



New South Wales

Water Management Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Water Management Act 2000* (*the Principal Act*):

- (a) to clarify the provisions relating to planned environmental water and to provide for access licences to be converted to planned environmental water in certain circumstances, and
- (b) to provide for access licences with adaptive environmental water conditions, and
- (c) to include new provisions in relation to compensation under amended or remade water management plans, as required by the National Water Initiative, in accordance with agreements for the sharing of compensation that are to be entered into with the Commonwealth, and
- (d) to include measures, as required by the National Water Initiative, to require irrigation corporations to arrange their affairs so as to remove certain barriers to shareholders transferring their water entitlements away from the corporations, and

- (e) to facilitate co-holders of access licences exiting from those access licences, and
- (f) to enable management plans to establish different rules of priority of categories and subcategories of access licence to those established in the Act, and
- (g) to remove the mandatory 5-year review of a local water utility access licence to allow the Minister to review the licence at any time or on request, to expand the range of commercial activities to be considered and specify the relevant criteria when determining in any such review whether the water entitlements conferred by the licence should be increased, and to provide for civil penalties for certain contraventions by local water utilities of the Act or their access licences, and
- (h) to extend the scheme of “water tagging” to enable the holder of an access licence, within certain specified water tagging zones within the State, to nominate a water supply work by which water will be taken under the licence that is located in a different water source to that to which the licence relates, and
- (i) to enable the Minister to impose conditions on water management works approvals relating to cold water releases, and
- (j) to enable the Ministerial Corporation to construct, maintain and operate gauging stations and other monitoring equipment, and
- (k) to make amendments relating to savings and transitional matters, particularly to facilitate transition in overallocated water sources, and to improve procedures for the recording of matters in the Water Access Licence Register, and
- (l) to enable certain management plans to be amended by the Minister to make further provision with respect to planned environmental water, adaptive environmental water and floodplain harvesting, and
- (m) to make other minor amendments and amendments by way of statute law revision.

The Bill also amends the *Protection of the Environment Operations (General) Regulation 1998* to exempt a person releasing cold water in accordance with conditions referred to in paragraph (b) above from the offence of polluting waters under the *Protection of the Environment Operations Act 1997*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides (with certain exceptions) for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Water Management Act 2000* set out in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendment to the *Protection of the Environment Operations (General) Regulation 1998* set out in Schedule 3.

Schedule 1 Amendment of Water Management Act 2000

Amendments relating to environmental water

Schedule 1 [1] amends section 8 of the Principal Act so as to specify the ways in which a management plan may commit water as planned environmental water.

Schedule 1 [2] inserts proposed sections 8A–8E into the Principal Act dealing with environmental water.

Proposed section 8A enables the Minister to cancel a supplementary access licence or a licence of a prescribed category or subcategory that is held by the Minister and commit an equivalent amount of water as planned environmental water in the relevant water source.

Proposed section 8B permits the holder of an access licence to request the Minister to impose an adaptive environmental water condition on the licence if the relevant management plan so provides. The condition is to be amended or removed at the request of the holder of the access licence. An adaptive environmental water condition is a condition that commits water for specified environmental purposes, either generally or at specified times or in specified circumstances.

Proposed section 8C enables the Minister to grant an access licence of a category or subcategory determined by the Minister to the Minister, a catchment management authority or other public body. An access licence may only be granted under the proposed section if the relevant management plan so provides and the licence is equivalent to water in the water source concerned that is not identified for commitments to basic landholder rights and other extraction rights that is saved by work or other actions.

Proposed section 8D enables the Minister to keep a surrendered access licence or transfer it to a catchment management authority or other public body if the Minister imposes an adaptive environmental water condition on the licence and the licence has been surrendered as a result of water savings (for example, water savings achieved by means of works or other improvements or recycling).

Proposed section 8E contains provisions relating to adaptive environmental water conditions and their operation.

Schedule 1 [3] makes a consequential amendment to section 20 of the Principal Act to require the water sharing provisions of a management plan to deal with adaptive environmental water.

Schedule 1 [45] amends Schedule 1A to the Principal Act to require adaptive environmental water conditions to be recorded in the Water Access Licence Register.

Schedule 1 [9], [15], [61] and [64] make consequential amendments.

Water tagging

Schedule 1 [25] amends section 71W of the Principal Act to permit the holder of an access licence to nominate as the water supply work by means of which water is extracted under the licence a water supply work that is situated in a NSW water tagging zone or an interstate tagging zone (if the operation of the work is lawful in the interstate tagging zone and certain arrangements are in place with the other State or Territory in which the zone is located). This concept is known as “water tagging”. Currently, a water supply work can only be nominated if it is in the same water source as that for which the access licence was granted.

Schedule 1 [4] and [28] amend sections 20 and 71Z of the Principal Act to provide that the access licence dealing principles only may establish NSW water tagging zones and interstate water tagging zones.

Schedule 1 [41] amends section 341 of the Principal Act to make the holder of an access licence liable if the person who manages or controls a water supply work nominated for the access licence takes water by means of that water management work in contravention of that section.

Schedule 1 [14], [27] and [42] contain consequential amendments.

Amendments to and other matters relating to management plans

Schedule 1 [6] amends section 42 of the Principal Act to provide that amendment of a management plan by an Act does not prevent its later amendment in the normal manner provided for in the Principal Act.

Schedule 1 [50] amends Schedule 9 to the Principal Act to validate any management plans and amendments to management plans published in the Gazette before the commencement of the amendment and to validate any actions done under those plans.

Schedule 1 [59] inserts proposed Schedule 12 into the Principal Act which makes certain amendments to certain management plans.

Part 1 of the proposed Schedule will amend all management plans made before the commencement of the Part to include provisions relating to adaptive environmental water.

Part 2 of the proposed Schedule will amend all management plans made before the commencement of the Part to include provisions relating to planned environmental water.

Part 3 of the proposed Schedule will amend all management plans for regulated and unregulated rivers made before the commencement of the Part to include provisions relating to floodplain harvesting.

Provisions facilitating trading in water

Schedule 1 [30] inserts proposed section 74 into the Principal Act to provide an easier procedure for the exit of a co-holder from an access licence. The proposed section enables the Minister, on the application of one or more co-holders, to extinguish their holdings in one access licence and to grant a new separate access

licence. The Minister may only take action if at least a majority of the co-holders of the original access licence consent or the Supreme Court makes an order dispensing with the consent.

Schedule 1 [48] inserts proposed Schedule 1B into the Principal Act which contains the procedure for determining the share component, extraction component, conditions and water allocations applying to the new licences created under proposed section 74.

Schedule 1 [40] and [63] make consequential amendments.

See also the amendments contained in Schedule 2 relating to irrigation corporations.

Water Access Licence Register procedures and dealings in access licences

Schedule 1 [29] inserts proposed section 72A into the Principal Act to make it clear that a dealing in an access licence that is held by more than one person (with the exception of a dealing under proposed section 74) requires the consent of all of the co-holders and relates to the licence as a whole rather than to the individual holdings. The only dealing that is permitted under the Act in relation to an individual holding in an access licence is a transfer of the holding or a term transfer of the water entitlements under the holding.

Schedule 1 [46] and [47] amend Schedule 1A to the Principal Act to require the time and date of the recording of a dealing in the Water Access Licence Register to be recorded in the register itself rather than endorsed on the dealing.

Compensation

Schedule 1 [35] amends section 87 of the Principal Act to provide that no compensation is payable under that section for reductions in water allocations due to a variation of a bulk access regime because of an amendment made by an Act to a management plan.

Schedule 1 [36] amends section 87 of the Principal Act to limit the payment of compensation under that section to reductions in water allocations arising during the operation of the first management plan.

Schedule 1 [37] inserts proposed sections 87AA and 87AB into the Principal Act. Proposed section 87AA provides for the payment of compensation to the holders of certain access licences in respect of a reduction in water allocations due to changes arising under management plans that operate after the first management plan or during certain extensions of the first management plan. Compensation is only payable in respect of changes in government policy or changes providing more environmental water because of the availability of more accurate scientific knowledge showing a need for the provision of that water. Compensation in respect of the provision of more environmental water is calculated over a 10-year period and is not payable for reductions of 3% or less. The liability for the payment of such compensation is to be shared between the State and Commonwealth governments and is not payable by the State unless funding is received from the Commonwealth for its share. Some other exceptions to the payment of compensation under the

proposed section are specified, including where the reduction in water allocations concerned is for the purpose of restoring water to the environment because of natural reductions in inflow to the water source.

Proposed section 87AB provides that no compensation is payable in respect of conduct in relation to a management plan or an amendment of a management plan occurring before its commencement. Conduct includes representations of any kind as to the effect of government policy concerning or the content of any such plan or amendment.

Schedule 1 [7] and [8] amend section 43A of the Principal Act to require the Natural Resources Commission to state if amendments suggested to management plans are for the purposes referred to in proposed section 87AA.

Schedule 1 [10] inserts proposed section 46 into the Principal Act to require the Minister when replacing or amending a management plan to state to what extent any changes to existing provisions are for purposes referred to in proposed section 87AA.

Schedule 1 [11] amends section 47 of the Principal Act to provide that any such statement of the Minister as to the purpose of changes to a management plan can only be questioned before the Land and Environment Court within a specified time.

Schedule 1 [33] inserts proposed section 86 into the Principal Act to define certain terms used in Division 9 of Part 2 of Chapter 3 of that Act dealing with compensation.

Schedule 1 [34] makes a consequential amendment.

Local water utilities

Schedule 1 [16] amends section 66 of the Principal Act to enable the Minister to review a local water utility access licence at any time to determine whether the water entitlements need to be increased to deal with variations in populations and associated commercial activities. Currently, the Minister must conduct such a review every 5 years. The amendment provides that before the Minister increases the water entitlements of a local water utility on a review, the Minister is to seek the advice of the Minister for Utilities on certain matters and take into account that advice and other specified matters, including whether the relevant management plan contains provisions indicating whether or not there is capacity in the relevant water source for increases in entitlements for local water utilities. The definition of *associated commercial activities* is expanded to include food and fibre processing and criteria for making a determination are included. **Schedule 1 [17]** makes a consequential amendment.

Schedule 1 [32] amends section 78 of the Principal Act to enable the Minister to impose civil monetary penalties on local water utilities instead of or in addition to suspending their licences for failure to comply with certain provisions of the Act or the access licences. Currently, the imposition of such penalties applies only to major utilities.

Schedule 1 [43] amends section 368 of the Principal Act to include a right of appeal to the Land and Environment Court on a decision to order a local water utility to pay a civil penalty to the Minister.

Savings and transitional matters

Schedule 1 [49] amends Schedule 9 to the Principal Act to enable regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [51] amends Schedule 10 to the Principal Act to change the provisions currently applying to the conversion of water entitlements under the *Water Act 1912* to access licences so as to provide that the water entitlements conferred by the new access licence are to be of the same quantity as conferred by the old entitlement unless the regulations and the relevant management plan specify a methodology for calculating a different quantity of water. Currently, the Schedule provides that the quantity of water conferred under the new access licence is to be the same as that conferred under the old entitlement.

Schedule 1 [52] amends Schedule 10 to the Principal Act to enable an access licence that replaces an entitlement to water under the *Water Act 1912* to provide for a reduction of the quantity of water that a person may take under the licence, or a reduction in the share component of the licence, over a specified time if the regulations and the relevant management plan so provide.

Schedule 1 [53] amends Schedule 10 to the Principal Act to enable the regulations to amend Schedule 11 to that Act to make provision for categories and subcategories of licences prescribed by the regulations. Schedule 11 contains a table that sets out the entitlements under the *Water Act 1912* and lists the categories and subcategories of access licence to which they are converted. However, section 57 (1) (l) and (2) of the Principal Act currently enable the regulations to prescribe additional categories and subcategories of access licence for the purposes of that Act.

Schedule 1 [54] amends Schedule 10 to the Principal Act to preserve authorisations conferred by entitlements under the *Water Act 1912* to take water for the purposes of food safety or essential dairy care.

Schedule 1 [55] and [56] amend Schedule 10 to the Principal Act to provide that certain calculations in relation to the water entitlements to be conferred by an access licence that replaces entitlements held by a local water utility for town water supply purposes are to take account of the area or water management works covered by all the entitlements held by the local water utility.

Schedule 1 [58] amends Schedule 10 to the Principal Act to extend from 24 months to 36 months the period within which persons may claim security interests in access licences that replace entitlements under the *Water Act 1912*.

Miscellaneous matters

Schedule 1 [5] amends section 41 of the Principal Act to provide that the manner of making a management plan is by order published in the Gazette.

Schedule 1 [18] makes an amendment to the Principal Act by way of statute law revision.

Schedule 1 [12] amends section 56 of the Principal Act to enable the extraction component of an access licence to authorise, in addition, the taking of water from a

water source not referred to in the share component of the licence if the two water sources are vertically abutting (either wholly or partly). **Schedule 1 [14] and [57]** make consequential amendments.

Schedule 1 [13] amends section 58 of the Principal Act to enable management plans to establish different rules of priority to those established in the Principal Act.

Schedule 1 [19] amends section 68A of the Principal Act to enable the Minister to amend the share component or extraction component (or both) of an access licence in circumstances where erroneous location data has resulted in the holder of the access licence taking water from a different location to that specified in the licence.

Schedule 1 [57] makes a consequential amendment.

Schedule 1 [21] and [23] amend sections 71B and 71N of the Principal Act to enable a term transfer of the water entitlements conferred by an access licence to be extended. **Schedule 1 [20] and [22]** make consequential amendments.

Schedule 1 [24] amends section 71S of the Principal Act to enable the Minister, by order published in the Gazette, to declare that the right to apply for the amendment of the extraction component of an access licence for a particular water source is to be acquired by auction, tender or other means.

Schedule 1 [38] amends section 100 of the Principal Act to enable the Minister to impose conditions on water management work approvals in respect of the release of cold water. (See also amendments contained in Schedule 3.)

Schedule 1 [39] amends section 102 of the Principal Act to provide that notice is not required to be given by the Minister of the proposed variation of a discretionary condition on a water management work approval if the variation is made with the consent of the holder of the approval.

Schedule 1 [44] amends section 372 of the Principal Act to give the Ministerial Corporation under that Act the function of constructing, maintaining and operating gauging stations and other monitoring equipment.

Schedule 1 [60] corrects a wrong cross-reference.

Schedule 1 [62] updates an out-of-date reference to a Department.

Schedule 2 Amendment of Water Management Act 2000 relating to irrigation corporations

Schedule 2 inserts proposed section 71ZA into the Principal Act to enable the Minister to order an irrigation corporation to pay a civil penalty if its constitution, any contract entered into by it with a member of the corporation or any other document associated with the operation of the corporation (such as transfer rules of the corporation), or any conduct of the corporation, prevents arrangements being made for the permanent transfer of a member's water entitlement to another access licence not held by the corporation. The proposed section will only apply to regulated river (high security) access licences and regulated river (general security) access licences held by an irrigation corporation (but not to any subcategory of those categories of access licence). The proposed section does not prevent an irrigation corporation from

having barriers to transfer of a member's water entitlement in circumstances where the transfer would reduce the share component of the corporation's access licence by more than 4% (or such other percentage prescribed by the regulations) in any one year.

The amount of civil penalty that may be imposed is not to exceed \$500,000 and a further amount not exceeding \$20,000 for each day that the circumstances giving rise to the initial civil penalty continue to exist.

The proposed section also enables an irrigation corporation to unilaterally amend a water supply contract entered into with a member of the corporation for the purposes of complying with the section.

Schedule 3 Amendment of Protection of the Environment Operations (General) Regulation 1998

Schedule 3 amends the *Protection of the Environment Operations (General) Regulation 1998* to exempt a person releasing cold water in accordance with conditions relating to those matters imposed on an access licence under the *Water Management Act 2000* from the offence of polluting waters under the *Protection of the Environment Operations Act 1997*.



New South Wales

Water Management Amendment Bill 2005

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New South Wales

Water Management Amendment Bill 2005

No. , 2005

A Bill for

An Act to amend the *Water Management Act 2000* in relation to plans of management, environmental water and compensation and to amend other legislation consequentially; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Water Management Amendment Act 2005</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) The provisions of Schedule 1 [49]–[58] commence on the date of assent to this Act.	7 8
3 Amendment of Water Management Act 2000 No 92	9
The <i>Water Management Act 2000</i> is amended as set out in Schedules 1 and 2.	10 11
4 Amendment of Protection of the Environment Operations (General) Regulation 1998	12 13
The <i>Protection of the Environment Operations (General) Regulation 1998</i> is amended as set out in Schedule 3.	14 15

Schedule 1	Amendment of Water Management Act 2000	1
		2
	(Section 3)	3
[1] Section 8 Environmental water		4
Insert after section 8 (1):		5
(1A) A management plan is to commit water as planned environmental water in at least 2 of the following ways (whether by 2 separate ways or a combination of 2 ways):		6
(a) by reference to the commitment of the physical presence of water in the water source,		7
(b) by reference to the long-term average annual commitment of water as planned environmental water,		8
(c) by reference to the water remaining after the commitments to basic landholder rights and for sharing and extraction under any other rights have been met.		9
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[2] Sections 8A–8E		16
Insert after section 8:		17
8A Planned environmental water		18
(1) If the relevant management plan so provides, the Minister may cancel any supplementary access licence, and any other category or subcategory of licence prescribed by the regulations, that is held by the Minister and commit an equivalent amount of water as determined in accordance with the management plan as planned environmental water for the water source to which the licence related.		19
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(2) Planned environmental water committed under this section is to be used for only those purposes specified in the relevant management plan.		26
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(3) Sections 78, 78A and 87 do not apply to the cancellation of an access licence under this section.		29
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8B Adaptive environmental water through dedication of existing water entitlements		31
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(1) If the relevant management plan so provides, the holder of an access licence may request that the Minister impose an adaptive environmental water condition in respect of the whole or a part of the access licence.		33
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(2)	A condition imposed under this section may be amended, and is to be revoked, by the Minister at the request in writing of the holder of the access licence.	1 2 3
8C	Adaptive environmental water through system improvements	4
(1)	If the relevant management plan so provides, the Minister may grant an access licence of a category or subcategory determined by the Minister to the Minister, a catchment management authority or other public body, without the need for an application to be made for the licence in accordance with Part 2 of Chapter 3, so long as:	5 6 7 8 9 10
(a)	works or other actions result in water savings in the system being made in the water source in respect of which the licence is granted, and	11 12 13
(b)	the share component of the licence is equivalent to the value of water savings in the system made, and	14 15
(c)	an adaptive environmental water condition is imposed on the licence.	16 17
(2)	In this section, <i>system</i> means that part of a water source to which a management plan applies that is not identified by the plan for commitments to basic landholder rights and for sharing and extraction under any other rights.	18 19 20 21
8D	Adaptive environmental water through water savings	22
	If the relevant management plan so provides, the Minister may keep an access licence surrendered by the holder of the licence or transfer it to a catchment management authority or other public body, and may change the licence to a different category or subcategory, if:	23 24 25 26 27
(a)	the licence has been surrendered as a result of water savings made by any means (for example, works or other improvements or recycling), and	28 29 30
(b)	the share component of the licence is equivalent to the value of the savings made, and	31 32
(c)	an adaptive environmental water condition is imposed on the licence.	33 34
8E	General provisions relating to access licences with adaptive environmental water conditions	35 36
(1)	This section applies to access licences that are subject to an adaptive environmental water condition.	37 38

(2)	For the purposes of this Act (but subject to section 8B (2)), an adaptive environmental water condition is a mandatory condition.	1 2 3
(3)	The terms of an adaptive environmental water condition imposed in respect of an access licence are to further the objectives of the relevant management plan.	4 5 6
(4)	If the adaptive environmental water condition on an access licence requires the water to be left in the water source for environmental purposes, then the water allocation account is to be debited when the water is available in accordance with the condition.	7 8 9 10 11
(5)	If the adaptive environmental water condition requires the environmental water to be taken from the water source then the water allocation account is to be debited when it is taken.	12 13 14
(6)	For the purposes of auditing compliance with the long-term extraction limit under the relevant management plan, the delivery of water pursuant to an access licence to which this section applies:	15 16 17 18
	(a) in the case of a licence to which section 8C relates—is not to be accounted for as extraction, and	19 20
	(b) in the case of a licence to which section 8B or 8D relates—is to be accounted for as extraction.	21 22
(7)	Before imposing an adaptive environmental water condition on an access licence, the Minister is to approve a plan for the implementation of the condition.	23 24 25
(8)	The Minister is to ensure that the plan referred to in subsection (7), and a requirement to comply with the plan, forms part of the adaptive environmental water condition.	26 27 28
(9)	An access licence to which this section applies, or a part of such a licence to which the adaptive environmental water condition concerned is expressed to relate, may be the subject of a dealing in accordance with this Act if the plan approved under subsection (7) so provides.	29 30 31 32 33
[3]	Section 20 Core provisions	34
	Insert “and provisions relating to adaptive environmental water” after “rules” in section 20 (1) (a).	35 36

[4] Section 20 (4) (b) and (c)	1
Omit section 20 (4) (b). Insert instead:	2
(b) must not deal with any matter for which the access licence dealing principles may make provision under section 71Z (2), and	3 4 5
(c) subject to paragraph (b) and the access licence dealing principles, may regulate or prohibit any dealing under Division 4 of Part 2 of Chapter 3.	6 7 8
[5] Section 41 Making of management plan	9
Insert “, by order published in the Gazette,” after “may” wherever occurring in section 41 (1) (a) and (b).	10 11
[6] Section 42 Amendment of management plans	12
Insert after section 42 (2):	13
(3) Each management plan specified in Schedule 12 is amended as set out in that Schedule.	14 15
(4) The amendment of a management plan by this or any other Act does not prevent its later amendment or repeal in accordance with this Act.	16 17 18
[7] Section 43A Extension of duration of management plan dealing with water sharing	19 20
Omit “were” from section 43A (3) (b). Insert instead “are”.	21
[8] Section 43A (3A)	22
Insert after section 43A (3):	23
(3A) If a report of the Natural Resources Commission under subsection (3) recommends changes to a management plan that will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Commission is to state in the report whether the purpose of the proposed changes is:	24 25 26 27 28 29
(a) to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or	30 31 32 33
(b) to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate.	34 35 36 37

[9] Section 45 Minister may amend or repeal management plan	1
Omit section 45 (2).	2
[10] Section 46	3
Insert before section 47:	4
46 Making or amendment of management plan	5
(1) If the Minister makes a replacement management plan or amends a management plan and the replacement plan or amendment will result in a reduction of water allocations in relation to which compensation might be payable under section 87AA, the Minister is to include in the order in which the replacement plan or amendment is made, or in another order, a statement as to whether:	6
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(a) the purpose of the reduction to water allocations is to restore water to the environment because of natural reductions in inflow to the relevant water source, including but not limited to changes resulting from climate change, drought or bushfires, or	13
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(b) the purpose of the reduction to water allocations is to provide additional water to the environment because of more accurate scientific knowledge that demonstrates that the amount previously allocated to the environment is inadequate, or	18
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(c) the reduction to water allocations results from a change in government policy.	23
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(2) A statement referred to in subsection (1):	25
(a) need not be made if the reduction concerned arises from circumstances referred to in section 87AA (3) (a) or (c), and	26
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(b) in a case where the reduction is made for more than one of the purposes referred to in subsection (1), is to specify each of the relevant purposes and the extent to which the reduction relates to each of those relevant purposes.	29
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[11] Section 47 Validity of management plans and exercise of plan-making functions	1 2
Omit the definition of <i>plan-making function</i> in section 47 (8). Insert instead:	3
<i>plan-making function</i> means:	4
(a) a function under this Act relating to the making of a management plan (including relating to the amendment, replacement or repeal of a management plan or the extension of the duration of a management plan), or	5 6 7 8
(b) a function under section 46 of this Act relating to the statement of the purpose for which any provision of a management plan has been made.	9 10 11
[12] Section 56 Access licences	12
Insert after section 56 (4):	13
(4A) Without limiting subsection (1) (b), the extraction component of an access licence may authorise the taking of water from a water source specified in the share component of the licence and from another water source not so specified if those water sources are vertically abutting (either wholly or partly) water sources.	14 15 16 17 18
(4B) In the circumstances referred to in subsection (4A), the water source specified in the share component of the access licence is to be the water source that is the main source for the extraction of water by the holder of the licence.	19 20 21 22
[13] Section 58 Priorities between different categories of licence	23
Insert after section 58 (2):	24
(3) In relation to the water management area or water source to which it applies, a management plan may provide for different rules of priority to those established by subsection (1).	25 26 27
(4) If a management plan so provides for different rules of priority, those different rules are taken to have been established by this section.	28 29 30
[14] Section 59 Available water determinations	31
Insert after section 59 (2):	32
(3) If the extraction component of an access licence authorises the taking of water from a water source specified in the share component of the licence and from another water source not so specified and those water sources are vertically abutting (either wholly or partly) water sources, the available water	33 34 35 36 37

	determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.	1 2 3
(4)	If the Minister consents to the amendment of an access licence to enable water to be taken by a specified water supply work or group of water supply works in circumstances referred to in section 71 W (2) (b) or (c), the available water determinations that apply to the licence are those made in relation to the water source specified in the share component of the licence.	4 5 6 7 8 9
[15]	Section 65 Controlled allocation of access licences	10
	Omit section 65 (3) and (4) and the note to subsection (4).	11
[16]	Section 66 Conditions of access licence	12
	Omit section 66 (3)–(4). Insert instead:	13
(3)	The Minister may, at any time or at the request of the relevant local water utility, review a local water utility licence and may increase the entitlement to water under the licence so as to reflect any variation in population or in associated commercial activities, that has occurred in the area in which water is supplied under the licence.	14 15 16 17 18 19
(4)	Any increase under subsection (3) may be achieved by the Minister increasing or decreasing the share component of any of the access licences held by the local water utility.	20 21 22
(5)	In subsection (3), <i>associated commercial activities</i> means:	23
(a)	activities within the following categories recognised in the <i>Australian and New Zealand Standard Industrial Classification</i> (ANZSIC), 1993 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):	24 25 26 27
(i)	construction (category E),	28
(ii)	wholesale trade (category F),	29
(iii)	retail trade (category G),	30
(iv)	accommodation, cafes and restaurants (category H),	31
(v)	communication services (category J),	32
(vi)	finance and insurance (category K),	33
(vii)	property and business services (category L),	34
(viii)	government administration and defence (category M),	35 36
(ix)	education (category N),	37
(x)	health and community services (category O),	38

	(xi) cultural and recreational services (category P),	1
	(xii) personal and other services (category Q), or	2
	(b) food and fibre processing.	3
(6)	Before increasing an entitlement to water conferred by a local water utility licence under subsection (3), the Minister is to seek the advice of the Minister for Utilities on the following matters:	4
	(a) whether the local water utility is actively taking all reasonable measures to implement any guidelines issued by the Minister for Utilities for the best practice management of water supply and sewerage services,	5
	(b) whether the local water utility has investigated and is implementing all reasonable alternative options for meeting the increased demand, including stormwater use and water re-use,	6
	(c) whether the current water entitlements would still be insufficient if the local water utility was complying with paragraphs (a) and (b),	7
	(d) whether an increase in water entitlements is the best option for meeting increased demand having regard to environmental impacts and costs.	8
(7)	In determining whether to increase an entitlement to water conferred by a local water utility licence under subsection (3), the Minister is to take the following into account:	9
	(a) the advice provided under subsection (6),	10
	(b) whether an approval can be granted for any new works proposed or for the expansion of any existing works,	11
	(c) any provisions of the relevant management plan,	12
	(d) such other matters as the Minister considers relevant.	13
(8)	For the purposes of subsection (7) (c), a management plan may contain provisions indicating whether or not there is capacity in the relevant water source for increases in entitlements to water for local water utilities.	14
[17]	Section 67 Imposition of conditions after access licence is granted	15
	Insert “to conditions imposed on an access licence as a result of action taken under section 66 (3)” after “the access licence,” in section 67 (2).	16
[18]	Section 68A Amendment of share or extraction components of access licences by Minister	17
	Insert “this Act or” after “with” in section 68A (1).	18

[19] Section 68A (1A) and (1B)	1
Insert after section 68A (1):	2
(1A) The Minister may amend the share component or extraction component (or both) of an access licence so as to alter the water management area or water source to which the share component of the licence relates, or the locations from which water may be taken in accordance with the extraction component of the licence.	3 4 5 6 7
(1B) An amendment may only be made under subsection (1A) if:	8
(a) the amendment is for the purpose of enabling the holder of the licence to take water from a different water source to that authorised by the licence because erroneous location data has resulted in the holder taking water from that different source, and	9 10 11 12 13
(b) at the time at which the granting of the access licence was recorded in the register, an access licence could have been granted to the holder authorising the taking of water from that different water source.	14 15 16 17
[20] Section 71B When matters required to be recorded in General Division of Access Register have effect	18 19
Omit “Any” from section 71B (1).	20
Insert instead “Subject to this section, any”.	21
[21] Section 71B (3)	22
Insert after section 71B (2):	23
(3) If an application for the extension of a term transfer under section 71N is received before the expiry of the term transfer, the extension is to be recorded in the Register as taking effect from the end of the current term of the term transfer.	24 25 26 27
[22] Section 71N Term transfers of entitlements under access licences	28
Insert “in relation to any water entitlements” after “concerned” in section 71N (5).	29 30
[23] Section 71N (7A)	31
Insert after section 71N (7):	32
(7A) The period for which a term transfer has effect may be extended, with the consent of the transferee, while the term transfer remains in force.	33 34 35

[24] Section 71S Amendment of extraction component of access licence	1
Insert after section 71S (3):	2
(4) The Minister may, by order published in the Gazette, declare that	3
the right to apply for an amendment of the extraction component	4
of an access licence for a specified water management area or	5
water source is to be acquired by auction, tender or other means	6
specified in the order.	7
[25] Section 71W Access licence may nominate water supply works	8
Omit section 71W (2). Insert instead:	9
(2) The water supply work or group of water supply works	10
nominated must be in one or more of the following:	11
(a) the same water management area or water source as the	12
access licence concerned,	13
(b) a NSW water tagging zone,	14
(c) an interstate water tagging zone in another State or	15
Territory if the operation of the work or works is lawful in	16
that zone and an arrangement is in place (as referred to in	17
section 391A) between the Minister and a Minister of the	18
other State or Territory.	19
(3) For the avoidance of doubt, a water supply work or group of	20
water supply works may be nominated under this section even	21
though no approval is required to be held in relation to the work	22
or works under this Act.	23
(4) In this section:	24
<i>interstate water tagging zone</i> means an interstate water tagging	25
zone established by the access licence dealing principles.	26
<i>NSW water tagging zone</i> means a NSW water tagging zone	27
established by the access licence dealing principles.	28
[26] Section 71Y General	29
Omit “or dealing on default” from section 71Y (1).	30
Insert instead “, dealing on default or assignment under section 71T or 71V”.	31
[27] Section 71Z Access licence dealing principles	32
Omit “subject to any such rules,” wherever occurring.	33

[28] Section 71Z (2) and (3)	1
Insert at the end of section 71Z:	2
(2) The access licence dealing principles may include provisions relating to any or all of the following:	3
(a) the establishment of interstate water tagging zones for the purposes of section 71W,	4
(b) the establishment of NSW water tagging zones for the purposes of section 71W,	5
(c) the criteria to be considered for the granting of an application in circumstances referred to in section 71W (2) (b) or (c).	6
(3) The access licence dealing principles prevail over the access licence dealing rules to the extent of any inconsistency.	7
[29] Section 72A	8
Insert after section 72:	9
72A Special provisions relating to co-holdings in access licences	10
(1) Except as provided by subsection (2) and section 74, any dealing in relation to an access licence that is held by co-holders requires the consent of all of the co-holders and is taken to be a dealing with respect to the whole of the licence (rather than to a holding in the licence).	11
(2) A holding in an access licence may only be the subject of a dealing under section 71M (8) or 71N (11).	12
[30] Section 74	13
Insert after section 73:	14
74 Exit from co-held access licence	15
(1) On the application of one or more of the co-holders of an access licence (<i>the original access licence</i>), the Minister may consent to the extinguishment of the holdings of one or more co-holders in the licence and the granting of a new access licence in accordance with Schedule 1B.	16
(2) If the Minister extinguishes holdings in the original licence and grants a new access licence under subsection (1), the Minister is to reduce the entitlements under the original access licence to the extent necessary to reflect the entitlements conferred by the new licence.	17

	(3)	An application may not be made under subsection (1) without the consent in writing of all of the co-holders of the access licence concerned or of co-holders who hold a majority share of the holdings under the licence.	1 2 3 4
	(4)	On the application of one or more co-holders of an access licence, the Supreme Court may, if it considers it just and equitable to do so, order that the consent referred to in subsection (3) need not be obtained and may make ancillary orders for the purposes of this section.	5 6 7 8 9
	(5)	When determining such an application where the water supply work nominated by the access licence concerned is shared by some or all of the co-holders of the licence, the Supreme Court is to take into consideration the likely effect that the taking of action under subsection (1) would have on the use of that work and the co-holders who have the benefit of it.	10 11 12 13 14 15
	(6)	This section does not apply to an access licence if:	16
	(a)	there is any money due under this Act in respect of the access licence, including any civil penalties imposed under this Act, or	17 18 19
	(b)	the co-holders hold the licence as joint tenants, or	20
	(c)	the access licence dealing principles or the access licence dealing rules prevent an application being made under this section.	21 22 23
	(7)	Schedule 1B has effect.	24
[31]		Section 77A Cancellation of access licences that can no longer be used or are no longer required	25 26
		Insert after section 77A (2):	27
	(2A)	Subsection (2) does not apply to an access licence in relation to which action is taken by the Minister under section 8D.	28 29
[32]		Section 78 Suspension and cancellation of access licences	30
		Omit section 78 (2). Insert instead:	31
	(2)	Instead of or in addition to suspending or cancelling an access licence, the Minister may order a major utility or local water utility to pay to the Minister a civil penalty of an amount not exceeding \$500,000 and a further civil penalty of an amount not exceeding \$20,000 for each day that the circumstances giving rise to the initial civil penalty continue to exist.	32 33 34 35 36 37

[33] Section 86	1
Insert before section 87:	2
86 Definitions	3
In this Division:	4
<i>compensation</i> includes damages or any other form of monetary compensation.	5
<i>the Crown</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> , and includes any officer, employee or agent of the Crown.	6
[34] Section 87 Compensation payable in certain circumstances for reductions in water allocations arising during initial period for which management plan is in force	7
Omit section 87 (2) (a).	8
[35] Section 87 (2)	9
Insert at the end of section 87 (2) (c):	10
, or	11
(d) an amendment made by an Act to a management plan.	12
[36] Section 87 (9)	13
Insert after section 87 (8):	14
(9) Despite the other provisions of this section, compensation may be claimed under this section only in respect of a reduction in water allocations occurring during the period for which the first management plan that established the bulk access regime concerned is in force (excluding any period for which that plan is extended under section 43A (1)).	15
[37] Sections 87AA and 87AB	16
Insert after section 87:	17
87AA Compensation payable in certain circumstances for reductions in water allocations arising after initial period that management plan is in force	18
(1) This section applies to the following categories and subcategories of access licence:	19
(a) regulated river (high security) access licences,	20
(b) regulated river (general security) access licences,	21
(c) Murrumbidgee Irrigation (conveyance) access licences,	22

Water Management Amendment Bill 2005

Schedule 1 Amendment of Water Management Act 2000

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| (d) | Coleambally Irrigation (conveyance) access licences, | 1 |
| (e) | unregulated river access licences, | 2 |
| (f) | aquifer access licences, | 3 |
| (g) | any other category or subcategory of access licence that is | 4 |
| | prescribed by the regulations (other than supplementary | 5 |
| | access licences or specific purpose access licences). | 6 |
| (2) | A holder of an access licence to which this section applies whose | 7 |
| | water allocations are reduced because of a change to provisions | 8 |
| | of the relevant management plan dealing with water sharing is | 9 |
| | entitled to compensation as assessed by the Minister in | 10 |
| | accordance with subsections (5) and (6). | 11 |
| (3) | Despite subsection (2), the holder of an access licence is not | 12 |
| | entitled to compensation under this section if: | 13 |
| (a) | the reduction in water allocations occurred while the first | 14 |
| | management plan (excluding any period for which that | 15 |
| | plan was extended under section 43A (1)) was in force, or | 16 |
| (b) | the reduction in water allocations occurred as a result of an | 17 |
| | amendment of a management plan by the Minister under | 18 |
| | section 45 that is authorised by the plan or that is required | 19 |
| | to give effect to a decision of the Land and Environment | 20 |
| | Court relating to the validity of the plan, or | 21 |
| (c) | the reduction in water allocations is for the purpose of | 22 |
| | restoring water to the environment because of natural | 23 |
| | reductions in inflow to the water source, including but not | 24 |
| | limited to changes resulting from climate change, drought | 25 |
| | or bushfires. | 26 |
| (4) | A reference in subsection (2) to a change in the provisions of a | 27 |
| | management plan includes a change between the provisions of | 28 |
| | the management plan concerned and provisions of the | 29 |
| | management plan that it replaced. | 30 |
| (5) | Compensation is payable to the holder of an access licence whose | 31 |
| | water allocations are reduced because of a change in the | 32 |
| | provisions of a management plan as a result of an amendment that | 33 |
| | is specified under section 46 by the Minister as due to a change | 34 |
| | in government policy. | 35 |
| (6) | Compensation is payable as follows for a reduction in water | 36 |
| | allocations for the purpose of providing additional water to the | 37 |
| | environment because of more accurate scientific knowledge that | 38 |
| | demonstrates that the amount previously allocated to the | 39 |
| | environment is inadequate: | 40 |
| (a) | no compensation is payable for reductions of 3% or less, | 41 |

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| (b) | compensation is payable for reductions of more than 3% over any 10-year period commencing on or after the expiration of the period for which the first management plan for the relevant area was in force (including any period for which that plan was extended under section 43A (1)), | 1
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| (c) | only one third of the compensation payable for a reduction of more than 3% but not more than 6% over any applicable 10-year period is liable to be paid under this section, | 7
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| (d) | only one half of the compensation payable for a reduction of more than 6% over any applicable 10-year period is liable to be paid under this section. | 10
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| (7) | The regulations may make provision for or with respect to the following: | 13
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| (a) | the basis on which reductions in water allocations are to be calculated or the method of determining such reductions for the purposes of this section, | 15
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| (b) | the basis on which compensation is to be calculated or the method for calculating the payment of compensation for the purposes of this section, | 18
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| (c) | the manner and time of payment of compensation. | 21 |
| (8) | This section has effect only while there is in force an agreement entered into by, or on behalf of, the State and the Commonwealth for or with respect to supplementing the payment of compensation under this section. | 22
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| (9) | Despite any other provision of this section, no compensation is payable under this section in respect of a reduction in water allocations of a kind referred to in subsection (6) if the Commonwealth has not provided funding in respect of that reduction to meet its obligations under the agreement referred to in subsection (8). | 26
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| (10) | A person may appeal to the Land and Environment Court on the ground that the person is entitled to the payment of compensation under this section but has not been determined as being entitled to any compensation. | 32
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| 87AB Compensation is not payable in relation to certain conduct | | 36 |
| (1) | Compensation is not payable by or on behalf of the Crown in respect of any relevant conduct in relation to a management plan. | 37
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	(2)	In this section, <i>relevant conduct</i> , in relation to a management plan, means an act or omission occurring before the commencement of the management plan in respect of the content, effect or government policy concerning the management plan, including the following:	1 2 3 4 5
	(a)	any act or omission, whether unconscionable, misleading, deceptive or otherwise,	6 7
	(b)	a representation of any kind, whether made verbally or in writing and whether negligent, false, misleading or otherwise.	8 9 10
	(3)	This section has effect despite section 87.	11
	(4)	In this section, a reference to a management plan includes a reference to an amendment of a management plan.	12 13
[38]	Section 100	Conditions of approval generally	14
		Insert after section 100 (2) (and before the note to the section):	15
	(3)	Without limiting the types of conditions relating to the protection of the environment that the Minister may impose under this section on a water management work approval, those conditions may include conditions relating to any or all of the following matters:	16 17 18 19 20
	(a)	the undertaking of an investigation of the environmental impact of cold water releases and the options for mitigation of that impact,	21 22 23
	(b)	the preparation of a program to mitigate the impact of cold water releases and the obtaining of approval to the program from the Minister,	24 25 26
	(c)	the implementation of the program,	27
	(d)	the monitoring and reporting on actions taken to implement the program and the impact of those actions on the environment,	28 29 30
	(e)	the carrying out of new works or the making of alterations to existing works, or both,	31 32
	(f)	the method of operation of water management works.	33
[39]	Section 102	Imposition or variation of conditions after approval is granted	34 35
		Insert “or with the consent of” after “at the request of” in section 102 (2).	36

[40] Section 107 Amendment of approvals	1
Insert after section 107 (5):	2
(6) In considering any application under this section, the Minister is to have regard to any order of the Supreme Court under section 74 that affects the matters covered by the application.	3 4 5
[41] Section 341 Unlawful taking of water	6
Insert after section 341 (1):	7
(1A) If a person who has the control or management of a water supply work takes water by means of that work in contravention of subsection (1) and the water supply work is nominated under section 71W in relation to an access licence that is not held by that person, the person who is the holder of the access licence is also taken to have contravened subsection (1).	8 9 10 11 12 13
(1B) A person may be proceeded against and convicted under subsection (1) pursuant to subsection (1A) whether or not the person who has the control or management of the water supply work concerned has been proceeded against or been convicted under subsection (1).	14 15 16 17 18
[42] Section 341 (6) and (7)	19
Insert after section 341 (5):	20
(6) A person is not guilty of an offence under this section by reason only of taking water under an access licence from a water management area or water source that is different to that specified in the extraction component for the licence if the person does so in accordance with the consent of the Minister given in circumstances referred to in section 71W (2) (b) or (c).	21 22 23 24 25 26
(7) A person who has the management or control of a water supply work that is nominated under section 71W for an access licence and who takes water by means of that water supply work is not guilty of an offence under this section by reason only of not being the holder of the access licence.	27 28 29 30 31
[43] Section 368 Appeals to Land and Environment Court	32
Insert “or local water utility” after “major utility” in section 368 (1) (m).	33
[44] Section 372 Functions of Ministerial Corporation	34
Insert after section 372 (1) (a):	35
(a1) to construct, maintain and operate gauging stations and other monitoring equipment,	36 37

[45] Schedule 1A Access Register	1
Insert after clause 1 (1) (d):	2
(e) any adaptive environmental water condition to which the licence, or a part of the licence, is subject.	3 4
[46] Schedule 1A, clause 2 (3) (a)	5
Omit “and a description of the dealing, and”.	6
Insert instead “, a description of the dealing and the time and date of the recording.”.	7 8
[47] Schedule 1A, clause 2 (3) (b)	9
Omit the paragraph.	10
[48] Schedule 1B	11
Insert after Schedule 1A:	12
Schedule 1B Provisions relating to exit from co-held access licence	13 14
	(Section 74 (7)) 15
1 Definitions	16
In this Schedule:	17
<i>extinguished holdings</i> means the holdings in an access licence extinguished by the Minister under section 74.	18 19
<i>new access licence</i> means an access licence granted by the Minister under section 74 (1).	20 21
<i>original access licence</i> has the meaning given by section 74 (1).	22
2 Share component of new access licence	23
The share component of the new access licence:	24
(a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or	25 26 27 28 29
(b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished	30 31 32 33 34

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| holdings bear to the whole of the holdings in the original access licence, or | 1 |
| | 2 |
| (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the share component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74. | 3 |
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| 3 Extraction component of new access licence | 10 |
| (1) If the extraction component of the original access licence did not specify a volume limit or some other kind of restriction on the amount of water to be extracted, the new access licence is to have the same extraction component as applied to the original access licence. | 11 |
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| (2) If the extraction component of the original access licence specified a volume limit or some other kind of restriction on the amount of water to be extracted, the extraction component of the new access licence: | 16 |
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| (a) in a case where all the co-holders consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in accordance with the directions in the application, or | 20 |
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| (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—is to be allocated between the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence, or | 25 |
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| (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the extraction component for the original access licence is to be distributed between the original access licence and the new access licence in accordance with the order of the Supreme Court under section 74. | 32 |
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4 Water allocation account for new access licence

The water allocations for a water allocation account for an original access licence and new access licence are to be adjusted as follows:

- (a) in a case where all the co-holders consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with the directions in the application,
- (b) in a case where co-holders who hold a majority of the holdings under the original access licence consented to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in the same proportions as the extinguished holdings bear to the whole of the holdings in the original access licence,
- (c) in a case where co-holders holding a majority of the water entitlements under the original access licence did not consent to the application under section 74 (1)—the water standing to the credit of the water allocation account for the original access licence is to be distributed between the water allocation accounts for the original access licence and the new access licence in accordance with an order of the Supreme Court under section 74 (4).

5 Conditions of new licence

A new access licence, at the time at which it is granted, is subject to the same mandatory conditions to which the original access licence was subject at that time.

6 Nominated water supply work for new access licence

A water supply work nominated in relation to an original access licence is taken to be nominated in relation to the new access licence unless a different water supply work is nominated in accordance with this Act or an order of the Supreme Court made under section 74 provides otherwise.

7	Security interests relating to new access licences	1
(1)	A dealing under section 74 is not to be recorded in the register unless the consent of any holder of a security interest in the extinguished holdings of the original access licence has been obtained.	2 3 4 5
(2)	Any security interests that subsisted in the extinguished holdings, as in force immediately before they were extinguished, become equivalent interests in the new access licence.	6 7 8
[49]	Schedule 9 Savings, transitional and other provisions	9
	Insert at the end of clause 1 (1):	10
	<i>Water Management Amendment Act 2005</i>	11
[50]	Schedule 9, Part 5	12
	Insert after Part 4 of Schedule 9:	13
Part 5	Provisions consequent on enactment of Water Management Amendment Act 2005	14 15
70	Definition	16
	In this Part, <i>amending Act</i> means the <i>Water Management Amendment Act 2005</i> .	17 18
71	Management plans	19
(1)	Any management plan (and any amendment of a management plan) that was published in the Gazette before the commencement of this clause is taken to have been validly made and to be valid on and from the date that it was so published.	20 21 22 23
(2)	Anything done or omitted to be done before the commencement of this clause pursuant to a management plan or amendment of a management plan referred to in subclause (1) (or done or omitted purportedly in pursuance of such a plan or amendment) is taken on and from the time at which it was done or omitted to be done to have been validly done or validly omitted to be done.	24 25 26 27 28 29
(3)	In this clause, a reference to a management plan, or an amendment of a management plan, includes a reference to a purported management plan or a purported amendment of a management plan.	30 31 32 33

[51] Schedule 10 Conversion of former entitlements to access licences and approvals	1
	2
Omit clause 3 (1) (a). Insert instead:	3
(a) to the extent to which it entitles any person or body to take	4
a specified quantity of water, by an access licence held by	5
that person or body (subject to such of the conditions of the	6
entitlement as are applicable to an access licence):	7
(i) for the quantity of water so specified, or	8
(ii) if the relevant management plan, and regulations	9
made for the purposes of this paragraph, indicate	10
that a different quantity of water calculated in	11
accordance with a specified methodology may be	12
taken under an access licence issued in relation to	13
the water management area or water source to which	14
the management plan applies—for a different	15
quantity of water calculated in accordance with that	16
methodology, and	17
[52] Schedule 10, clause 3 (3)	18
Insert after clause 3 (2):	19
(3) An access licence that replaces an entitlement may provide for a	20
specified reduction over a specified period of the quantity of	21
water that the holder of the licence is entitled to take or of the	22
share component of the licence if the relevant management plan	23
and any regulations made for the purposes of this subclause allow	24
the licence to provide for those matters.	25
[53] Schedule 10, clause 4 (3) and (4)	26
Insert after clause 4 (2):	27
(3) The regulations may amend Schedule 11 so as to insert, amend or	28
omit matter in Column 1, 2, 3 or 4 of that Schedule to make	29
provision for categories and subcategories of access licence	30
prescribed by the regulations (as referred to in section 57 (1) and	31
(2)).	32
(4) Despite subclause (3), if an entitlement has been replaced in	33
accordance with this Act before the commencement of an	34
amendment to Schedule 11 made pursuant to that subclause,	35
Schedule 11 as in force at the time the entitlement was replaced	36
continues to apply in relation to that entitlement.	37

[54] Schedule 10, clause 9A	1
Insert after clause 9:	2
9A Conditions relating to food safety and essential dairy care	3
(1) If an entitlement authorised water to be extracted for the purposes of food safety or essential dairy care at times of low flows when extraction of the water would not otherwise be allowed, an access licence that replaces that entitlement is taken to contain the same authorisation.	4 5 6 7 8
(2) An access licence referred to in subclause (1) is also subject to a mandatory condition that the authorisation ceases to have effect if the activity for which the extraction of water is permitted ceases to be conducted at the same location or is not carried out in the same manner as it was carried out immediately before the entitlement concerned was replaced by the access licence.	9 10 11 12 13 14
[55] Schedule 10, clause 13 (3) (b)	15
Omit “the licence relates”.	16
Insert instead “all the former entitlements related”.	17
[56] Schedule 10, clause 13 (3) (c)	18
Omit the paragraph. Insert instead:	19
(c) a quantity of water calculated on the basis of the current yield of the water management works controlled or managed under all the former entitlements by the local water utility by which the licence is taken to be held.	20 21 22 23
[57] Schedule 10, clause 16 Entitlements relating to bores	24
Insert at the end of clause 16:	25
(2) If the holder of a licence under Part 5 of the 1912 Act has been taking water from a different water source to that authorised by the licence because of erroneous location data, an access licence that is taken to replace that licence may be issued with a share component or extraction component (or both) that refers to the different water source rather than to the water source referred to in the replaced licence.	26 27 28 29 30 31 32
(3) A licence under Part 5 of the 1912 Act which, immediately before the appointed day, related to a bore that intersects two water sources that vertically abut each other is taken to have been replaced by:	33 34 35 36

	(a) an access licence that specifies in its share component the water source that is the main source of extraction of water, and	1 2 3
	(b) a water supply work approval.	4
[58]	Schedule 10, clause 19	5
	Omit “24” from clause 19 (11). Insert instead “36”.	6
[59]	Schedule 12	7
	Insert after Schedule 11:	8
	Schedule 12 Amendment of management plans	9
	(Section 42 (3))	10
	Part 1 Amendment relating to adaptive environmental water	11 12
	1 Management plans to be amended	13
	The management plans to which this Part applies are all management plans made before the commencement of this Part.	14 15
	2 Amendment of management plans relating to adaptive environmental water	16 17
	Each management plan to which this Part applies is amended by omitting subclause (2) of the clause titled “Adaptive environmental water” and by inserting instead the following subclauses:	18 19 20 21
	(2) The Minister may grant an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition and arises through water savings in the system made in that water source as referred to in section 8C (1) of the Act.	22 23 24 25 26
	(2A) The Minister may change the category or subcategory of an access licence in a water source to which this Plan applies if the licence is subject to an adaptive environmental water condition that arises through water savings as referred to in section 8D of the Act.	27 28 29 30 31

Part 2 Amendment relating to planned environmental water

3 Management plans to be amended

The management plans to which this Part applies are all management plans made before the commencement of this Part.

4 Amendment of management plans relating to planned environmental water

Each management plan to which this Part applies (other than the *Water Sharing Plan for the Toorumbbee Creek Water Source 2003*) is amended by inserting after the last clause (with appropriate numbering) in the Part titled "Amendment of this Plan" the following clause:

Amendment relating to planned environmental water

(1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:

- (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
- (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
- (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.

(2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

5 Amendment of Water Sharing Plan for the Toorumbbee Creek Water Source 2003

The *Water Sharing Plan for the Toorumbbee Creek Water Source 2003* is amended by inserting as the final Part (with appropriate Part and clause numbering) the following Part:

Part Amendment of this Plan

Amendment relating to planned environmental water

- (1) The Minister may amend this Plan to provide for the recovery of planned environmental water as follows:
 - (a) the recovery is only to apply where the Minister has cancelled an access licence held by the Minister in accordance with section 8A of the Act,
 - (b) the amount of additional water to be provided as planned environmental water is to be equivalent to the annual average extraction of water under the cancelled licence over the long-term,
 - (c) the average annual long-term availability of water for the remaining access licences that relate to the water source concerned is to be reduced by the average annual long-term extraction of water under the cancelled licence.
- (2) The Minister may amend this Plan to specify the purposes for which planned environmental water committed under section 8A of the Act is to be used.

Part 3 Amendment of management plans relating to floodplain harvesting

6 Management plans to be amended

The management plans to which this Part applies are the following:

- (a) *Water Sharing Plan for the Adelong Creek Water Source 2003,*
- (b) *Water Sharing Plan for the Apsley River Water Source 2003,*
- (c) *Water Sharing Plan for the Castlereagh River above Binnaway Water Source 2003,*
- (d) *Water Sharing Plan for the Commissioners Waters Water Source 2003,*
- (e) *Water Sharing Plan for the Coopers Creek Water Source 2003,*
- (f) *Water Sharing Plan for the Dorriggo Plateau Surface Water Source and Dorriggo Basalt Groundwater Source 2003,*

(g)	<i>Water Sharing Plan for the Gwydir Regulated River Water Source 2002,</i>	1
		2
(h)	<i>Water Sharing Plan for the Hunter Regulated River Water Source 2003,</i>	3
		4
(i)	<i>Water Sharing Plan for the Jiliby Jiliby Creek Water Source 2003,</i>	5
		6
(j)	<i>Water Sharing Plan for the Kangaroo River Water Source 2003,</i>	7
		8
(k)	<i>Water Sharing Plan for the Karuah River Water Source 2003,</i>	9
		10
(l)	<i>Water Sharing Plan for the Lachlan Regulated River Water Source 2003,</i>	11
		12
(m)	<i>Water Sharing Plan for the Macquarie and Cudgegong Regulated Rivers Water Source 2003,</i>	13
		14
(n)	<i>Water Sharing Plan for the Mandagery Creek Water Source 2003,</i>	15
		16
(o)	<i>Water Sharing Plan for the Murrumbidgee Regulated River Water Source 2003,</i>	17
		18
(p)	<i>Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2003,</i>	19
		20
(q)	<i>Water Sharing Plan for the Ourimbah Creek Water Source 2003,</i>	21
		22
(r)	<i>Water Sharing Plan for the Phillips Creek, Mooki River, Quirindi Creek and Warrah Creek Water Sources 2003,</i>	23
		24
(s)	<i>Water Sharing Plan for the Rocky Creek, Cobbadah, Upper Horton and Lower Horton Water Source 2003,</i>	25
		26
(t)	<i>Water Sharing Plan for the Tarcutta Creek Water Source 2003,</i>	27
		28
(u)	<i>Water Sharing Plan for the Tenterfield Creek Water Source 2003,</i>	29
		30
(v)	<i>Water Sharing Plan for the Toorumbie Creek Water Source 2003,</i>	31
		32
(w)	<i>Water Sharing Plan for the Upper Billabong Water Source 2003,</i>	33
		34
(x)	<i>Water Sharing Plan for the Upper Brunswick River Water Source 2003,</i>	35
		36
(y)	<i>Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003,</i>	37
		38

(z)	<i>Water Sharing Plan for the Wandella Creek Water Source 2003,</i>	1
		2
(aa)	<i>Water Sharing Plan for the Wybong Creek Water Source 2003.</i>	3
		4
7	Amendment of management plans relating to floodplain harvesting	5
		6
	Each management plan to which this Part applies (other than the Plan referred to in clause 6 (v)) is amended by inserting as the final clause (with appropriate numbering) in the Part titled "Amendment of this Plan" the following clause:	7
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	Amendment of Plan relating to floodplain harvesting	11
	The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:	12
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		15
	(a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the Plan, or	16
		17
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		19
	(b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the <i>Murray-Darling Basin Act 1992</i> .	20
		21
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8	Amendment of Water Sharing Plan for the Toorumbbee Creek Water Source 2003	26
		27
	The <i>Water Sharing Plan for the Toorumbbee Creek Water Source 2003</i> is amended by inserting as the final clause (with appropriate numbering) the following clause:	28
		29
		30
	Amendment of Plan relating to floodplain harvesting	31
	The Minister may amend this Plan so as to provide for the floodplain harvesting of water by amending the waters or water sources to which this Plan applies and by consequential amendments so long as the amendments:	32
		33
		34
		35
	(a) if the Plan has already taken into consideration floodplain harvesting extractions, do not affect the outcomes of the long-term extraction limit specified in the plan, or	36
		37
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	(b) if the Plan has not already taken into consideration floodplain harvesting extractions, do not allow more water being taken pursuant to access licences for floodplain harvesting than permitted under Schedule F to the Agreement within the meaning of the <i>Murray-Darling Basin Act 1992</i> .	1 2 3 4 5 6
[60]	Dictionary	7
	Omit “section 71L” from the definition of <i>access licence dealing principles</i> .	8
	Insert instead “section 71Z”.	9
[61]	Dictionary	10
	Insert in alphabetical order:	11
	<i>adaptive environmental water condition</i> means a condition imposed on an access licence of a type referred to in section 8 (1) (b).	12 13 14
[62]	Dictionary	15
	Omit “Land and Water Conservation” from the definition of <i>Department</i> .	16
	Insert instead “Natural Resources”.	17
[63]	Dictionary	18
	Insert after paragraph (d) of the definition of <i>general dealing</i> :	19
	(da) the grant of an access licence on an application under section 74,	20 21
[64]	Dictionary	22
	Insert after paragraph (c) of the definition of <i>Ministerial action</i> :	23
	(ca) the grant of an access licence under section 8C or the imposition, revocation or amendment of an adaptive environmental water condition under section 8B, 8C or 8D,	24 25 26 27

Schedule 2 Amendment of Water Management Act 2000 relating to irrigation corporations

(Section 3)

[1] Section 71ZA

Insert after section 71Z:

71ZA Removal of certain restrictions on dealings relating to irrigation corporations

- (1) This section applies only in respect of regulated river (high security) access licences and regulated river (general security) access licences held by an irrigation corporation, but does not apply to any subcategory of those categories of access licence.
- (2) The Minister may order an irrigation corporation to pay a civil penalty under this section if:
 - (a) any provision of its constitution, of any contract entered into by it with a member of the corporation or of any other document associated with the operation of the corporation (such as transfer rules of the corporation) prevents, or
 - (b) the irrigation corporation conducts its operations so as to prevent, arrangements being made for the reduction in the share component of an access licence held by it for the purpose of permanently transferring a member's entitlement to water under the access licence to another access licence that is not held by the irrigation corporation.
- (3) Subsection (2) does not apply to a provision referred to in subsection (2) (a), or to the conduct of the operations of an irrigation corporation in a manner, that prevents a transfer that would result in the share component of an access licence held by the irrigation corporation being reduced, in any period commencing on 1 July in any year and ending on 30 June (inclusive) in the following year, by an amount of more than 4% of the share component that applied to the access licence at the beginning of that period.
- (4) If an irrigation corporation holds more than one access licence to which this section applies, the percentage referred to in subsection (3) is to be calculated on the basis of the combined share component of all of those access licences held by the corporation.

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|------------|--|----------------------------|
| (5) | The regulations may alter the percentage of share component referred to in subsection (3). | 1
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| (6) | A regulation that increases the percentage of the share component applying under subsection (3) is to provide for the increase to take effect no earlier than 6 months after the regulation commences. | 3
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| (7) | The Minister may order a civil penalty to be paid under this section of an amount not exceeding \$500,000 and a further civil penalty of an amount not exceeding \$20,000 to be paid for each day that the circumstances giving rise to the initial civil penalty continue to exist. | 7
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| (8) | For the purpose of enabling compliance with subsection (2), an irrigation corporation may amend any water supply contract to which it is a party. | 12
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| (9) | Any amendment of a water supply contract under subsection (8) is to be notified by the irrigation corporation to the member of the corporation who is a party to the contract and is taken to have been accepted by the member when notification is served on the member. | 15
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| (10) | No claim, action or demand may be made, asserted or taken against an irrigation corporation for anything done by the corporation in accordance with this section. | 20
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| (11) | In this section, <i>water supply contract</i> means a contract entered into by an irrigation corporation with a member of the corporation relating to the supply of water to the member by the corporation. | 23
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26 |
| [2] | Section 368 Appeals to Land and Environment Court | 27 |
| | Insert after section 368 (1) (l): | 28 |
| | (la) a decision ordering an irrigation corporation to pay a civil penalty to the Minister, | 29
30 |

Schedule 3 Amendment of Protection of the Environment Operations (General)
Regulation 1998

Schedule 3	Amendment of Protection of the	1
	Environment Operations (General)	2
	Regulation 1998	3
	(Section 4)	4
Clause 56A		5
Insert after clause 56:		6
56A	Exemption from water pollution offence in relation to cold water releases	7
		8
	Section 120 of the Act does not apply to the release of water that	9
	is more than 2 degrees Celsius colder than the water into which it	10
	is discharged if the water is released from a water supply work	11
	pursuant to an approval under the <i>Water Management Act 2000</i>	12
	that contains one or more conditions relating to the work of a type	13
	specified in section 100 (3) of that Act.	14