

Sydney Water Amendment (Water Restrictions) Bill 2003

Explanatory note

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

Overview of Bill

Under clause 17 of the *Sydney Water Regulation 2000*, the Minister may, by notice, impose restrictions on the use of water in the Sydney Water Corporation's area of operations. It is an offence under that clause for a person to use water contrary to such a notice (**a water restriction offence**).

The object of this Bill is to facilitate the enforcement of water restriction offences:

(a) by providing that each person who is an owner or occupier of land on which a water restriction offence occurs is taken to have committed the offence if the identity of the actual offender cannot be ascertained at the relevant time, and

(b) by empowering persons who are authorised to issue penalty notices for water restriction offences to enter land for the purposes of investigating suspected offences.

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 that gives effect to the amendments to the *Sydney Water Act 1994* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Land and Environment Court Act 1979* and the *Sydney Water Regulation 2000* set out in Schedule 2.

Schedule 1 Amendment of Sydney Water Act 1994

Schedule 1 [1] increases the maximum penalty for an offence against section 48 of the Act (which essentially deals with the theft of water) from 100 penalty units (or 200 penalty units in the case of a corporation) to 200 penalty units (or 400 penalty units in the case of a corporation).

Schedule 1 [3] provides that proceedings for offences against the Act and the regulations are to be disposed of summarily before the Land and Environment Court instead of the Supreme Court. **Schedule 1 [2]** is an amendment by way of statute law revision.

Schedule 1 [4] inserts a new Division 6A into Part 6 of the Act that deals with the enforcement of water restriction offences and related matters. Under proposed section 53B, if a water restriction offence occurs on any land but the identity of the person who committed the offence cannot be ascertained by the authorised person who witnessed the offence, each person who was an owner or occupier of the land at the relevant time is taken to be guilty of the offence. Exceptions are provided to the presumption of liability that is created under proposed section 53B. For example, a person who was an owner of the land on which the offence occurs will not be liable if the person provides a statutory declaration stating the name and address of the person who committed the offence or who was an occupier of the land at the relevant time. Similarly, an occupier will not be liable if the occupier provides the name and address of the person who committed the offence.

Proposed section 53D empowers an authorised person to enter any land if the authorised person suspects that a water restriction offence is being committed on the land. An authorised person is not authorised to enter any dwelling or other

enclosed structure on the land or to use any force to enter land.

Proposed section 53A contains definitions for the purposes of the new Division and proposed section 53C deals with evidentiary matters.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends the *Land and Environment Court Act 1979* to confer jurisdiction on the Land and Environment Court to hear and dispose of offences against the *Sydney Water Act 1994* and the regulations under that Act.

Schedule 2.2 [1] and [3] amend the *Sydney Water Regulation 2000* to provide that an offence against section 48 of the *Sydney Water Act 1994* may be dealt with by way of a penalty notice issued under section 50 of that Act. Water restriction offences are already prescribed as penalty notice offences.

Schedule 2.2 [2] deletes a provision as a consequence of the repeal of the *Justices Act 1902*.