

First print



New South Wales

Water Legislation Amendment Bill 1997

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Water Act 1912* so as:
 - (i) to provide for declaration of certain statutory bodies as water management authorities and the licensing of water management works operated by water management authorities so declared, and
 - (ii) to alter the existing 5 year limit on temporary transfers of water allocations on regulated river systems, and
 - (iii) to subject the taking of water from bores licensed under Part 5 of that Act to a similar regime to that which applies to the taking of water from works licensed under Part 2 of that Act, and
 - (b) to make minor, consequential and ancillary amendments to various other Acts.
-

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the amendments to the *Water Act 1912* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Schedule 1 Amendment of Water Act 1912

Water management authorities

Proposed Part 9 of the *Water Act 1912* (proposed sections 187–203 to be inserted by Schedule 1 [21]) enables the Governor, by proclamation, to declare any body to be a water management authority. The effect of the declaration will be to include the name of the body in Schedule 3 to that Act. Two such bodies, Sydney Water Corporation Limited and Hunter Water Corporation Limited, are to be included in Schedule 3 without the need for such a proclamation.

A water management authority will be required to be licensed (proposed section 195). A licence will have an initial life of up to 20 years, extendible every 5 years for a further 5 year period (proposed section 190). The licence will authorise the water management authority to take and use water from any water source and to construct and use water management works (proposed section 191). The licence will be subject to review at any time, but with mandatory reviews at the end of the first 6 months after the licence is granted and at the end of every 5 years thereafter (proposed section 193). The conduct of the review will involve the Water Administration Ministerial Corporation calling for public submissions concerning the activities of the water management authority over the previous 5 years. The results of the review will be used to determine what conditions need to be imposed on the water management authority's licence and whether it is appropriate to grant the water management authority a 5 year extension of its licence.

The Ministerial Corporation will be empowered to issue directions to a water management authority to ensure that it complies with the conditions of its licence (proposed section 192). Those directions may be enforced by the Land and Environment Court. The Ministerial Corporation will also be able to issue directions to a water management authority with respect to the taking

of preventive or remedial action and, where such action is not taken, to authorise any other person to take that action at the expense of the water management authority (proposed section 197). The Ministerial Corporation will have the power to impose a civil penalty of up to \$500,000, together with a daily penalty of up to \$20,000, on a water management authority that contravenes the conditions of its licence or failed to comply with a direction to take preventive or remedial action (proposed section 198).

An appeal will lie to the Land and Environment Court against decisions under the proposed Part that are made by the Ministerial Corporation with respect to a water management authority (proposed section 199).

Alteration of 5 year limit on temporary transfers of water allocations

Section 20AI of the *Water Act 1912* provides for the transfer of water allocations with respect to regulated river systems. Temporary transfers (that is, transfers for a period of up to 5 years) can be effected by a simpler procedure than transfers for a longer period. The calculation of the 5 year period is cumulative, taking account of previous transfers that have been approved. It is proposed to alter the 5 year limit in two ways.

Firstly, by allowing the 5 year period to be exceeded when an approved farm water management plan is in place. In determining whether to approve such a plan, in circumstances involving a significant increase in water consumption by the proposed transferee, the Ministerial Corporation will be required to seek, and have regard to, public submissions (proposed section 20AI (3A)–(3C) to be inserted by Schedule 1 [1]).

Secondly, by allowing certain transfers to be ignored when considering the cumulative effect of previous transfers. The transfers to be ignored are those that are merely intended to maintain the transferee's water consumption at the level to which the transferee would ordinarily be entitled in circumstances where that entitlement has been reduced under section 20Z of the Act in times of water shortage (proposed section 20AI (3D) to be inserted by Schedule 1 [1]).

Licensing regime under Part 5 for water bores

Schedule 1 [4]–[20] contains amendments that subject the licensing regime for the construction and use of bores under Part 5 of the Act to similar provisions to those to which the licensing regime for the construction and use

of works under Part 2 of the Act are subject. In particular, the amendments provide for the issue of an embargo on the granting of new licences (proposed section 113A), the imposition of limitations and conditions on licences from time to time (proposed section 116C), the reduction in water allocations in times of water shortage (proposed section 117E), the increase in water allocations in times of water surplus (proposed section 117F), the borrowing and carrying over of water allocations from year to year (proposed section 117G) and the transfer of water allocations (proposed section 117J). Other amendments of a minor, consequential or ancillary nature are also made.

Schedule 2 Amendment of other Acts

The other Acts that are proposed to be amended (Schedule 2) are as follows:

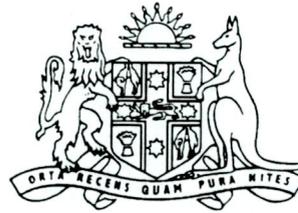
- *Hunter Water Board (Corporatisation) Act 1991 No 53*
- *Land and Environment Court Act 1979 No 204*
- *Rivers and Foreshores Improvement Act 1948 No 20*
- *Water Administration Act 1986 No 195*
- *Water Board (Corporatisation) Act 1994 No 88*
- *Water Supply Authorities Act 1987 No 140*

The amendments to the *Hunter Water Board (Corporatisation) Act 1991*, the *Water Board (Corporatisation) Act 1994* and the *Water Supply Authorities Act 1987* will repeal the power of Hunter Water Corporation Limited, Sydney Water Corporation Limited and water supply authorities under the *Water Supply Authorities Act 1987* to exercise the rights conferred on the Water Administration Ministerial Corporation with respect to the use and flow, and the control, of water.

The amendments to the *Rivers and Foreshores Improvement Act 1948* will require the Land and Environment Court to have regard to any relevant Government policies and rivers and foreshores management objectives when exercising its appeal functions under section 22L of that Act.

The amendments to the *Water Administration Act 1986* will require the Water Administration Ministerial Corporation to have regard to principles of ecologically sustainable development, and to other environmental concerns, in the exercise of its functions.

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New South Wales

Water Legislation Amendment Bill 1997

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New South Wales

Water Legislation Amendment Bill 1997

No. , 1997

A Bill for

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

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water Legislation Amendment Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Water Act 1912 No 44

The *Water Act 1912* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act referred to in Schedule 2 is amended as set out in that Schedule. 10

Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 20AI Application for transfer

Insert after section 20AI (3):

- (3A) Subsection (3) (c) does not apply in relation to an application referred to in subsection (2) if the Ministerial Corporation is satisfied that the water allocation to which the application relates will be used in accordance with a farm water management plan approved by the Ministerial Corporation. 5
10
- (3B) A farm water management plan must include details concerning the following matters:
- (a) existing and proposed recycling schemes,
 - (b) existing and proposed surface and sub-surface drainage patterns, 15
 - (c) existing and proposed irrigation and water reticulation patterns,
 - (d) any proposed removal of vegetation,
 - (e) current groundwater levels,
 - (f) current soil types, 20
 - (g) levels of water consumption and water usage patterns during the previous 5 year period,
 - (h) such other matters as the regulations require.
- (3C) Before approving a farm water management plan in relation to a proposed transfer that in its opinion involves a significant increase in water consumption by the transferee above the water allocation for the transferee's entitlement, the Ministerial Corporation: 25
- (a) must cause information as to where and when the plan may be inspected to be advertised in a newspaper circulating in the locality of the transferee, and 30

- (b) must give persons in that locality a reasonable opportunity to inspect the plan and to make written submissions to the Ministerial Corporation with respect to the plan, and
 - (c) must have regard to any submission that is duly made. 5
 - (3D) The reference in subsection (3) (c) to any other transfer or transfers does not include a reference to any other transfer that, because of a deemed reduction under section 20Z in the water allocation for the transferee's entitlement, has merely maintained the transferee's consumption of water at or below the level of the water allocation for that entitlement. 10
- [2] **Section 22D Sale of land pending transfer of water allocation**
- Omit "(or under Part 8 of the *Water (Part 2) Regulations*)" from section 22D (1). 15
Insert instead "(or under the regulations made under this Part)".
- [3] **Section 22D (1)**
- Omit "in accordance with Part 8 of" wherever occurring.
- [4] **Section 105 Definitions** 20
- Insert in alphabetical order:
- Licence* means a licence in force under this Part.
- Sub-surface water basin* means land overlying, as nearly as may be determined by known facts, a distinct body of sub-surface water. 25
- Water allocation*, in relation to a licence, means the volume of water to which the licensee of the bore is restricted by means of a condition of the licence referred to in section 115 or 116 or by means of a notice referred to in section 117A (3) (a). 30

[5] Section 113A

Insert after section 113:

113A Invalidation of applications for licences

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a *water shortage zone*) is unlikely to have more water available than is sufficient to meet: 5
- (a) the requirements of the licensees of the bores situated within the water shortage zone, and
 - (b) such other possible requirements from the water shortage zone as are determined by the Ministerial Corporation, 10
- it may, by order, place an embargo on any further applications for licences with respect to that zone.
- (2) Such an order may relate to: 15
- (a) a specified application for a licence, or
 - (b) a specified class of applications for licences, or
 - (c) all applications for licences, or
 - (d) all applications for licences, other than:
 - (i) a specified application for a licence, or 20
 - (ii) a specified class of applications for licences.
- (3) Notice of such an order must be published in:
- (a) the Gazette, and
 - (b) a newspaper circulating in the district in which the water shortage zone is situated. 25
- (4) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect.
- (5) An application to which such an order relates is invalid, and is to be rejected by the Ministerial Corporation, if it is made on or after the date specified in the notice published in relation to the order. 30

- (6) Subsection (5) does not apply to:
 - (a) an application for a renewal of a licence, or
 - (b) an application for a licence for a bore to replace some other licensed bore that the applicant has ceased to use, or 5
 - (c) an application for a licence for a bore to produce water to satisfy a water allocation arising from the transfer of a water allocation under section 117J.

- [6] **Section 115 Issue of licence**
Omit "terms," wherever occurring. 10

- [7] **Section 116 Granting of licence**
Number the first paragraph of the section as subsection (1) and the second paragraph of the section as subsection (2).

- [8] **Sections 116C and 116D**
Insert after section 116B: 15

- 116C Limitations and conditions**
 - (1) Limitations and conditions referred to in section 115 (1) or (2) or 116 (1) may be imposed on a licence at the time of, or from time to time after, the issue or grant of the licence. 20

 - (2) Before imposing a limitation or condition on a licence, the Ministerial Corporation:
 - (a) must cause written notice of its intention to impose such a limitation or condition to be served on the licensee or proposed licensee, and 25

 - (b) must give the licensee or proposed licensee a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the limitation or condition to be imposed, and 30

 - (c) must have regard to any submission that is duly made.

116D Authority conferred by licence

A licence authorises its holder:

- (a) to sink, enlarge, deepen or alter the bore in respect of which it is issued, and
- (b) to take and use any water obtained by means of the bore, 5

subject to the limitations and conditions of the licence and subject to the provisions of this Part.

- [9] Section 117A Declaration of restricted sub-surface water area**
Omit "notice" wherever occurring in section 117A (3). 10
Insert instead "order".
- [10] Section 117A (3) (a) (iv)**
Omit "for any industrial or manufacturing purpose whatsoever or for irrigation".
- [11] Section 117A (4)** 15
Omit the subsection.
- [12] Section 117B Charges**
Omit the definition of *sub-surface water basin* from section 117B (1).
- [13] Section 117C Penalty for use of bore when licence suspended** 20
Omit the section.
- [14] Section 117D Water meters**
Omit "within an area which is a prescribed area for the purposes of section 117B" from section 117D (1) (a) (i).

[15] Sections 117E–117K

Insert after section 117D:

117E Restriction or suspension of rights held under licences during periods of water shortage

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a *water shortage zone*) is unlikely to have more water available than is sufficient to meet:
- (a) the requirements of the licensees of bores situated within the water shortage zone, and
 - (b) such other possible requirements from the water shortage zone as are determined by the Ministerial Corporation,
- it may, by order, suspend or restrict the entitlement of licensees within that zone to take and use water obtained by such bores.
- (2) In particular, such an order may reduce a licensee's water allocation during the period for which the order is in force.
- (3) Such an order may relate to:
- (a) a specified bore, or
 - (b) a specified class of bores, or
 - (c) all bores, or
 - (d) all bores, other than:
 - (i) a specified bore, or
 - (ii) a specified class of bores.
- (4) Notice of such an order must be published in:
- (a) the Gazette, and
 - (b) a newspaper circulating in the district in which the water shortage zone is situated.
- (5) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect.

-
- (6) A person must not take or use water from a bore to which such an order relates contrary to the terms of the order.
Maximum penalty: 200 penalty units (in the case of a corporation) and 100 penalty units (in any other case). 5
- (7) In the case of a bore with respect to which there is a water allocation, the water allocation is taken to be reduced, during the period for which the order is in force, in accordance with the terms of the order.
- (8) Evidence that water has been taken from a bore is evidence that the water has been taken by the licensee of that bore. 10

117F Allocation of surplus

- (1) If the Ministerial Corporation is satisfied that the whole or any part of a sub-surface water basin (referred to in this section as a *water surplus zone*) is likely to have more water available than is sufficient to meet:
- (a) the requirements of the licensees of bores situated within the water surplus zone, and
 - (b) such other possible requirements from the water surplus zone as are determined by the Ministerial Corporation, 20
- it may, by order, increase the water allocation for any licensee in that zone for the period for which the order is in force. 25
- (2) Such an order may relate to:
- (a) a specified bore, or
 - (b) a specified class of bores, or
 - (c) all bores, or
 - (d) all bores, other than: 30
 - (i) a specified bore, or
 - (ii) a specified class of bores.

- (3) Notice of such an order must be published in:
 - (a) the Gazette, and
 - (b) a newspaper circulating in the district in which the water surplus zone is situated.
- (4) The notice must specify the date (being the date of publication in the Gazette or a later date) on and from which the order has effect. 5
- (5) The licensee's water allocation is taken to be increased, during the period for which the order is in force, in accordance with the terms of the order. 10

117G Borrowing and carrying over

- (1) The Ministerial Corporation may, at the written request of a licensee, vary the licensee's water allocations for the current year and the following year so as to allow the licensee:
 - (a) to use during the current year the whole or any part of the licensee's water allocation for the following year, or
 - (b) to use during the following year the whole or any part of the unused portion of the licensee's water allocation for the current year, 20and the licensee's water allocations for those years are taken to be varied accordingly.
- (2) The Ministerial Corporation may, at the request of a licensee, vary the licensee's water allocations for the current year and the previous year so as to allow the licensee to use during the current year the whole or any part of the unused portion of the licensee's water allocation for the previous year, and the licensee's water allocations for those years are taken to be varied accordingly. 25 30
- (3) In this section, *unused portion*, in relation to a water allocation, means such part of the water allocation as has not been used during the year to which it relates.

117H Cancellation and suspension of licences

- (1) The Ministerial Corporation may cancel or suspend a licence if it is satisfied that the licensee has failed to comply with:
- (a) any limitation or condition of the licence, or 5
 - (b) any requirement imposed by or under this Part, whether or not the licensee has been prosecuted or convicted for an offence arising out of that failure to comply.
- (2) Before taking any action under this section, the Ministerial Corporation: 10
- (a) must cause written notice of the proposed action to be given to the licensee, and
 - (b) must give the licensee a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the proposed action, and 15
 - (c) must have regard to any submission that is duly made.

117I Offences 20

Any person:

- (a) who alters a licensed bore (otherwise than to make repairs or alterations necessary for the maintenance of the bore), or
- (b) who takes or uses water from an unlicensed bore, or 25
- (c) who takes or uses water from a licensed bore while the licence is suspended, or
- (d) who takes or uses water from a licensed bore otherwise than in accordance with the conditions of the licence and the provisions of this Part, 30

is guilty of an offence.

Maximum penalty: 200 penalty units (in the case of a corporation) and 100 penalty units (in any other case).

117J Transfer of water allocations

- (1) This section applies only to such sub-surface water basins (or parts of sub-surface water basins) as the Ministerial Corporation has determined to be subject to this section. 5
- (2) The holder of a licence (the *transferor*) may, with the approval of the Ministerial Corporation, transfer the whole or part of the water allocation for the licence to any other person (the *transferee*), whether or not the transferee is the holder of another licence at the time the application for approval of the transfer is made. 10
- (3) Any such transfer:
 - (a) may be a temporary transfer for such period as may be determined by the Ministerial Corporation, after which time the transferred water allocation reverts to the transferor, or 15
 - (b) may be a permanent transfer, in which case the transferor's rights to take and use the water concerned are cancelled on completion of the transfer. 20
- (4) An application for the Ministerial Corporation's approval may be made by the transferor and transferee in the form approved by the Ministerial Corporation.
- (5) An application must be accompanied by the following:
 - (a) such application fee as is determined by the Ministerial Corporation either generally or in a particular case, and 25
 - (b) such information and consents as the Ministerial Corporation may require.
- (6) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer. 30
- (7) The Ministerial Corporation may, in relation to an application for a transfer:
 - (a) require the transferor to provide such information and consents, and 35
 - (b) require the transferee to provide such information and evidence,
as are specified by the Ministerial Corporation.

-
- (8) A requirement under subsection (7) may be complied with in any manner acceptable to the Ministerial Corporation, but the Ministerial Corporation may decline to proceed with consideration of the application until the requirement is complied with. 5
- (9) In determining whether or not to approve a transfer, the Ministerial Corporation may take into consideration such matters as it thinks fit, including its opinion as to the social and economic effect that the transfer would have if approved. 10
- (10) If the Ministerial Corporation approves the transfer, it may give effect to the transfer in any one or more of the following ways:
- (a) by making such adjustments with respect to the transferor's and transferee's water allocations as the Ministerial Corporation considers appropriate, 15
 - (b) if the whole of the transferor's water allocation is being transferred, by cancelling the transferor's licence,
 - (c) if the transferee does not hold a licence, by issuing a licence to the transferee in accordance with this Part and including the transferred water allocation in the conditions of the licence. 20
- (11) The Ministerial Corporation may, in approving a transfer under this section, impose such conditions in relation to the transfer as the Ministerial Corporation thinks fit to impose. 25
- 117K Sale of land pending transfer of water allocation**
- (1) This section applies to land in respect of which a transfer of water allocation under section 117J has been approved but has yet to take effect. 30
- (2) Despite section 117, the sale of land to which this section applies:
- (a) does not operate to pass the benefit of the water allocation being transferred to the purchaser of the land, and 35
 - (b) does not prevent the transfer taking effect.
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- [16] Section 118 Penalty for alterations of licensed bore or contravention of licence**
Omit the section.
- [17] Section 121A Unlawful obstruction of sub-surface water**
Omit "a direction" from section 121A (2). 5
Insert instead "an order".
- [18] Section 123 Waste of water**
Omit "direct" wherever occurring in section 123 (1).
Insert instead "order".
- [19] Section 123 (2)** 10
Omit "direction" wherever occurring. Insert instead "order".
- [20] Section 123 (2)**
Omit ", and in addition to the said penalty any licence issued under this Part in respect of such artesian well or bore may, by notice in the Gazette, be cancelled". 15
- [21] Part 9**
Insert after Part 8:
Part 9 Licensing of water management authorities
187 Definitions
(1) In this Part: 20
enforcement order means an order in force under section 192.

lake has the same meaning as it has in Part 2.

river has the same meaning as it has in Part 2.

sub-surface water has the same meaning as it has in Part 5.

sub-surface water basin has the same meaning as it has in Part 5. 5

water management authority means a person or body referred to in Schedule 3.

water management licence means a water management licence granted under this Part. 10

water management work means:

(a) a work within the meaning of Part 2, or

(b) a bore within the meaning of Part 5.

water source means a river, lake or sub-surface water basin. 15

(2) The Governor may by proclamation amend Schedule 3 so as:

(a) to add the corporate name of any body that is to become a water management authority for the purposes of this Part, or 20

(b) to vary the name of any water management authority as a consequence of any change in its corporate name.

188 Water management licence

(1) The Ministerial Corporation: 25

(a) on the application of a water management authority, and

(b) on payment of the appropriate licence fee,

may grant to the water management authority a water management licence. 30

- (2) The appropriate licence fee is to be determined by the Minister, having regard to the costs incurred by the Ministerial Corporation in dealing with the application for the licence.
- (3) Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to or in respect of the first water management licence granted to a water management authority under this section. 5

189 Conditions of water management licence

- (1) A water management licence is subject to: 10
 - (a) the conditions imposed on the water management licence from time to time by or under this Act, and
 - (b) such other conditions as are imposed on the water management licence from time to time by the Ministerial Corporation. 15
- (2) In determining the conditions to be imposed on a water management licence, the Ministerial Corporation must have regard to any review that it has conducted under section 193.
- (3) Before imposing any condition on a water management authority's water management licence, the Ministerial Corporation: 20
 - (a) must cause written notice of its intention to impose the condition to be given to the water management authority, and 25
 - (b) must give the water management authority a reasonable opportunity to make written submissions to the Ministerial Corporation in relation to the proposed condition, and
 - (c) must have regard to any submission that is duly made. 30

190 Duration of water management licence

- (1) A water management licence has effect for:
 - (a) such period (not exceeding 20 years) as is specified in the licence, or 35

-
- (b) if that period is extended under this section, for that extended period.
- (2) At the end of each 5 year period following the date on which its current water management licence was granted, a water management authority may apply to the Ministerial Corporation for an extension of the period of the licence for a further 5 years. 5
- (3) In determining whether or not to grant such an extension, the Ministerial Corporation must have regard to the review that it has conducted under section 193 in relation to that 5 year period. 10

191 Effect of water management licence

A water management licence authorises its holder:

- (a) to take and use water from any water source, and
- (b) to construct or use a water management work, 15
- subject to the conditions of the licence and the provisions of this Part.

192 Enforcement order

- (1) For the purpose of ensuring that a water management authority complies with the conditions of its water management licence, the Ministerial Corporation may from time to time give a written order (an *enforcement order*) directing the authority to do, or to cease doing, such things as are specified in the order. 20
- (2) On the application of the Ministerial Corporation, the Land and Environment Court may direct a water management authority to comply with an enforcement order. 25

193 Review of water management licence

- (1) The activities of a licensed water management authority: 30
- (a) may be reviewed at any time, and

- (b) must be reviewed:
 - (i) before the end of the 6 month period following the date on which its first water management licence was granted, and
 - (ii) before the end of each 5 year period following the date on which its current water management licence was granted. 5
- (2) For the purpose of conducting such a review, the Ministerial Corporation must cause notice to be published: 10
 - (a) in the Gazette, and
 - (b) in a newspaper circulating throughout New South Wales,

inviting written submissions from interested persons in relation to the activities of the holder of the licence during the period under review. 15

194 Water management charges

- (1) A water management authority is liable to pay water management charges to the Ministerial Corporation.
- (2) The charges so payable are to be fixed by the Ministerial Corporation, having regard to the Ministerial Corporation's costs in relation to: 20
 - (a) its conduct of reviews under section 193, and
 - (b) its administration of this Act with respect to the water management authority, and 25
 - (c) its monitoring of the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the work and activities of the water management authority, and
 - (d) its exercise of any other water resource management function with respect to the water management authority. 30

195 Offences with respect to water management licences

- (1) A water management authority that uses a water management work that is not the subject of a water management licence is guilty of an offence.

Maximum penalty: 200 penalty units. 5

- (2) A water management authority does not commit an offence under this section with respect to anything authorised by or under Part 2 or 5.

196 Evidence

A certificate that is issued by the Director-General of the Department of Land and Water Conservation and that states that, on a date or during a period specified in the certificate: 10

(a) a specified water management licence was or was not in force, or 15

(b) a specified water management licence was or was not subject to specified conditions, or

(c) a specified water management work was or was not the subject of a specified water management licence, 20

is admissible in any legal proceedings and is evidence of the fact or facts so stated.

197 Directions for remedial work

- (1) The Ministerial Corporation may, by order in writing, direct a water management authority to take such action as is specified in the order: 25

(a) to protect a water source from any adverse effects of the authority's activities, or

(b) to mitigate any adverse effects on a water source that have arisen from the authority's activities, or 30

(c) to prevent the wastage or pollution of water from the authority's water management works.

- (2) If the water management authority fails to take any action so directed, the Ministerial Corporation may authorise any other person to take that action on behalf of the Ministerial Corporation.
- (3) A person so authorised has and may exercise such of the functions of the water management authority as are necessary to enable the person to take that action. 5
- (4) The amount of any costs and expenses incurred by the Ministerial Corporation as a result of action taken as referred to in subsection (2) is recoverable in a court of competent jurisdiction as a debt due to the Ministerial Corporation from the water management authority. 10

198 Civil penalties

- (1) If satisfied that a water management authority:
 - (a) has contravened the conditions of its water management licence, or 15
 - (b) has failed to comply with an order under section 197,

the Ministerial Corporation may order the authority to pay to the Ministerial Corporation a penalty not exceeding \$500,000 and, in the case of a continuing offence, a further penalty not exceeding \$20,000 for each day for which the contravention continues. 20
- (2) Before making an order under this section, the Ministerial Corporation: 25
 - (a) must cause written notice of its intention to make the order to be given to the water management authority, and
 - (b) must give the water management authority a reasonable opportunity to make written submissions to the Ministerial Corporation in relation to the proposed order, and 30
 - (c) must have regard to any submission that is duly made.

199 Appeals

- (1) A water management authority may appeal to the Land and Environment Court against the following decisions:
- (a) a decision under section 188 refusing to grant a water management licence, 5
 - (b) a decision under section 189 imposing a condition on a water management licence,
 - (c) a decision under section 190 refusing to extend the term of a water management licence,
 - (d) a decision under section 192 to give an enforcement order to the water management authority, 10
 - (e) a decision under section 198 to make an order requiring the water management authority to pay a penalty. 15
- (2) The lodging of an appeal does not operate to stay action on the decision appealed against, except to the extent to which the Land and Environment Court otherwise directs.

200 Compensation for loss of certain water rights 20

- (1) This section applies to any holder of a licence under Part 2 where, as a result of a water management authority's failure to comply with a direction under section 192 (2), water that would otherwise be available to the licensee becomes unavailable. 25
- (2) A person to whom this section applies may recover from the water management authority the amount of any loss or damage suffered by the person as a result of the water management authority's failure to comply with the enforcement order. 30
- (3) An action under this section may be commenced at any time within 3 years after the date on which the failure to comply with the enforcement order occurred and may not be commenced after that period.

201 Regulations

The Governor may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part. 5

202 Part to bind Crown

This Part binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. 10

203 Exclusion of certain matters

This Part does not apply to or in respect of:

- (a) the taking or using of water from any water source within the Snowy water catchment (within the meaning of the *Snowy Hydro Corporatisation Act 1997*), or 15
- (b) the construction or use of any water management work within that catchment.

[22] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1): 20

Water Legislation Amendment Act 1997

[23] Schedule 2

Insert after Part 3:

Part 4 Provisions consequent on enactment of Water Legislation Amendment Act 1997 25

7 Definitions

In this Part, *amending Act* means the *Water Legislation Amendment Act 1997*.

8 Application of Part 2 amendments to existing applications

An amendment to section 20AI made by the amending Act applies to applications made under that section before the commencement of the amendment in the same way as it applies to applications made under that section after that commencement. 5

9 Application of Part 5 amendments to existing licences

An amendment to Part 5 made by the amending Act applies to licences issued under that Part before the commencement of the amendment in the same way as it applies to licences issued under that Part after that commencement. 10

10 Existing notices and directions taken to be orders

- (1) Any notice that was in force under section 117A immediately before the commencement of Schedule 1 [9] to the amending Act is taken to be an order under that section. 15
- (2) Any direction that was in force under section 121A immediately before the commencement of Schedule 1 [17] to the amending Act is taken to be an order under that section. 20
- (3) Any direction that was in force under section 123 immediately before the commencement of Schedule 1 [18] to the amending Act is taken to be an order under that section. 25

11 Part 9 licences for Sydney and Hunter Water Corporations

- (1) On the commencement of this clause, an application is taken to have been made by Sydney Water Corporation Limited for the grant of a water management licence under Part 9 for all water management works owned or operated by it immediately before that commencement. 30

Water Legislation Amendment Bill 1997

Schedule 1 Amendment of Water Act 1912

- (2) On the commencement of this clause, an application is taken to have been made by Hunter Water Corporation Limited for the grant of a water management licence under Part 9 for all water management works owned or operated by it immediately before that commencement. 5
- (3) Part 9 applies to an application that is taken to have been made, as referred to in subclauses (1) and (2), in the same way as it applies to an application referred to in section 188.

[24] Schedule 3 10

Insert after Schedule 2:

Schedule 3 Water management authorities

(Section 187)

Sydney Water Corporation Limited

Hunter Water Corporation Limited 15

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Hunter Water Board (Corporatisation) Act 1991 No 53

Section 12 Grant of operating licence

Omit section 12 (2) and (3). Insert instead:

5

- (2) Except to the extent to which this Act expressly provides, nothing in an operating licence limits the requirements imposed by or under any other Act or law with respect to the provision, construction, operation, management or maintenance of any system or service referred to in subsection (1).

10

2.2 Land and Environment Court Act 1979 No 204

Section 19 Class 3—land tenure, valuation, rating and compensation matters

Insert after section 19 (e):

15

- (e1) appeals under section 199 of the *Water Act 1912*,

2.3 Rivers and Foreshores Improvement Act 1948 No 20

[1] Section 22C Grant etc of permit

Insert after section 22C (4):

- (5) The conditions subject to which a permit is granted under this section may include conditions relating to the protection of the environment.

20

[2] Section 22L Appeal to Land and Environment Court

Insert after section 22L (2):

- (3) The Land and Environment Court is required, in carrying out its appeal functions under this section and in making any determination with respect to any such appeal, to take into account, and to have due regard to, the following matters: 5
 - (a) any relevant policy that concerns the subject-matter of the appeal and that is brought to the attention of the Court, 10
 - (b) any State-wide rivers and foreshores management objectives that are brought to the attention of the Court.

- (4) In this section, *relevant policy* means any governmental policy relating to the management, protection and enhancement of the State's rivers and foreshores. The Minister may certify, in writing, that a particular policy is, or was, a relevant policy in relation to a particular matter. The certificate is evidence of the relevant policy concerned. 15
20

2.4 Water Administration Act 1986 No 195

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

principles of ecologically sustainable development means the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*. 25

[2] Section 11 Functions of the Ministerial Corporation

Insert after section 11 (1):

- (1A) In exercising its functions under this or any other Act or law, the Ministerial Corporation must have regard to the following matters: 5
- (a) the principles of ecologically sustainable development,
 - (b) the need to encourage and support sustainable water use practices,
 - (c) the need to integrate the management of water resources with the management of other natural resources, 10
 - (d) the need to encourage co-operation between Government and the community in the management of water and other natural resources, 15
 - (e) the need to develop and implement integrated State, catchment area and sub-catchment area approaches to the management of water and other natural resources,
 - (f) the need to consider the cumulative impact of its decisions on water and water systems and related natural resources. 20

2.5 Water Board (Corporatisation) Act 1994 No 88

Section 12 Grant of operating licences

Omit section 12 (3)–(6). Insert instead: 25

- (3) Except to the extent to which this Act expressly provides, nothing in an operating licence limits the requirements imposed by or under any other Act or law with respect to the provision, construction, operation, management or maintenance of any system or service referred to in subsection (1). 30

Water Legislation Amendment Bill 1997

Schedule 2 Amendment of other Acts

2.6 Water Supply Authorities Act 1987 No 140

Section 11 Exercise of right of Ministerial Corporation

Omit the section.