WATER (AMENDMENT) ACT 1988 No. 108

NEW SOUTH WALES

TABLE OF PROVISIONS

81202-41926 (8)

WATER (AMENDMENT) ACT 1988 No. 108

NEW SOUTH WALES

Act No. 108, 1988

An Act to amend the Water Act 1912 to apply volumetric water allocations schemes to certain trusts; to impose charges for water taken by certain trusts; and for other purposes. [Assented to 21 December 1988]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Water (Amendment) Act 1988.

Commencement

2. This Act commences on the date of assent to this Act.

Amendment of Water Act 1912 No. 44

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 4H—

After section 4G, insert:

Savings and transitional provisions

4H. Schedule 2 has effect.

(2) Section 20V (**Definitions**)—

(a) Section 20V (1)—

Omit the definition of "entitlement", insert instead:

"entitlement" means—

(a) a licence, permit, authority or group licence; or

(b) in relation to a trust, the right to take and use water conferred on the trust by section 38B;

(b) Section 20V (1)—

After the definition of "scheme", insert:

"trust" means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this Division applies;

(c) Section 20V (2)—

Omit the subsection, insert instead:

(2) A reference in this Division to the holder of an entitlement includes—

(a) if the entitlement is an authority, a reference to each of the holders of the authority; and

(b) if the entitlement is the right of a trust to take and use water, a reference to the trust.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 22C (**Flow of water assured by a work of the Crown**)—

(a) Section 22C (1), (1A)—

Omit section 22C (1), insert instead:

(1) In this section—

"entitlement" means—

(a) a licence, permit, authority or group licence; or

(b) in relation to a trust, the right to take and use water conferred on the trust by section 38B;

"trust" means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this section applies.

(1A) In this section—

(a) a reference to a work of the Crown includes a reference to a work vested in or controlled by the Dumaresq-Barwon Border Rivers Commission; and

(b) a reference to the holder of an entitlement includes—

(i) if the entitlement is an authority, a reference to each of the holders of the authority; and

(ii) if the entitlement is the right of a trust to take and use water, a reference to the trust.

(b) Section 22C (3)—

(i) Omit "any licence, group licence, permit or authority", insert instead "an entitlement".

(ii) Omit "a licence, group licence or permit or, as the case may be, the holders of the authority", insert instead "the entitlement".

(iii) Omit "payable for the licence, group licence, permit or authority", insert instead "(if any) payable for the entitlement".

(c) Section 22C (4) (a1), (d), (e)—

Omit "licence, group licence, permit or authority" wherever occurring, insert instead "entitlement".

(d) Section 22C (4) (b)—

After "a rate", insert "which may vary according to the nature of the entitlement but is".

(e) Section 22C (5)—

Omit "licence, group licence, permit and authority", insert instead "entitlement".

SCHEDULE 1—AMENDMENTS—*continued*

(f) Section 22C (6) (a)—

Omit "licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority", insert instead "entitlement (including, in relation to a group licence, each of the group licence occupiers)".

(g) Section 22C (6A) (b), (c)—

Omit "licence, group licence, permit or authority" wherever occurring, insert instead "entitlement".

(h) Section 22C (7)—

(i) Omit "licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority", insert instead "entitlement (including, in relation to a group licence, any 1 or more of the group licence occupiers)".

(ii) Omit "licence, group licence, permit or authority", insert instead "entitlement".

(i) Section 22C (9)—

(i) Omit "a licence, group licence or permit fails or, as the case may be, the holders of an authority fail", insert instead "an entitlement (not being the right of a trust to take and use water) fails".

(ii) Omit "licence, group licence, permit or authority", insert instead "entitlement".

(4) Section 28 (**Definitions**)—

(a) Before the definition of "Murray Basin", insert:

"Member", in relation to a trust, means a trustee or a ratepayer.

(b) Omit the definition of "Trustee", insert instead:

"Trustee", in relation to a trust, means a trustee appointed or elected under Division 4.

(5) Section 32 (**Contents of proposals**)—

Section 32 (g)—

Omit ", if any,", insert instead "(if any) levied under this Part".

(6) Section 38B—

After section 38A, insert:

Right of trust to take and use water

38B. Subject to Division 4B of Part 2 and to section 22C, a trust may—

(a) for the purposes for which it is constituted; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) for any other purpose authorised by this Act in respect of the trust,

take and use water conserved or obtained by works administered and managed by the trust under this Part.

(7) Section 54 (**Power of trustees to enter and inspect**)—

(a) Section 54 (4)—

Omit "Commission", insert instead "Ministerial Corporation (otherwise than under Division 4B of Part 2)".

(b) Section 54 (4)—

Omit "as provided in this Act".

(8) Section 64A (**Reduction or discontinuance of supply of water**)—

Section 64A (1A)—

Before section 64 (1), insert:

(1A) Subsection (1) does not apply to a trust to which Division 4B of Part 2 applies.

(9) Sections 70A, 70B—

After section 70, insert:

Trusts not to exceed water allocation

70A. (1) If a trust exceeds its water allocation under Division 4B of Part 2, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source subject to the volumetric water allocations scheme concerned.

(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

Direction to trust to pay certain charges

70B. (1) If a trust fails to pay a charge payable under section 22C, or fails to pay such a charge in accordance with the requirements of that section, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source concerned until the charge is duly paid.

(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

SCHEDULE 1—AMENDMENTS—*continued*

(10) Schedule 2—

After Schedule 1, insert:

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4H)

PART 1—PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Act:

Water (Amendment) Act 1988.

(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE WATER (AMENDMENT) ACT 1988

Definitions

2. In this Part—

"scheme", "trust", "water allocation" and "year" have the same meanings as they have in Division 4B of Part 2.

Effect of existing schemes on trusts

3. Where, pursuant to Division 4B of Part 2, a trust becomes subject to a scheme otherwise than at the beginning of a year, the water allocation for the trust shall be taken to be reduced by such proportion as the part of the year that has elapsed bears to the whole of the year.

[*Minister's second reading speech made in—*
Legislative Assembly on 29 November 1988
Legislative Council on 14 December 1988]

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1989

FIRST PRINT

WATER (AMENDMENT) BILL 1988

NEW SOUTH WALES

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

Division 4B of Part 2 of the Water Act 1912 provides for schemes (known as volumetric water allocations schemes) which control the maximum amount of water that may be taken from a water source by the holder of an entitlement such as a licence, permit or authority. Part 3 of that Act provides for the constitution of trusts to administer and manage works of water conservation, water supply and irrigation and certain other works.

The object of this Bill is to amend the Water Act 1912—

(a) to apply volumetric water allocations schemes to certain trusts; and

(b) to enable certain trusts to be charged for the water taken by them; and

(c) to provide for offences relating to the taking of water in excess of a trust's water allocation or when certain water charges have not been paid.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Volumetric water allocations schemes to apply to certain trusts

Schedule 1 (2) amends section 20v (definitions) of the Water Act 1912 by extending the definition of "entitlement" to mean, in relation to a trust, the right conferred on the trust to take and use water. "Trust" is to be defined by that section to mean a trust constituted under Part 3 of the Act that is declared by the regulations to be a trust to which Division 4B of Part 2 of the Act (which deals with volumetric water allocations schemes) is to apply. Under that Division, it is a condition of an entitlement that no more than the maximum quantity of water allocated to the entitlement under a scheme may be taken from a water source (such as a river or lake) in any year.

81115-41013[1027] 395— (12)

By enabling a volumetric water allocations scheme to apply to such a trust, the Water Administration Ministerial Corporation will assume managerial control over the quantities and timing of water taken by a trust from a regulated water source in the same way as it can now control water taken under the authority of a licence or other entitlement.

Schedule 1 (6) inserts section 38B (right of trust to take and use water) which makes it clear that a trust is entitled to take and use water for the purposes for which the trust is constituted or for other authorised purposes.

Schedule 1 (7) and (8) make consequential amendments which exclude the operation of certain powers of the Ministerial Corporation (relating to the reduction or discontinuance of the supply of water) in respect of a trust to which a volumetric water allocations scheme applies. Those powers remain in respect of a trust which is not subject to such a scheme.

Charges for right to take and use water

Schedule 1 (3) amends section 22C (flow of water assured by a work of the Crown) to enable a trust that is declared by the regulations to be a trust to which that section applies to be charged for the right to take and use water from a river or lake in respect of which a proclamation under that section is in force. These charges generally apply to water taken from a river that is regulated by a work of the Crown (such as a major dam). The amended section will contain definitions of "entitlement" and "trust" similar to those inserted in section 20V and will so enable a trust to be charged in the same way as a holder of a licence, permit, authority or group licence is charged under section 22C. Schedule 1 (3) also makes a number of amendments consequential on the insertion of the definition of "entitlement" and enables differential charges under section 22C to be calculated according to the nature of the entitlement.

Schedule 1 (5) consequentially amends section 32 (contents of proposals) to make it clear that charges payable by a trust under Part 3 are different from charges payable by a trust under section 22C.

Sanctions relating to schemes and charges

Schedule 1 (9) inserts sections 70A (trusts not to exceed water allocation) and 70B (direction to trust to pay certain charges). Proposed section 70A provides that if a trust exceeds its water allocation, the Ministerial Corporation may direct certain persons who benefit from the works of the trust not to take any more water from the water source. If any such person takes water contrary to the direction, the person is liable to a penalty not exceeding 100 penalty units ($10,000).

Proposed section 70B provides that if a trust fails to pay a charge payable under section 22C (or fails to pay in accordance with the requirements of that section, such as within the prescribed period), the Ministerial Corporation may direct certain persons who benefit from the works of the trust not to take any more water from the river or lake until the charge is paid. If any such person takes water contrary to the direction, the person is liable to a penalty not exceeding 100 penalty units ($10,000).

Schedule 1 (4) inserts a definition of "member" in section 28 (definitions) and substitutes the definition of "trustee" in that section.

Savings and transitional provisions

Schedule 1 (1) inserts section 4H which gives effect to the Schedule containing savings and transitional provisions.

Schedule 1 (10) inserts Schedule 2 which contains savings and transitional provisions. Part 1 enables savings and transitional regulations to be made. Part 2 of the Schedule contains provisions consequent on the enactment of the proposed Act, in particular clause 3 which enables the water allocation for a trust to be reduced if the trust becomes subject to a volumetric water allocations scheme otherwise than at the beginning of an allocations year.

WATER (AMENDMENT) BILL 1988

NEW SOUTH WALES

TABLE OF PROVISIONS

81115-41013[1027] 395— (12)

WATER (AMENDMENT) BILL 1988

NEW SOUTH WALES

No. , 1988

A BILL FOR

An Act to amend the Water Act 1912 to apply volumetric water allocations schemes to certain trusts; to impose charges for water taken by certain trusts; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Water (Amendment) Act 1988.

Commencement

5 **2.** This Act commences on the date of assent to this Act.

Amendment of Water Act 1912 No. 44

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

10 (1) Section 4H—

After section 4G, insert:

Savings and transitional provisions

4H. Schedule 2 has effect.

(2) Section 20V (**Definitions**)—

15 (a) Section 20V (1)—

Omit the definition of "entitlement", insert instead:

"entitlement" means—

(a) a licence, permit, authority or group licence; or

(b) in relation to a trust, the right to take and use water
20 conferred on the trust by section 38B;

(b) Section 20V (1)—

After the definition of "scheme", insert:

"trust" means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this Division applies;

25 (c) Section 20V (2)—

Omit the subsection, insert instead:

(2) A reference in this Division to the holder of an entitlement includes—

(a) if the entitlement is an authority, a reference to each of
30 the holders of the authority; and

(b) if the entitlement is the right of a trust to take and use water, a reference to the trust.

SCHEDULE 1—AMENDMENTS—*continued*

(3) Section 22C **(Flow of water assured by a work of the Crown)**—

(a) Section 22C (1), (1A)—

Omit section 22C (1), insert instead:

(1) In this section—

"entitlement" means—

(a) a licence, permit, authority or group licence; or

(b) in relation to a trust, the right to take and use water conferred on the trust by section 38B;

"trust" means a trust constituted under Part 3 that is declared by the regulations to be a trust to which this section applies.

(1A) In this section—

(a) a reference to a work of the Crown includes a reference to a work vested in or controlled by the Dumaresq-Barwon Border Rivers Commission; and

(b) a reference to the holder of an entitlement includes—

(i) if the entitlement is an authority, a reference to each of the holders of the authority; and

(ii) if the entitlement is the right of a trust to take and use water, a reference to the trust.

(b) Section 22C (3)—

(i) Omit "any licence, group licence, permit or authority", insert instead "an entitlement".

(ii) Omit "a licence, group licence or permit or, as the case may be, the holders of the authority", insert instead "the entitlement".

(iii) Omit "payable for the licence, group licence, permit or authority", insert instead "(if any) payable for the entitlement".

(c) Section 22C (4) (a1), (d), (e)—

Omit "licence, group licence, permit or authority" wherever occurring, insert instead "entitlement".

(d) Section 22C (4) (b)—

After "a rate", insert "which may vary according to the nature of the entitlement but is".

(e) Section 22C (5)—

Omit "licence, group licence, permit and authority", insert instead "entitlement".

SCHEDULE 1—AMENDMENTS—*continued*

(f) Section 22C (6) (a)—

Omit "licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority", insert instead "entitlement (including, in relation to a group licence, each of the group licence occupiers)".

(g) Section 22C (6A) (b), (c)—

Omit "licence, group licence, permit or authority" wherever occurring, insert instead "entitlement".

(h) Section 22C (7)—

(i) Omit "licence, the group licence occupiers, the holder of the permit or, as the case may be, the holders of the authority", insert instead "entitlement (including, in relation to a group licence, any 1 or more of the group licence occupiers)".

(ii) Omit "licence, group licence, permit or authority", insert instead "entitlement".

(i) Section 22C (9)—

(i) Omit "a licence, group licence or permit fails or, as the case may be, the holders of an authority fail", insert instead "an entitlement (not being the right of a trust to take and use water) fails".

(ii) Omit "licence, group licence, permit or authority", insert instead "entitlement".

(4) Section 28 (**Definitions**)—

(a) Before the definition of "Murray Basin", insert:

"Member", in relation to a trust, means a trustee or a ratepayer.

(b) Omit the definition of "Trustee", insert instead:

"Trustee", in relation to a trust, means a trustee appointed or elected under Division 4.

(5) Section 32 (**Contents of proposals**)—

Section 32 (g)—

Omit ", if any,", insert instead "(if any) levied under this Part".

(6) Section 38B—

After section 38A, insert:

Right of trust to take and use water

38B. Subject to Division 4B of Part 2 and to section 22C, a trust may—

(a) for the purposes for which it is constituted; and

(b) for any other purpose authorised by this Act in respect of the trust,

take and use water conserved or obtained by works administered and managed by the trust under this Part.

(7) Section 54 **(Power of trustees to enter and inspect)**—

(a) Section 54 (4)—

Omit "Commission", insert instead "Ministerial Corporation (otherwise than under Division 4B of Part 2)".

(b) Section 54 (4)—

Omit "as provided in this Act".

(8) Section 64A **(Reduction or discontinuance of supply of water)**—

Section 64A (1A)—

Before section 64 (1), insert:

(1A) Subsection (1) does not apply to a trust to which Division 4B of Part 2 applies.

(9) Sections 70A, 70B—

After section 70, insert:

Trusts not to exceed water allocation

70A. (1) If a trust exceeds its water allocation under Division 4B of Part 2, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source subject to the volumetric water allocations scheme concerned.

(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

Direction to trust to pay certain charges

70B. (1) If a trust fails to pay a charge payable under section 22C, or fails to pay such a charge in accordance with the requirements of that section, the Ministerial Corporation may, by notice in writing served on each of the members of the trust, direct the members not to take any more water from the water source concerned until the charge is duly paid.

(2) If a member on whom such a notice has been served takes water contrary to the direction contained in the notice, the member is guilty of an offence and liable to a penalty not exceeding 100 penalty units.

SCHEDULE 1—AMENDMENTS—*continued*

(10) Schedule 2—

After Schedule 1, insert:

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 4H)

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PART 1—PRELIMINARY

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Act:

Water (Amendment) Act 1988.

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(2) Any such provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or on a later date.

(3) To the extent to which any such provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT OF THE WATER (AMENDMENT) ACT 1988

Definitions

2. In this Part—

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"scheme", "trust", "water allocation" and "year" have the same meanings as they have in Division 4B of Part 2.

Effect of existing schemes on trusts

3. Where, pursuant to Division 4B of Part 2, a trust becomes subject to a scheme otherwise than at the beginning of a year, the water allocation for the trust shall be taken to be reduced by such proportion as the part of the year that has elapsed bears to the whole of the year.

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BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1988