatus or fixture used for plumbing work.

plumbing work means work comprising or affecting:

- (a) a water supply service pipe or its connection (whether directly or indirectly) with a water supply authority's water supply system, or
- (b) a sewerage service pipe or its connection (whether directly or indirectly) with a water supply authority's sewerage system, or
- (c) a drainage service pipe or its connection (whether directly or indirectly) with a water supply authority's drainage system.

sewage work means a work (such as a pump, pipe or channel) that is constructed or used for the purpose of removing sewage or other waste matter from land, including a reticulated system of such works, and includes:

- (a) all associated pipes, valves, pumps and other equipment, and
- (b) all sewage treatment or sewage processing plants and their outfalls and drainage beds,

but does not include any work declared by the regulations not to be a sewage work.

sewerage service means that part of sewerage pipework, including all sanitary fixtures, up to its point of connection to a water supply authority's sewerage system.

sewerage service pipe means a pipe connecting a sewerage service to a water supply authority's sewerage system, and includes the plumbing fittings connected to the pipe.

water supply service means that part of water supply pipework from its point of connection to a water supply authority's water supply system up to and including its outlet valves.

water supply service pipe means a pipe connecting a water supply service to a water supply authority's water supply system, and includes the plumbing fittings connected to the pipe.

water supply work includes any work that receives water from a water supply work under the control or management of a water supply authority.

[5] Section 283, definition of “statutory body”

Omit the definition.

[6] Section 293 Exercise of functions by a water supply authority

Insert after section 293 (1):

(1A) Subsection (1) (b) does not apply to a water supply authority listed in Part 3 of Schedule 3.

[7] Section 299 Altering position of conduits

Insert “(or any other land on which no building or other structure is located)” after “public road” in section 299 (4).

[8] Section 306 Authority may impose certain requirements before granting certificate of compliance

Omit “for Public Works and Services” from section 306 (3) (c).

[9] Section 310 Authority may levy service charges and impose fees and other charges

Insert after section 310 (2):

(3) Without limiting subsection (2), a water supply authority may impose fees and charges with respect to discharges into its sewerage system.

[10] Section 320 Efficiency review

Insert after section 320 (2):

(3) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

[11] Section 321 Appointment of administrator

Insert after section 321 (3):

(4) This section does not apply to a water supply authority listed in Part 3 of Schedule 3.

[12] Section 322 Regulations

Omit section 322 (1) (c).

[13] Section 322 (1) (d)

Omit “and drainage”.

[14] Section 322 (1) (e) and (f)

Insert “supply” after “water” wherever occurring.

[15] Section 322 (1) (h)

Omit the paragraph. Insert instead:

(h) the regulation and prohibition of discharges into sewerage and drainage systems,

[16] Section 327 Directions to stop work where unlawful activity occurring

Insert “or aquifer interference activity” after “controlled activity” wherever occurring is section 327 (2).

[17] Section 336A

Insert after section 336:

336A Application of Part to certain works

Directions may be given under this Part with respect to a water supply work or water management work within the meaning of Part 2 of Chapter 6 in the same way as they may be given with respect to any other water supply work or water management work.

[18] Section 342 Using water without a water use approval

Insert “or private water trust” after “private irrigation board” in section 342 (3).

[19] Section 343 Constructing or using water management work without a water management work approval

Omit “drainage work approval or flood work approval” from section 343 (3).

Insert instead “water supply work approval or drainage work approval”.

[20] Section 344 Unlawful carrying out of certain activities

Omit “a controlled activity approval” from section 344 (3) (a).

Insert instead “an aquifer interference approval”.

[21] Section 344 (3)

Omit “Subsection (1) (a)”. Insert instead “Subsection (1)”.

[22] Section 344 (3) (a1)

Insert after section 344 (3) (a):

- (a1) from carrying out an aquifer interference activity in accordance with a controlled activity approval, or

[23] Section 344 (4)

Insert after section 344 (3):

- (4) This section does not prevent a person:
 - (a) from carrying out a controlled activity pursuant to a permit in force under the *Rivers and Foreshores Improvement Act 1948*, or
 - (b) from carrying out an aquifer interference activity pursuant to a licence in force under Part 5 of the *Water Act 1912*.

[24] Section 347 Taking water from public or private works

Insert after section 347 (2):

- (3) In subsection (1), a reference to a water supply work, in relation to a water supply authority, is a reference to a water supply work within the meaning of Part 2 of Chapter 6.

[25] Section 351 Unlicensed plumbing work

Omit “work of water supply, sewerage or drainage intended for direct or indirect connection with the pipes, sewers or drains of a water supply authority”.

Insert instead “plumbing work (within the meaning of Part 2 of Chapter 6)”.

[26] Section 353 False or misleading information

Insert “or the regulations” after “this Act”.

[27] Section 368 Appeals to Land and Environment Court

Omit section 368 (4). Insert instead:

- (4) In addition to the appellant and the Minister:

- (a) the parties to an appeal made by an applicant for a designated access licence or designated approval against a decision refusing to grant the licence or approval include any objector to the granting of the licence or approval who, in accordance with rules of court, gives notice to the Land and Environment Court of the objector's wish to become a party to the appeal, and
- (b) the parties to an appeal made by an objector to the granting of a designated access licence or designated approval against a decision granting the licence or approval include the applicant for the licence or approval.

[28] Section 372 Functions of Ministerial Corporation

Insert after section 372 (1):

- (1A) The Ministerial Corporation has such other functions as are conferred or imposed on it by or under this or any other Act or law.

[29] Section 372 (5) and (6)

Insert after section 372 (4):

- (5) It is the duty of the Ministerial Corporation to exercise its function of issuing a Snowy water licence under Part 5 of the [Snowy Hydro Corporatisation Act 1997](#) consistently with the terms of the *Snowy Water Inquiry Outcomes Implementation Deed*.
- (6) In subsection (5), ***Snowy Water Inquiry Outcomes Implementation Deed*** means the deed under that title that was entered into on behalf of the Commonwealth, New South Wales and Victoria on 3 June 2002, as that deed is amended from time to time in accordance with its terms.

[30] Schedule 3 Water supply authorities

Omit "Australian Inland Energy Water Infrastructure" from Part 2.

[31] Schedule 3, Part 3

Insert after Part 2:

Part 3 State owned corporations

Australian Inland Energy Water Infrastructure

[32] Schedule 8 Amendment of other Acts

Omit "Omit the section." from Schedule 8.27 [8].

Insert instead “Omit section 91 (2)–(6).”.

[33] Schedule 9 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Water Management Amendment Act 2002

[34] Schedule 9, clause 1

Insert after clause 1 (3):

(4) If the regulations so provide, such a provision has effect despite any other provision of this Schedule.

[35] Schedule 9, clause 9

Insert after clause 9 (7) (f):

, or

(g) any other right, interest, privilege, permission or authority that is declared by the regulations to be an entitlement for the purposes of this clause.

[36] Schedule 9, clause 13A

Insert after clause 13:

13A Regulations

Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the following regulations:

- (a) the *Water (Part 2—General) Regulation 1997*,
- (b) the *Water (Part 5—Bore Licences) Regulation 1995*,
- (c) the *Water (Part 5—Drillers’ Licences) Regulation 1995*,
- (d) the *Water (Part 8—General) Regulation 1995*.

[37] Schedule 9, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of *Water*

Management Amendment Act 2002

59 Definitions

In this Part:

the 2002 amending Act means the *Water Management Amendment Act 2002*.

60 Guidelines under section 306 (3) (c)

Any guidelines in force under section 306 (3) (c) immediately before its amendment by the 2002 amending Act are taken to be guidelines issued by the Minister for the purposes of that paragraph as amended by that Act.

[38] Dictionary

Insert “(within the meaning of Part 2 of Chapter 6)” after “sewage work” in paragraph (a) of the definition of **drainage work**.

[39] Dictionary, definition of “estuary”

Omit the definition. Insert instead:

estuary means:

- (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
- (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or
- (c) anything declared by the regulations to be an estuary,

but does not include anything declared by the regulations not to be an estuary.

[40] Dictionary, definition of “lake”

Insert “whether or not it also forms part of a river or estuary,” before “but”.

[41] Dictionary, definition of “river”

Insert “whether or not it also forms part of a lake or estuary,” before “but”.

[42] Dictionary, definition of “sewage work”

Omit the definition.

[43] Dictionary, definition of “statutory body”

Insert in alphabetical order:

statutory body means a corporation that is incorporated by or under an Act, other than:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, and
- (b) a society within the meaning of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* or a co-operative within the meaning of the *Co-operatives Act 1992*, or
- (c) an incorporated association within the meaning of the *Associations Incorporation Act 1984*.

[44] Dictionary, definition of “waterfront land”

Omit paragraph (a). Insert instead:

- (a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or
- (a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or
- (a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or

[45] Dictionary, definition of “waterfront land”

Insert at the end of the definition:

Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.

Schedule 5 Amendment of other Acts

(Section 4)

5.1 Conveyancing Act 1919 No 6

[1] Section 184C General Register of Deeds

Insert after section 184C (2) (h):

(h1) instruments that create, modify, transfer or extinguish interests in access licences under the *Water Management Act 2000*, and

[2] Section 184G Instruments affecting land to take effect according to priority of registration

Insert after section 184G (2):

(3) In the case of an instrument that affects, or intends to affect, both land and an access licence under the *Water Management Act 2000*:

(a) this section has effect in relation to the instrument to the extent to which the instrument affects, or intends to affect, the land, and

(b) section 83A of the *Water Management Act 2000* has effect to the extent to which the instrument affects, or intends to affect, the access licence.

5.2 Land and Environment Court Act 1979 No 204

Section 20 Class 4—environmental planning and protection and development contract civil enforcement

Insert before section 20 (1) (dg):

(df1) proceedings under sections 335 and 336 of the *Water Management Act 2000*,

5.3 Rivers and Foreshores Improvement Act 1948 No 20

[1] Section 22M

Insert after section 22L:

22M Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to controlled activity approvals within the meaning of that Act.

[2] Section 25 Regulations

Insert after section 25 (3):

(4) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Act.

5.4 Water Act 1912 No 44

[1] Section 27 Regulations

Insert after section 27 (1A):

- (2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

[2] Section 27A

Insert after section 27:

27A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work approvals within the meaning of that Act.

[3] Section 129 Regulations

Insert after section 129 (1A):

- (2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

[4] Section 129A

Insert after section 129:

129A Application of Part

This Part (section 118A excepted) does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work or aquifer interference approvals within the meaning of that Act.

[5] Section 185 Regulations

Insert after section 185 (4):

- (5) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

[6] Section 186A

Insert after section 186:

186A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to flood work approvals within the meaning of that Act.

[7] Section 201 Regulations

Insert at the end of the section:

- (2) Part 3 of the *Subordinate Legislation Act 1989* does not apply to or in respect of the regulations under this Part.

[8] Section 202A

Insert after section 202:

202A Application of Part

This Part does not apply to any part of the State to which Part 3 of Chapter 3 of the *Water Management Act 2000* applies in relation to water supply work approvals within the meaning of that Act.