

FIRST PRINT

## WATER BOARD (AMENDMENT) BILL 1991

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Water Board Act 1987 so as:

- (a) to remove any doubt as to the capacity of the Water Board to contract out its functions to private contractors; and
- (b) to remove any doubt as to the capacity of the Water Board to give security for the performance of obligations arising under any such contract; and
- (c) to ensure that any contract for the construction, maintenance and operation of water, sewerage or drainage works within the Water Board's area of operations may be entered into only with the approval of the Minister; and
- (d) to facilitate the construction, maintenance and operation of water, sewerage and drainage works by private contractors to whom those functions have been contracted out; and
- (e) to ensure that land may be compulsorily acquired under the Act for the purpose of its being transferred to private contractors to facilitate the construction, maintenance or operation of water, sewerage and drainage works or the making of ancillary financial arrangements.

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Clause 1 specifies 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 gives effect to the Schedule of amendments.

### SCHEDULE 1—AMENDMENTS

The power of the Water Board to enter into contracts generally is dealt with in section 12 of the Act. Schedule 1 (1) (c) amends the section so as to enable the Board to enter other arrangements. Schedule 1 (1) (d) amends the section so as to ensure that the Board has the power to enter into contracts and other arrangements for the exercise of

*Water Board (Amendment) 1991*

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the Board's functions or for the securing of obligations arising under such contracts and arrangements. Schedule 1 (1) (f) amends the section so as to prevent the Board from entering into contracts for the construction, maintenance and operation of water, sewerage or drainage works except with the approval of the Minister. The other amendments made to section 12 by Schedule 1 (1) (a), (b) and (e) are for the purpose merely of clarifying the scope of the Board's functions generally.

The capacity of the Water Board to contract out its functions is fettered by section 13 of the Act which prohibits the exercise of the Board's functions within the Board's area of operations by persons other than the Board. Schedule 1 (2) amends the section so as to ensure that the prohibition does not apply to a private contractor to whom the Board has contracted out its functions.

For the purpose of exercising its water, sewerage and drainage functions, the Water Board is empowered to enter land (section 15 of the Act), subject to the requirement that it pays appropriate compensation for any damage that ensues, and to break up roads, sewers and drains (section 17 of the Act), subject to the requirement that it pays the costs incurred by a statutory body in rectifying any damage so caused. Schedule 1 (3) and (4) amend those sections so as to confer those powers on private contractors acting in the performance of certain kinds of contract, such as those for the construction, maintenance or operation of water, sewerage or drainage works. The Board will remain primarily liable for payment of compensation and costs of rectification for damage ensuing from a private contractor's exercise of those powers.

Section 55 of the Act provides for the compulsory acquisition of land for the purposes of the Act. Schedule 1 (5) amends the section so as to ensure that land may be acquired under that section for the purpose of its being transferred to a private contractor to enable the contractor to construct, maintain or operate water, sewerage or drainage works or to make ancillary financial arrangements.

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FIRST PRINT

**WATER BOARD (AMENDMENT) BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Water Board Act 1987 No. 141

**SCHEDULE 1—AMENDMENTS**

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**WATER BOARD (AMENDMENT) BILL 1991**

NEW SOUTH WALES



No.       , 1991

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**A BILL FOR**

An Act to amend the Water Board Act 1987 in relation to the exercise of the Water Board's water, sewerage and drainage functions by private contractors.

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

1. This Act may be cited as the Water Board (Amendment) Act 1991.

**Commencement**

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

**Amendment of Water Board Act 1987 No. 141**

3. The Water Board Act 1987 is amended as set out in Schedule 1.
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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 12 (General functions of the Board):**

- (a) From section 12 (1), omit “, for the purposes for which it is constituted”.
- (b) Omit section 12 (1) (b), insert instead:
  - (b) provide, construct, operate, manage and maintain buildings, works, systems and services for impounding, conserving and supplying water, for sewerage and drainage and for the disposal of trade waste and waste water;
- (c) In section 12 (1) (d), after “contracts”, insert “and other arrangements”.
- (d) After section 12 (1) (d), insert:
  - (d1) without limiting the generality of paragraph (d), enter into contracts and other arrangements for the exercise by other persons and bodies of any of the Board’s functions or for the securing (by guarantee, indemnity or undertaking or otherwise) of the performance by the Board, or by any other such person or body, of the obligations imposed by any such contract or arrangement;
- (e) From section 12 (1) (i), omit “its objects”, insert instead “the objects of this Act”.

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SCHEDULE 1—AMENDMENTS—*continued*

(f) After section 12 (3), insert:

(4) The Board may not enter into a contract or other arrangement under which some other person or body undertakes to construct, maintain and operate water, sewerage or drainage works within the Board's area of operations, except with the approval of the Minister, whether given generally or in the particular case.

(2) Section 13 (**Area of operations**):

After section 13 (4) (a1), insert:

(a2) the function is exercised by a person or body in the performance of a contract or other arrangement between the person or body and the Board;

(3) Section 15 (**Entry on land to read meters or carry out works**):

After section 15 (7), insert:

(8) In this section:

(a) a reference to the Board includes a reference to any person or body acting in the performance of a contract or other arrangement between the person or body and the Board under which the person or body exercises a function referred to in section 12 (1) (b); and

(b) a reference to an authorised person includes a reference to any employee or other person acting on behalf of a person or body referred to in paragraph (a),

but the powers conferred by this section may not be exercised by any such person or body, or by any employee or other person acting on behalf of any such person or body, except in accordance with an authority granted by the Board.

(9) For the purposes only of the payment of compensation under this section, a person or body acting in the performance of a contract or arrangement referred to in subsection (8) is taken to be doing so as an agent of the Board.

(4) Section 17 (**Power to break up roads etc.**):

After section 17 (4), insert:

(5) In this section, a reference to the Board includes a reference to any person or body acting in the performance of a contract or other arrangement between the person or body

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SCHEDULE 1—AMENDMENTS—*continued*

and the Board under which the person or body exercises a function referred to in section 12 (1) (b), but the powers conferred by this section may not be exercised by any such person or body except in accordance with an authority granted by the Board.

(6) For the purposes only of the recovery of costs under this section, a person or body acting in the performance of a contract or arrangement referred to in subsection (5) is taken to be doing so as an agent of the Board.

(5) Section 55 (**Appropriation or resumption, or divesting, of land**):

After section 55 (4), insert:

(5) Land may be acquired under this section for the purpose of the land, or any interest in the land, being disposed of to a person or body so as to enable the person or body to do either or both of the following:

(a) to construct, maintain or operate water, sewerage or drainage works pursuant to a contract or other arrangement between the person or body and the Board;

(b) to make financial arrangements in connection with the exercise of a function referred to in paragraph (a), and, if so acquired, is taken to be acquired for the purposes of this Act.

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# WATER BOARD (AMENDMENT) ACT 1991 No. 98

NEW SOUTH WALES

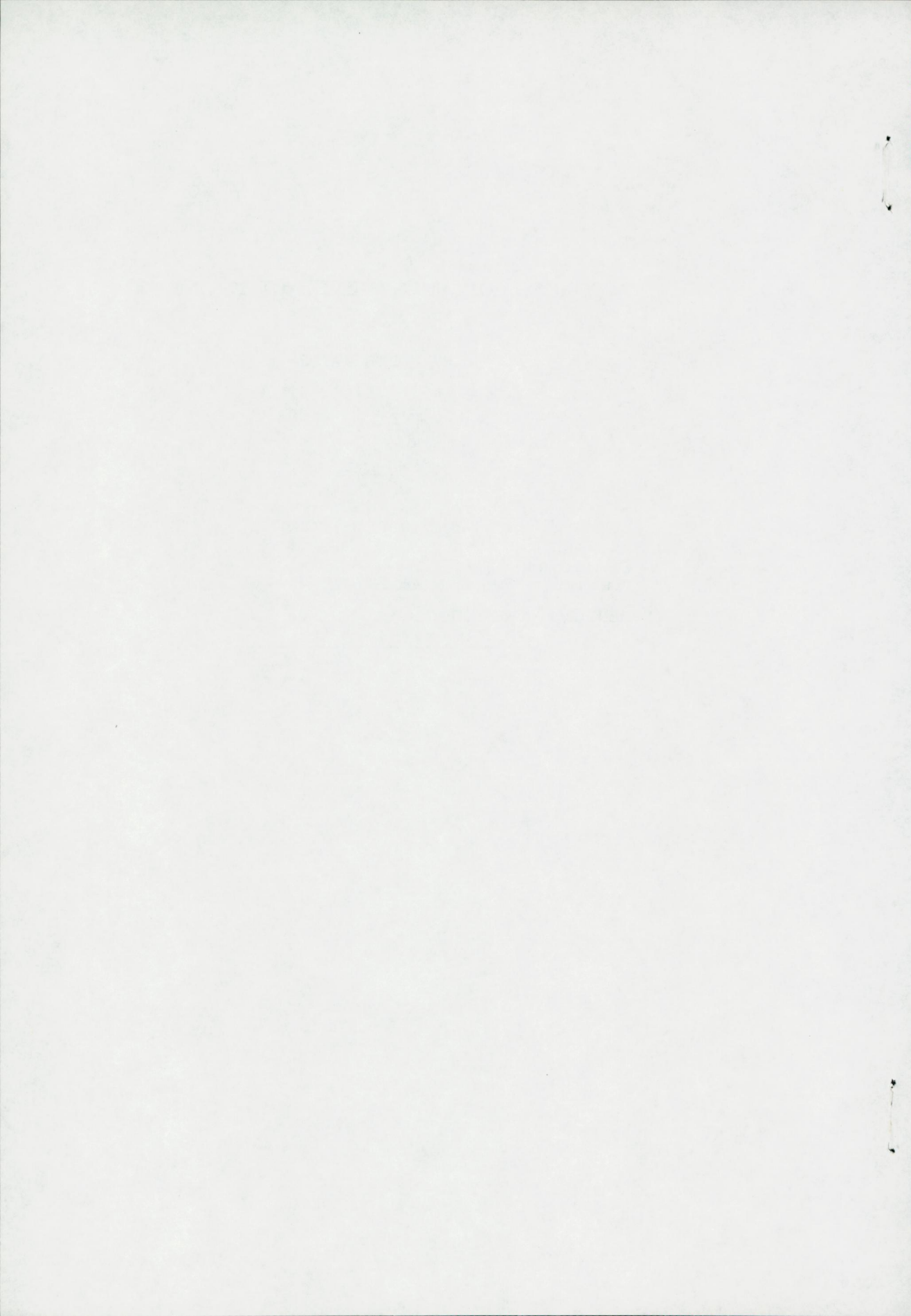


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3. Amendment of Water Board Act 1987 No. 141

## SCHEDULE 1—AMENDMENTS

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**WATER BOARD (AMENDMENT) ACT 1991 No. 98**

NEW SOUTH WALES



**Act No. 98, 1991**

An Act to amend the Water Board Act 1987 in relation to the exercise of the Water Board's water, sewerage and drainage functions by private contractors. [Assented to 17 December 1991]

*Water Board (Amendment) 1991*

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

**Short title**

1. This Act may be cited as the Water Board (Amendment) Act 1991.

**Commencement**

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

**Amendment of Water Board Act 1987 No. 141**

3. The Water Board Act 1987 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 12 (General functions of the Board):**

- (a) From section 12 (1), omit “, for the purposes for which it is constituted”.
- (b) Omit section 12 (1) (b), insert instead:
  - (b) provide, construct, operate, manage and maintain buildings, works, systems and services for impounding, conserving and supplying water, for sewerage and drainage and for the disposal of trade waste and waste water;
- (c) In section 12 (1) (d), after “contracts”, insert “and other arrangements”.
- (d) After section 12 (1) (d), insert:
  - (d1) without limiting the generality of paragraph (d), enter into contracts and other arrangements for the exercise by other persons and bodies of any of the Board’s functions or for the securing (by guarantee, indemnity or undertaking or otherwise) of the performance by the Board, or by any other such person or body, of the obligations imposed by any such contract or arrangement;
- (e) From section 12 (1) (i), omit “its objects”, insert instead “the objects of this Act”.

SCHEDULE 1—AMENDMENTS—*continued*

(f) After section 12 (3), insert:

(4) The Board may not enter into a contract or other arrangement under which some other person or body undertakes to construct, maintain and operate water, sewerage or drainage works within the Board's area of operations, except with the approval of the Minister, whether given generally or in the particular case.

(2) Section 13 (**Area of operations**):

After section 13 (4) (a1), insert:

(a2) the function is exercised by a person or body in the performance of a contract or other arrangement between the person or body and the Board;

(3) Section 15 (**Entry on land to read meters or carry out works**):

After section 15 (7), insert:

(8) In this section:

(a) a reference to the Board includes a reference to any person or body acting in the performance of a contract or other arrangement between the person or body and the Board under which the person or body exercises a function referred to in section 12 (1) (b); and

(b) a reference to an authorised person includes a reference to any employee or other person acting on behalf of a person or body referred to in paragraph (a),

but the powers conferred by this section may not be exercised by any such person or body, or by any employee or other person acting on behalf of any such person or body, except in accordance with an authority granted by the Board.

(9) For the purposes only of the payment of compensation under this section, a person or body acting in the performance of a contract or arrangement referred to in subsection (8) is taken to be doing so as an agent of the Board.

(4) Section 17 (**Power to break up roads etc.**):

After section 17 (4), insert:

(5) In this section, a reference to the Board includes a reference to any person or body acting in the performance of a contract or other arrangement between the person or body

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SCHEDULE 1—AMENDMENTS—*continued*

and the Board under which the person or body exercises a function referred to in section 12 (1) (b), but the powers conferred by this section may not be exercised by any such person or body except in accordance with an authority granted by the Board.

(6) For the purposes only of the recovery of costs under this section, a person or body acting in the performance of a contract or arrangement referred to in subsection (5) is taken to be doing so as an agent of the Board.

(5) Section 55 (**Appropriation or resumption, or divesting, of land**):

After section 55 (4), insert:

(5) Land may be acquired under this section for the purpose of the land, or any interest in the land, being disposed of to a person or body so as to enable the person or body to do either or both of the following:

(a) to construct, maintain or operate water, sewerage or drainage works pursuant to a contract or other arrangement between the person or body and the Board;

(b) to make financial arrangements in connection with the exercise of a function referred to in paragraph (a),

and, if so acquired, is taken to be acquired for the purposes of this Act.

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[*Minister's second reading speech made in—  
Legislative Assembly on 14 November 1991  
Legislative Council on 10 December 1991*]