

Passed by both Houses



New South Wales

# Water Legislation Amendment Bill 1999

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 1999*



New South Wales

## **Water Legislation Amendment Bill 1999**

Act No , 1999

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An Act to amend the *Water Act 1912* and various other Acts with respect to the management of water resources; and for related purposes.

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Water Legislation Amendment Act 1999*.

**2 Commencement**

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

**3 Amendment of Water Act 1912 No 44**

The *Water Act 1912* is amended as set out in Schedules 1–3.

**4 Amendment of other Acts**

Each Act specified in Schedule 4 is amended as set out in that Schedule.

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## **Schedule 1 Miscellaneous amendments to Part 2 of Water Act 1912**

(Section 3)

### **[1] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

*existing work* means a work declared by the Ministerial Corporation under subsection (5) to be an existing work for the purposes of this Part.

### **[2] Section 5 (1), definition of “river”**

Omit paragraph (c) of the definition. Insert instead:

(c) anything declared by the Ministerial Corporation by order published in the Gazette to be a river,

### **[3] Section 5 (1), definition of “river”**

Omit “but does not include anything prescribed as not being a river”.

Insert instead “but does not include anything declared by the Ministerial Corporation by order published in the Gazette as not being a river”.

### **[4] Section 5 (1), definition of “work to which this Part extends”**

Omit “but does not include a prescribed work or a work declared under subsection (3) to be a work for urban drainage”.

Insert instead:

and includes an existing work or any other work (or class of work) declared by the Ministerial Corporation by order published in the Gazette to be a work to which this Part extends, but does not include:

(g) a work declared under subsection (3) to be a work for urban drainage, or

(h) a work (or class of work) declared by the Ministerial Corporation by order published in the Gazette as being a work to which this Part does not extend.

**[5] Section 5 (5) and (6)**

Insert after section 5 (4):

- (5) The Ministerial Corporation may, by order published in the Gazette, declare any work that:
  - (a) is used, or is capable of being used, for the purposes of water supply or water conservation, and
  - (b) was constructed before 1 January 1999, and
  - (c) was not, as at that date, a work in respect of which a licence, permit, authority or group licence was in force, to be an existing work for the purposes of this Part.
- (6) An order under subsection (5):
  - (a) takes effect on the day it is published in the Gazette or such later date as may be specified in the order, and
  - (b) may declare a work to be an existing work by reference to a specified class or classes of work, to a specified area, or to specified rivers or lakes or sections of rivers or lakes (or to any combination of those matters), and
  - (c) may make provision for such transitional arrangements as are necessary in relation to the implementation of the order.

**[6] Section 10 Application for licences**

Omit “The application” from section 10 (2).

Insert instead “Except in the case of an application for a licence in respect of an existing work, the application”.

**[7] Section 11 Notification of application for licence**

Insert after section 11 (7):

- (8) Subsections (1)–(3) (a) do not apply to an application for a licence in respect of an existing work.

**[8] Section 11A Determination of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979**

Insert “(other than an application in respect of an existing work)” after “section 10” in section 11A (1).

**[9] Section 12 Licence**

Insert “, except in the case of an initial licence in respect of an existing work,” before “a licence” in section 12 (2) (b).

**[10] Section 13A Application for licence by person who does not occupy land on which works are to be constructed**

Insert before section 13A (1):

(1A) This section does not apply to or in respect of an existing work.

**[11] Section 20 Application for authority**

Insert after section 20 (2):

(2A) The prescribed deposit referred to in subsection (2) is not payable in the case of an initial authority in respect of an existing work.

**[12] Section 20A Notification of application and reference to local land board or Magistrate**

Insert after section 20A (2):

(3) This section does not apply to an application for an authority in respect of an existing work.

**[13] Section 20B Authority**

Insert after section 20B (3):

(4) The prescribed fee is not payable in the case of an initial authority in respect of an existing work.

**[14] Section 20CA Application for authority by persons who do not occupy land on which works are to be constructed**

Insert before section 20CA (1):

(1A) This section does not apply to or in respect of an existing work.

**[15] Section 20L Issue of group licence**

Insert after section 20L (2):

- (2A) The prescribed fee is not payable in the case of an initial group licence in respect of an existing work.

**[16] Section 20AG Interpretation**

Insert at the end of the section:

- (2) A reference in this Division to the holder of an entitlement includes a reference to a person who is an applicant for an entitlement.

**[17] Section 22BB**

Insert after section 22BA:

**22BB Invalidation of applications for entitlements in respect of dams**

- (1) In this section:

*dam* includes any work used for the purposes of water storage or conservation, but does not include any such work that, in the opinion of the Ministerial Corporation, is used for environmental purposes.

*entitlement* means a licence, permit, authority or group licence.

- (2) The Ministerial Corporation may, by order published in the Gazette, declare that, until the order is revoked, an application for an entitlement in respect of a dam or class of dam specified in the order may not be made after a specified date (being a date not earlier than the date of publication).
- (3) If an application for an entitlement in respect of a dam to which any such order relates is made while the order is in force, the application is invalid and must be rejected by the Ministerial Corporation.
- (4) The provisions of section 22BA (3) and (4) apply to an order under this section in the same way as those provisions apply to an order under section 22BA.

**[18] Section 22C Charge if flow of water assured by work of Crown or water or dam managed by State**

Insert in alphabetical order in section 22C (1):

*dam* includes any work used for the purposes of water storage or conservation.

**[19] Section 22C (2B)**

Insert after section 22C (2A):

(2B) The Ministerial Corporation may, by order published in the Gazette, declare that the storage or conservation of water in any specified dam or specified class of dam is managed by the State.

**[20] Section 22C (3A)**

Insert after section 22C (3):

(3A) The holder of an entitlement in respect of a dam to which an order under subsection (2B) relates must, subject to and in accordance with this section, pay a charge for the right to store or conserve water in the dam in addition to the fee (if any) payable for the entitlement.

**[21] Section 22C (4), (4A), (6A) and (6B)**

Insert “or (3A)” after “subsection (3)” wherever occurring.

**[22] Section 22C (4) (a1) and (8)**

Omit “or (2A)” wherever occurring. Insert instead “, (2A) or (2B)”.

**[23] Section 22C (6AB)**

Insert after section 22C (6AA):

(6AB) The Ministerial Corporation must, when fixing the charge payable under this section in connection with an order under subsection (2B), have regard to the benefits received by the holder of the entitlement (including, in relation to a group licence, each of the group licence occupiers) as a result of the management by the State of the storage or conservation of water in the dam.



**[24] Section 27 Regulations**

Insert after section 27 (1) (c1):

- (c2) a scheme for transfers between holders of licences, authorities and group licences of rights to store or conserve water in dams within the meaning of section 22BB,

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## Schedule 2 Amendment to Water Act 1912 relating to water harvesting rights

(Section 3)

### [1] Section 21B Offences with respect to construction, erection and use of work without licence etc

Insert “or Part 10” after “by this Part” wherever occurring in section 21B (1) and (2).

### [2] Part 10

Insert after Part 9:

## Part 10 Right to harvest water

### 204 Definitions

In this Part:

*capture* includes impound, take or use.

*entitlement under Part 2* means a licence, permit, authority or group licence issued under Part 2.

*harvestable rights order* means an order of the Ministerial Corporation under section 205.

*impoundment* means a work that impounds water.

*minor stream* means a river declared by a harvestable rights order to be a minor stream.

*owner* of land includes any person who jointly or severally, whether at law or in equity:

- (a) is entitled to the land for any estate of freehold in possession, or
- (b) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Lands Act 1989* or any other Act relating to the alienation of lands of the Crown, or

- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits from the tenancy as beneficial owner, trustee, mortgagee in possession, or otherwise, or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

***rainwater run-off*** means:

- (a) water occurring naturally on the surface of the ground (whether from rainfall or groundwater seepage), or
- (b) rainwater that is impounded or diverted by means of any work or any building or structure (other than a building or structure used only for residential purposes).

***river*** includes:

- (a) a stream of water, whether perennial or intermittent, flowing in a natural channel, or in a natural channel artificially improved, or in an artificial channel that has changed the course of the stream, and
- (b) an affluent, confluent, branch or other stream of water into or from which a stream referred to in paragraph (a) flows, and
- (c) anything declared in a harvestable rights order to be a river for the purposes of this Part,

but does not include anything declared in a harvestable rights order as not being a river for the purposes of this Part.

***work*** has the same meaning as in Part 2.

## **205 Orders providing for rights to harvest water**

- (1) The Ministerial Corporation may from time to time make an order (a ***harvestable rights order***) that provides for the rights of owners of land:
  - (a) to capture rainwater run-off, and
  - (b) to construct and use impoundments, and other works, for the purpose of capturing rainwater run-off.

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- (2) A harvestable rights order is to give the owners of land in the area to which the order applies a right, without obtaining an entitlement under Part 2:
    - (a) to capture a minimum of 10 percent of the average rainwater run-off of the area to which the order applies, and
    - (b) to construct and use impoundments and other works for the purpose of capturing that rainwater run-off.
  - (3) An owner of land has the right, without obtaining an entitlement under Part 2:
    - (a) to capture rainwater run-off, and
    - (b) to construct and use an impoundment or other work for the purpose of capturing rainwater run-off,in accordance with any harvestable rights order that is in force in respect of the land.
  - (4) A harvestable rights order may apply in respect of land in any part of the State.
  - (5) Different harvestable rights orders may apply to different parts of the State.
  - (6) A harvestable rights order is to be published in the Gazette and takes effect on the date of its publication in the Gazette or a later date specified in the order.
  - (7) A harvestable rights order may make provision for such arrangements as are necessary for the implementation of the order.

**206 Matters that may be included in harvestable rights order**

- (1) Without limiting section 205, a harvestable rights order may provide for the following:
  - (a) subject to section 205 (2), the amount of the average rainwater run-off in any period that may be captured by owners of land and the method by which that average rainwater run-off is to be calculated,
  - (b) a description of the area to which the order applies (*the catchment area*), being the area in respect of which the average rainwater run-off is to be calculated,

- (c) the apportionment of the amount of average rainwater run-off that may be captured by owners of land in the catchment area between those owners according to the size of their parcels of land, or by reference to some other criteria the Ministerial Corporation considers appropriate,
  - (d) the types of impoundments that may be used for the purpose of capturing rainwater run-off, the maximum storage capacity of impoundments and the locations in which impoundments may be constructed and used,
  - (e) arrangements for the use of impoundments by more than one owner of land (such as impoundments that are located on the boundary of a parcel of land or on more than one parcel of land),
  - (f) the rights of owners of land to use other works, besides impoundments, for the purpose of capturing rainwater run-off.
- (2) A harvestable rights order may:
- (a) treat any work to which Part 2 extends as an impoundment under this Part, and include the capacity of any such work in the calculation of the maximum storage capacity of an impoundment that may be used by an owner of land to capture rainwater run-off under this Part, and
  - (b) require other matters provided for by Part 2 to be taken into account for the purpose of determining the rights of an owner of land under this Part.
- (3) A harvestable rights order may make reference to maps held by the Ministerial Corporation.
- (4) The Ministerial Corporation is to ensure that copies of any such maps are available for public inspection free of charge in the office of the Ministerial Corporation for the region to which the harvestable rights order relates.
- (5) In this section:
- parcel of land* means a portion or parcel of land separately valued under the *Valuation of Land Act 1916*.

**207 Restrictions on impoundments**

This Part does not permit an owner of land to construct or use an impoundment or other work:

- (a) that obstructs the flow of a river (other than a minor stream), or
- (b) that, in the opinion of the Ministerial Corporation:
  - (i) detrimentally affects or will detrimentally affect the interests of any person, or
  - (ii) detrimentally affects or will detrimentally affect the environment.

**208 Directions relating to impoundments and other works**

- (1) If the Ministerial Corporation is satisfied that an impoundment or other work used for the purpose of capturing rainwater run-off:

- (a) detrimentally affects or will detrimentally affect the interests of any person, or
- (b) detrimentally affects or will detrimentally affect the environment,

the Ministerial Corporation may, by notice in writing served on the owner of the land on which the impoundment or other work is situated, direct the owner to carry out specified work in a specified manner and within a specified time.

- (2) Without limiting subsection (1), the direction may require the owner of the land to carry out work for the purpose of modifying, repairing, restoring or removing the impoundment or other work.
- (3) A direction under this section may be varied or revoked by a further notice in writing served on the person the subject of the direction.
- (4) A person who fails to comply with a direction under this section is guilty of an offence and is liable on conviction:
  - (a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or

- (b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.
- (5) An owner of land is authorised to enter the land and carry out work in accordance with a direction under this section.
- (6) If a person fails to comply with a direction under this section, the Ministerial Corporation may authorise any other person to enter the land and carry out the specified work.
- (7) The Ministerial Corporation may recover the cost of any work carried out by the Ministerial Corporation under this section from the owner of the land as a debt in a court of competent jurisdiction.
- (8) This section does not apply in respect of any impoundment or other work that is the subject of an entitlement under Part 2 that is in force.

**209 Obstruction of persons**

A person must not hinder or obstruct the Ministerial Corporation, or any of its officers, employees or agents, in the exercise of any function under section 208.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in the case of an individual.

**210 Prior notification not required**

The Ministerial Corporation is not required, before giving a direction under section 208, to notify any person who may be affected by the direction.

**211 Appeals**

- (1) A person who is given a direction by the Ministerial Corporation under section 208 may appeal against the direction to the Land and Environment Court in accordance with the rules of that court.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the direction appealed against.

**212 Service of notices**

Any notice under this Part that is required to be served on or given to a person may be served or given:

- (a) by delivering it personally to the person, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it with any person apparently of or above the age of 14 years who apparently resides or is employed there, or
- (c) by letter sent by post and addressed to the person at the person's address last known to the Ministerial Corporation.



## **Schedule 3 Miscellaneous amendments to Water Act 1912**

(Section 3)

### **[1] Section 34 Constitution of trust**

Omit section 34 (3).

### **[2] Section 112 Bores to be licensed**

Insert after section 112 (2):

- (3) This section extends to any bore that was constructed, or was otherwise in existence, before 1912.

### **[3] Section 113 Application for licence**

Insert after section 113 (2):

- (3) An application for a licence in respect of any bore that was constructed before the commencement of this subsection (as inserted by the *Water Legislation Amendment Act 1999*) is not required to be advertised in accordance with subsection (2).

### **[4] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Water Legislation Amendment Act 1999*

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## **Schedule 4 Amendment of other Acts**

(Section 4)

### **4.1 Land and Environment Court Act 1979 No 204**

#### **Section 17 Class 1—environmental planning and protection appeals**

Insert after section 17 (d):

(da) appeals under section 211 of the *Water Act 1912*,

### **4.2 Rivers and Foreshores Improvement Act 1948 No 20**

#### **Section 22B Permit required for excavation etc**

Insert after section 22B (3):

- (4) A person does not commit an offence under subsection (1) if the activity concerned relates to a work, or class of work, specified by the Ministerial Corporation by order published in the Gazette.

### **4.3 Water Administration Act 1986 No 195**

#### **Schedule 2 Absolute rights**

Omit clause 6.