



New South Wales

Water and Environmental Planning 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 as follows:

- to provide a scheme for interstate water allocation transfers that is similar to the existing scheme for the intra-state transfer of water allocations,
 - to enable conditions relating to environmental protection to be included in the conditions to which licences (and other entitlements) under the *Water Act 1912* are subject,
 - to provide for relevant governmental policies and certain other matters to be taken into account by the Land and Environment Court, and by local land boards, when carrying out inquiry and appeal functions under the *Water Act*,
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Explanatory note

- to enable a Commission of Inquiry under the *Environmental Planning and Assessment Act 1979* to consider applications for approvals (under the Water Act) for the carrying out of certain water-related works in the same way as a Commission of Inquiry may presently consider applications for water licences and, in so doing, co-ordinate the consideration of such applications for approvals and the consideration of the proposed activities or development in respect of which such applications are made,
- to make other amendments of an administrative and machinery nature.

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. Most of the provisions commence on the date of assent, while others (ie the amendments relating to the scheme for the interstate transfer of water, and the amendments enabling a Commission of Inquiry to consider applications for water approvals) commence 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 the *Water Administration Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 3.

Schedule 1 Amendment of Water Act 1912

Schedule 1 [2] provides that the Land and Environment Court and local land boards are required to take into account, and have due regard to, certain matters when conducting inquiries and appeals under the Water Act. These matters include State-wide water resource management objectives and the actual state of water resources at local, regional and State-wide levels. The court and the boards will also be required to consider the impact that their decisions might have in relation to these matters.

The new section 4A is designed to ensure that any decision under the Water Act by a judicial-type body should not be based solely on the particular circumstances of the case, and that any such decision should not be considered in isolation of relevant matters and policies or in isolation from the wider implications of the decision.

Schedule 1 [3]–[5] and [9] qualify the general rule that an entitlement under the Water Act runs with the land to which the entitlement relates (eg the rule provides that the benefit of a water licence lies with the occupier for the time being of the land that is supplied with water by means of the licensed work). This general rule has, in cases involving the transfer of water allocations, resulted in the anomalous situation where the entitlement holder is prevented from being able to complete the transfer of the holder's water allocation if the land to which the entitlement relates has been sold to another party.

The new section 22D provides that if the land to which an entitlement relates is sold before the completion of the transfer of the water allocation for the entitlement, the sale does not operate to pass the benefit of the entitlement to the new occupier of the land. This provision will enable the scheme for the transfer of water allocations to operate independently of the general rule described above.

The new section also applies in respect of the scheme under the *Water (Part 2) Regulations* which makes provision for the transfer of water rights from water sources other than those that are covered by the transfer scheme under the Water Act.

Schedule 1 [8] provides a scheme for the interstate transfer of water to, and from, other States. Under the new Division 4E (which is based on the existing Division 4C applying to intra-State water transfers) the Ministerial Corporation (ie the Water Administration Ministerial Corporation established under the *Water Administration Act 1986* and which is the corporate "arm" of the Department of Land and Water Conservation) will be able to approve the following:

- the transfer, by a NSW entitlement holder, of the holder's water allocation to a person outside NSW,
- the transfer, by a person from another State, of that person's water rights to a person in NSW.

The Ministerial Corporation will be able to determine the water sources and the types of transfers (ie permanent and temporary) to which the new Division 4E applies. If it approves the transfer of a NSW entitlement holder's water allocation to an interstate licensee, the Ministerial Corporation may give effect to the transfer by making the necessary adjustments and modifications to the holder's NSW water allocation (or by cancelling the entitlement if the transfer is permanent). The Ministerial Corporation's approval will be subject to advice being given by the relevant interstate licensing authority that it also approves the transfer and has granted the interstate transferee an interstate licence in respect of the transferred water.

Explanatory note

In the case of the transfer of water rights into NSW from interstate, the Ministerial Corporation may approve a NSW transferee obtaining an interstate transferor's water rights, but again only if the Ministerial Corporation is advised by the interstate licensing authority that it also approves the transfer. The transfer to NSW will be effected by the Ministerial Corporation adjusting or modifying the NSW transferee's existing entitlement, or by granting a new entitlement.

In both cases, the Ministerial Corporation will be able to make arrangements with the relevant interstate licensing authority to jointly assess and process the application for the interstate transfer, and to liaise with that authority to determine the administrative arrangements that are to apply with respect to the transfer. A transfer under the new Division will be subject to such conditions as the Ministerial Corporation thinks fit to impose when approving the transfer.

Schedule 1 [6] and [7] are consequential on the amendment made by **Schedule 1 [8]**, and make it clear that the existing scheme under the Water Act for the transfer of water allocations is an intra-State scheme (ie it applies to water transfers within NSW only).

Schedule 1 [11] enables regulations to be made with respect to any matter that is relevant to the scheme for the interstate transfer of water.

Schedule 1 [10], [12] and [17] provide that the conditions to which the various types of entitlements (eg water licences) and approvals under the Water Act are subject may include conditions relating to the protection of the environment. These amendments remove any doubt that the conditions relating to those entitlements and approvals can only be "water-related" conditions. The term *environment* is defined widely (see **Schedule 1 [1]**).

Schedule 1 [13] enables the Ministerial Corporation to fix an annual charge with respect to licences under Part 5 of the Water Act (ie bore licences). At present, the charge payable under section 117B of the Water Act is on the basis of the quantity of the water taken from the licensed bore. As a result of this amendment, the charge will be payable on the basis of a fixed charge determined by the Ministerial Corporation or on the basis of the quantity of water taken (or a combination of both). This will bring bore water licence charges into line with the charges payable under section 22C of the Water Act in relation to other entitlements such as water licences.

Schedule 1 [15] inserts a new section 171A which will apply to applications for approvals under Part 8 of the Water Act that relate to a controlled work in respect of which the Ministerial Corporation receives a notice under section 120A of the *Environmental Planning and Assessment Act 1979* (see **Schedule 4**).

The new section requires the Ministerial Corporation to refer an application for an approval under Part 8 of the Water Act, and any objections relating to the application, to the Commission of Inquiry by which the notice was given, and to defer making a decision on the application until it receives the Commission of Inquiry's report on the application. The Ministerial Corporation will be required to have regard to the Commission of Inquiry's report in making its decision on the application. The provisions of Part 8 of the Water Act relating to public inquiries by local land boards, and for appeals to the Land and Environment Court, will not apply to decisions made by the Ministerial Corporation on an application to which the proposed section applies.

Schedule 1 [14] and [16] are consequential amendments that ensure that the provisions of Part 8 of the Water Act are construed subject to the provisions of the proposed section 171A.

Schedule 1 [18]–[20] deal with matters of a savings and transitional nature.

Schedule 2 Amendment of Water Administration Act 1986

Schedule 2 [1] expressly enables the Ministerial Corporation to implement, and give effect to, any scheme for the interstate transfer of water.

Schedule 2 [2] provides for water management charges to be payable to the Ministerial Corporation by Sydney Water Corporation and Hunter Water Corporation.

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

The amendments made by **Schedule 3** extend the current operation of section 120A of the *Environmental Planning and Assessment Act 1979* so that it will apply with respect to approvals under Part 8 of the Water Act (ie approvals to carry out certain works on river banks and flood plains) and not just to water licences.

As a result of the amendments, a Commission of Inquiry that is investigating a development application under Part 4, or an activity the subject of environmental assessment under Part 5, of the EP&A Act will be required to notify the Ministerial Corporation if it becomes aware that the development or activity involves a work that may require an approval under Part 8 of the

Water and Environmental Planning Legislation Amendment Bill 1997

Explanatory note

Water Act. The Commission of Inquiry will be required to advise the applicant or proponent to make prompt application for such an approval, and must defer concluding its inquiry for so long as is necessary to enable such an application to be made. As soon as practicable after an application for an approval is referred to it under proposed section 171A of the Water Act (see **Schedule 1 [15]**), the Commission of Inquiry will be required to hold a public hearing into the application before making its report on the development or activity. To the extent to which the report relates to the application for an approval under Part 8 of the Water Act, a copy of the report must be given to the Ministerial Corporation.



New South Wales

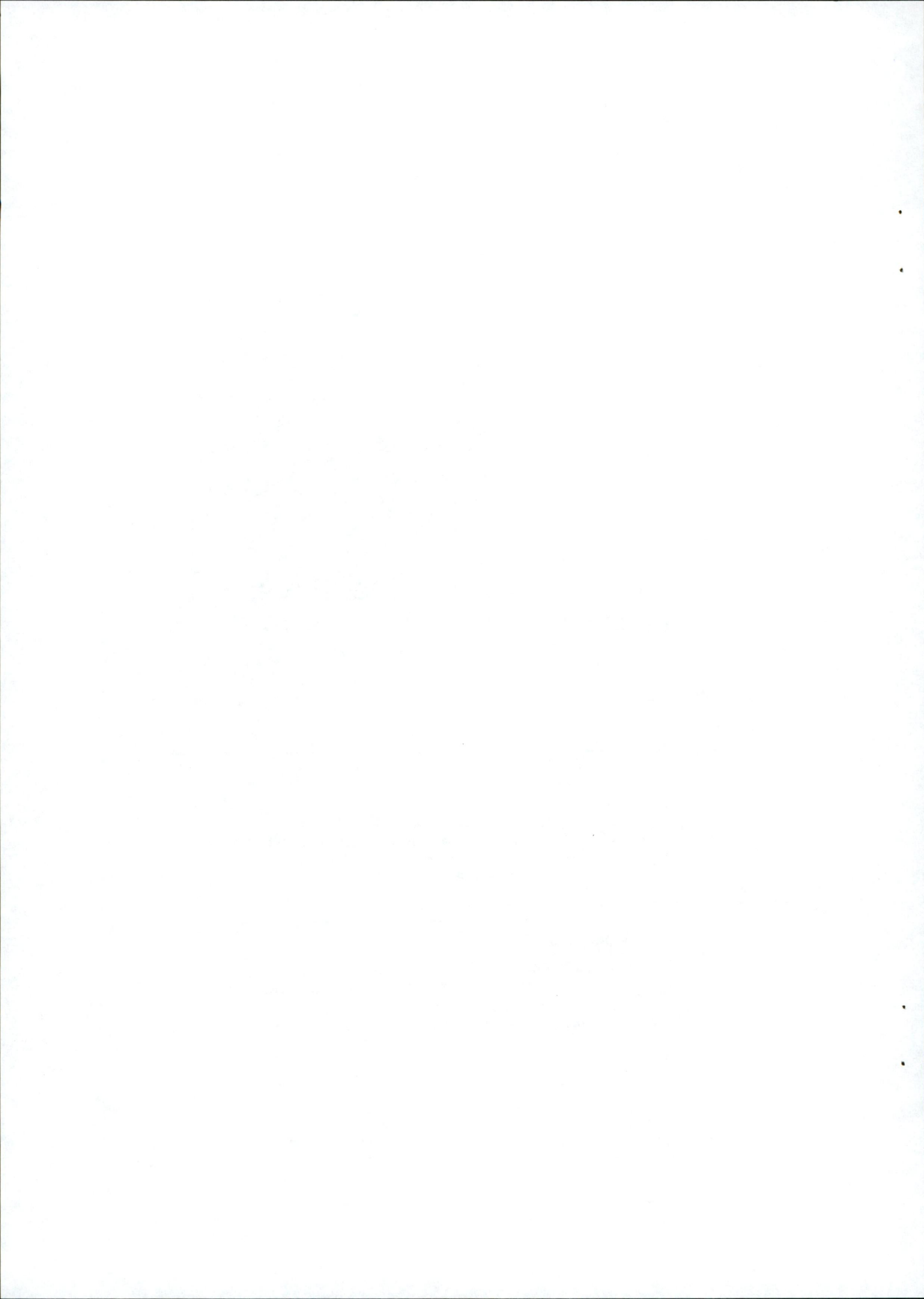
Water and Environmental Planning Legislation Amendment Bill 1997

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Act 1912 No 44	2
4 Amendment of Water Administration Act 1986 No 195	2
5 Amendment of Environmental Planning and Assessment Act 1979 No 203	2

Schedules

1 Amendment of Water Act 1912	3
2 Amendment of Water Administration Act 1986	16
3 Amendment of Environmental Planning and Assessment Act 1979	18





New South Wales

Water and Environmental Planning Legislation Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Water Act 1912* and the *Water Administration Act 1986* to make further provision with respect to water allocation transfers, licence conditions, charges and other miscellaneous matters; to amend the *Environmental Planning and Assessment Act 1979* to provide for a Commission of Inquiry to inquire into matters concerning approvals for certain water related works; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water and Environmental Planning Legislation Amendment Act 1997*.

2 Commencement

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(1) This Act commences on the date of assent, except as provided by subsection (2).

(2) The following provisions of this Act commence on a day or days to be appointed by proclamation:

(a) Schedule 1 [6]–[8] and [14]–[16],

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(b) Schedule 4.

3 Amendment of Water Act 1912 No 44

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

4 Amendment of Water Administration Act 1986 No 195

The *Water Administration Act 1986* is amended as set out in Schedule 2.

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5 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 3.

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Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

- environment* includes any one or more of the following: 5
- (a) land, air and water,
 - (b) any organic or inorganic matter and any living organism,
 - (c) human-made or modified structures and areas,
 - (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b). 10

[2] Section 4A

Insert after section 4:

- 4A Inquiries and appeals—requirement to take certain matters into account** 15
- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters: 20
 - (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body by the Ministerial Corporation,
 - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body by the Ministerial Corporation, 25
 - (c) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body by the Ministerial Corporation, 30

- (d) the impact that the judicial body's determination or recommendation could or might have:
 - (i) on the allocation of water resources at a local, regional and State-wide level, and
 - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and 5
 - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and 10
 - (iv) in relation to the management, protection and enhancement of the State's water resources.
- (2) In this section:
 - judicial body* means the Land and Environment Court, a local land board or a Magistrate. 15
 - relevant policy* means any governmental policy, identified by the Ministerial Corporation for the purposes of this section from time to time, relating to the management, protection and enhancement of the State's water resources. 20
- [3] Section 16 Benefit of licence**
Insert after section 16 (2):
 - (3) This section is subject to section 22D.
- [4] Section 18Q Permit to pass with land** 25
Insert "and to section 22D," after "Subject to the provisions of this Division".
- [5] Section 20F Benefit of authority**
Insert at the end of the section:
 - (2) This section is subject to section 22D. 30

[6] Part 2, Division 4C, heading

Omit "Transfer". Insert instead "Intra-State transfer".

[7] Section 20AG

Omit the section. Insert instead:

20AG Interpretation and application of Division

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- (1) This Division is to be construed with, and as if it formed part of, Division 4B.
- (2) This Division applies to the transfer of water allocations within New South Wales.

[8] Part 2, Division 4E

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Insert after Division 4D:

Division 4E Interstate transfer of water rights

20AS Interpretation

- (1) This Division is to be construed with, and as if it formed part of, Division 4B.
- (2) In this Division, and without limiting subsection (1):
interstate licensing authority means the interstate body that is responsible for the granting of rights to take and use water in the State concerned.

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interstate water licence means a licence (or other similar authorisation) granted by an interstate licensing authority to take and use water in a State other than New South Wales.

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20AT Application of Division

- (1) This Division applies:
 - (a) to the transfer, by the holder of an entitlement, of the whole or part of the water allocation for the entitlement to a person who is the holder of land outside New South Wales, and

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- (b) to the transfer, by a person from another State, of that person's water rights under the law of that State to a person in New South Wales.
- (2) This Division applies only:
 - (a) in respect of those water sources (or to those parts of water sources) that the Ministerial Corporation has, by notice published in the Gazette, determined to be subject to this Division, and 5
 - (b) in respect of those types of transfers that the Ministerial Corporation may specify in any such determination. 10
- (3) This Division is, to the extent of any inconsistency with the provisions of the Agreement set out in the *Murray-Darling Basin Act 1992* that relate to the interstate transfer of water allocations, subject to those provisions. 15

20AU Transfer of NSW water allocations interstate

- (1) The holder of an entitlement (the *transferor*) may, with the approval of the Ministerial Corporation, transfer the whole or part of the water allocation for the entitlement to a person who is the holder of an interstate water licence (the *interstate transferee*). 20
- (2) Any such transfer may:
 - (a) 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 25
 - (b) 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. 30
- (3) An application for the Ministerial Corporation's approval may be made by the transferor in the form approved by the Ministerial Corporation.

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- (4) 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
 - (b) such information and consents as the Ministerial Corporation may require. 5
- (5) The Ministerial Corporation may:
- (a) assess the application, and
 - (b) decide whether or not to refer the application to the relevant interstate licensing authority, and 10
 - (c) if it decides to refer the application to the relevant interstate licensing authority:
 - (i) make such arrangements with the authority as are necessary for the joint assessment and processing of the application, and 15
 - (ii) liaise with the authority for the purposes of determining the administrative arrangements that are to apply with respect to the transfer if it is approved.
- (6) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer. 20
- (7) The Ministerial Corporation may not approve the transfer until it has been advised by the relevant interstate licensing authority that the authority:
- (a) has approved the water allocation being transferred to the interstate transferee, and 25
 - (b) has granted the interstate licensee an interstate water licence for the water that is the subject of the transfer (or it has amended the interstate transferee's existing interstate water licence accordingly). 30

- (8) If the Ministerial Corporation approves the transfer, it may give effect to the transfer:
- (a) in the case of a transfer referred to in subsection (2) (a)—by making an appropriate modification or adjustment under Division 4B of the water allocation to which the transferor's entitlement relates, and 5
 - (b) in the case of a transfer referred to in subsection (2) (b)—by making such adjustments with respect to the transferor's entitlement as the Ministerial Corporation considers necessary (eg by cancelling the entitlement if the whole of the water allocation for the entitlement is transferred, or by amending it accordingly if only part of the water allocation is transferred). 10 15
- (9) 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.
- (10) In determining whether or not to approve a transfer under this section, 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. 20
- (11) The regulations may make further provision with respect to the transfer of water allocations in accordance with this section. 25

20AV Transfer of water rights into NSW from interstate

- (1) A person (the *NSW transferee*) may, with the approval of the Ministerial Corporation, obtain the whole or part of the rights of a person to take and use water under an interstate water licence (the *interstate transferor*). 30
- (2) The NSW transferee may obtain those water rights by way of a transfer being effected in accordance with this section. 35

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- (3) Any such transfer may:
- (a) be a temporary transfer for such limited period as may be determined by the Ministerial Corporation either generally or in a particular case, or
 - (b) be a transfer without limitation as to its duration. 5
- (4) An application for the Ministerial Corporation's approval may be made by the NSW 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 10
 - (b) such information and evidence as the Ministerial Corporation may require.
- (6) The Ministerial Corporation may: 15
- (a) assess the application, and
 - (b) decide whether or not to refer the application to the relevant interstate licensing authority, and
 - (c) if it decides to refer the application to the relevant interstate licensing authority: 20
 - (i) make such arrangements with the authority as are necessary for the joint assessment and processing of the application, and
 - (ii) liaise with the authority for the purposes of determining the administrative arrangements that are to apply with respect to the transfer if it is approved. 25
- (7) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer.
- (8) The Ministerial Corporation may not approve the transfer until it has been advised by the relevant interstate licensing authority that the authority has approved the transfer by the interstate transferor to the NSW transferee. 30

- (9) The Ministerial Corporation may, if it approves the transfer, give effect to the transfer:
- (a) in the case of a transfer referred to in subsection (3) (a):
 - (i) by making, if the NSW transferee is the holder of an existing entitlement, an appropriate modification or adjustment under Division 4B of the water allocation to which the NSW transferee's entitlement relates, or 5
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 - (ii) by granting, if the NSW transferee is not the holder of an existing entitlement, a new entitlement to the NSW transferee in accordance with this Part, and
 - (b) in the case of a transfer referred to in subsection (3) (b)—by granting a new entitlement to the NSW transferee in accordance with this Part (or, if the Ministerial Corporation considers it appropriate to do so, by amending the existing entitlement of the NSW transferee accordingly). 15
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- (10) A notice in force under section 20Y does not apply to an application for an entitlement made in order to give effect to an approved transfer under this section.
- (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
- (12) In determining whether or not to approve a transfer under this section, 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. 30
- (13) The regulations may make further provision with respect to the transfer of water rights to a NSW transferee in accordance with this section. 35

[9] Section 22D

Insert after section 22C:

22D Effect of land being sold before transfer of water allocation (or water rights) is completed

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under Part 8 of the *Water (Part 2) Regulations*) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or in accordance with Part 8 of those Regulations), the sale of the land does not:
- (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
 - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and
 - (c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or in accordance with Part 8 of those Regulations.
- (2) In this section, *entitlement* and *water allocation* have the same meanings as in section 20V.

[10] Section 25

Insert after section 24:

25 Conditions relating to environmental protection

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection

of the environment (such as conditions that are designed to prevent any harmful effects that the works might have in relation to any flora or fauna or any fish habitat).

[11] Section 27 Regulations

Insert after section 27 (1) (c1): 5

(c2) any matter relevant to the scheme under Division 4E for the transfer of water allocations and water rights from, or to, New South Wales,

[12] Section 116AA

Insert before section 116A: 10

116AA Conditions relating to environmental protection

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment (such as conditions that are designed to prevent any harmful effects that the bore might have in relation to any flora or fauna or any fish habitat). 15

[13] Section 117B Charges

Omit section 117B (5) (e). Insert instead:

(e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and 20

[14] Section 171 Determinations

Insert after section 171 (6):

(7) This section is subject to section 171A. 25

[15] Section 171A

Insert after section 171:

- 171A Determinations of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979** 5
- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171. 10
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars prescribed for the purposes of section 167 (1) (b)), and 15
- (ii) any objection to the granting of an approval that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and 20
- (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report. 25
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171 (5) and (6), 172, 173 and 174 do not have effect in relation to that determination. 30

- (5) This section extends to applications made (but not determined) before the commencement of this section.
- (6) In this section:
Commission of Inquiry means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*. 5
section 119 report means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.
section 120A notice means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*. 10

[16] Section 172 Protests against conditions

Insert after section 172 (2):

- (3) This section is subject to section 171A. 15

[17] Section 176A

Insert after section 176:

176A Conditions relating to environmental protection

The conditions subject to which an approval is issued or renewed under this Part may include conditions relating to the protection of the environment (such as conditions that are designed to prevent any harmful effects that the controlled works might have in relation to any flora or fauna or any fish habitat). 20

[18] Schedule 2 Savings and transitional provisions 25

Omit "following Act" from clause 1 (1).
Insert instead "following Acts".

[19] Schedule 2, clause 1 (1)

Insert at the end of clause 1 (1):

Water and Environmental Planning Legislation Amendment Act 1997 30

[20] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Water and Environmental Planning
Legislation Amendment Act 1997** 5

4 Definition

In this Part:

amending Act means the *Water and Environmental Planning Legislation Amendment Act 1997*.

5 Pending inquiries and appeals 10

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

6 Transfer of water allocations and rights 15

- (1) Section 22D of this Act, as inserted by Schedule 1 [9] to the amending Act, extends to any application:
- (a) to transfer a water allocation under Part 2 of this Act, and
 - (b) to transfer water rights under Part 8 of the *Water (Part 2) Regulations*, 20

that was made, but not completed, before the date of assent to the amending Act.

- (2) Any thing done under:
- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act, or 25
 - (b) Part 8 of the *Water (Part 2) Regulations* with respect to the transfer of water rights under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated. 30

Schedule 2 Amendment of Water Administration Act 1986

(Section 4)

[1] Section 11A

Insert after section 11: 5

11A Implementation of measures relating to interstate transfers of water allocations

The Ministerial Corporation may do all things that are necessary in order to implement, and give effect to, any measures providing for the interstate transfer of water rights and water allocations, regardless of whether those measures are authorised under an agreement or arrangement entered into by the State. 10

[2] Section 15A

Insert after section 15: 15

15A Water management charges payable by metropolitan water corporations

(1) Sydney Water Corporation and Hunter Water Corporation are each liable to pay water management charges to the Ministerial Corporation in accordance with this section. 20

(2) The charges payable by Sydney Water Corporation and Hunter Water Corporation:

(a) are payable in respect of the financial year that began on 1 July 1996, and in respect of each subsequent financial year, and 25

(b) are to be fixed by the Independent Pricing and Regulatory Tribunal in accordance with such pricing policies as may be determined by the Tribunal, and 30

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- (c) relate to the Ministerial Corporation's costs for or in connection with:
- (i) monitoring the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the operations of Sydney Water Corporation or Hunter Water Corporation, and 5
 - (ii) exercising any other water resource management function in relation to Sydney Water Corporation or Hunter Water Corporation. 10

**Schedule 3 Amendment of Environmental
Planning and Assessment Act 1979**

(Section 5)

- [1] Section 120A Additional procedural requirements where water licence or water approval is involved** 5
- Insert "or a work that may require a water approval" after "water licence" in section 120A (1).
- [2] Section 120A (3) and (7) (a)**
- Insert "or for a water approval" after "water licence" wherever occurring. 10
- [3] Section 120A (4) and (5)**
- Omit the subsections. Insert instead:
- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent: 15
- (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*, or
- (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act. 20
- (5) As soon as practicable after the applicant's or proponent's:
- (a) application for a water licence is referred to it under section 11A of the *Water Act 1912*, or 25
- (b) application for a water approval is referred to it under section 171A of that Act,

the Commission of Inquiry must give at least 14 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held. 5

[4] Section 120A (7) (b)

Omit the paragraph. Insert instead:

- (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the *Water Act 1912*. 10

[5] Section 120A (8) (a) and (11)

Insert "or a water approval" after "water licence" wherever occurring. 15

[6] Section 120A (8) (b)

Insert "or approval" after "licence".

[7] Section 120A (12)

Omit the subsection. Insert instead:

- (12) In this section: 20

Water and Environmental Planning Legislation Amendment Bill 1997

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

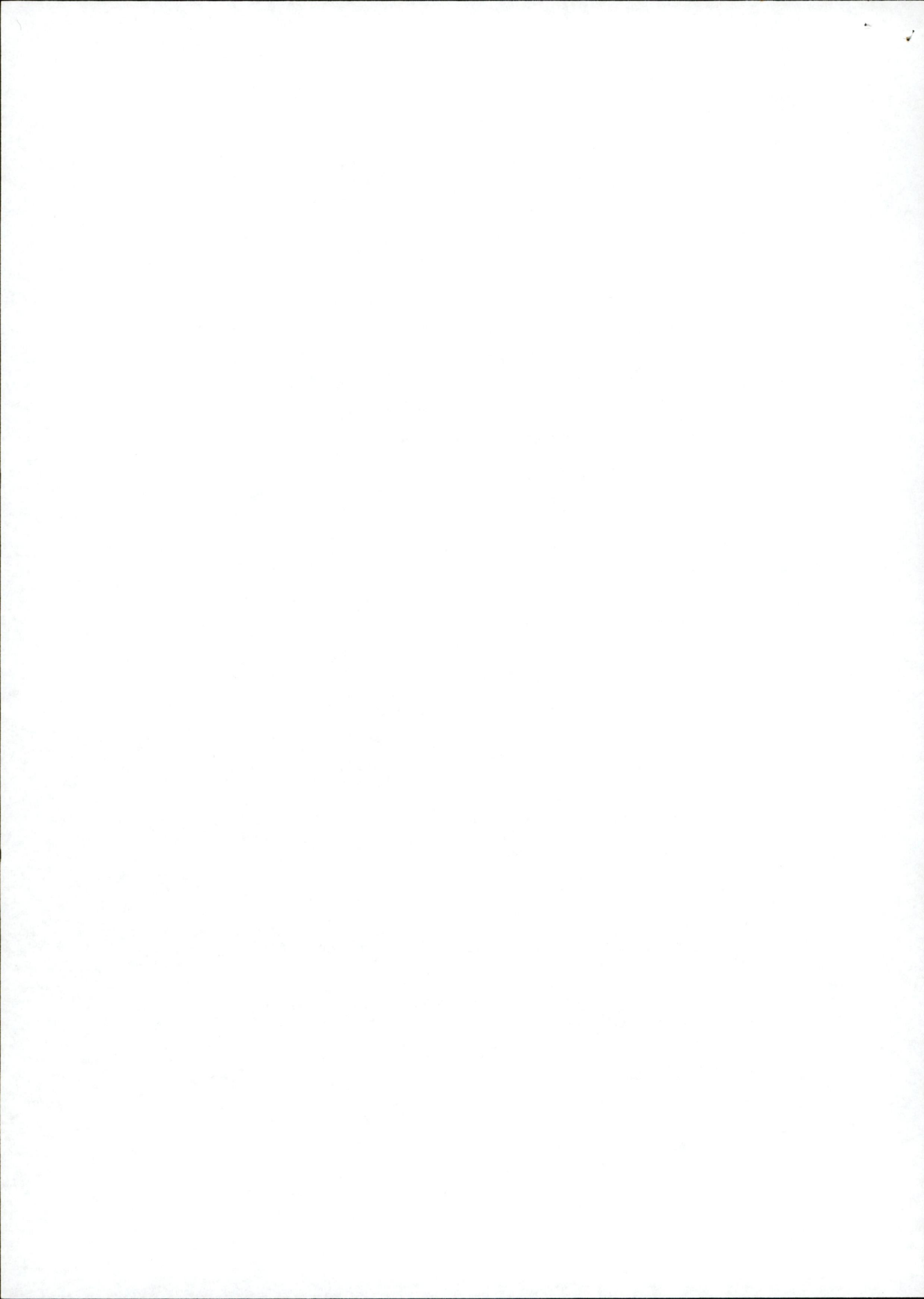
water approval means an approval under Part 8 of the *Water Act 1912*.

water licence means a licence under Division 3 of Part 2 of the *Water Act 1912*.

WATER AND ENVIRONMENTAL PLANNING LEGISLATION AMENDMENT BILL

Schedule of the amendments referred to in the Legislative Council's Message of 26 June 1997.

- No. 1 Page 3, Schedule 1 [2], proposed section 4A, lines 23 and 24. Omit "by the Ministerial Corporation".
- No. 2 Page 3, Schedule 1 [2], proposed section 4A, line 27. Omit "by the Ministerial Corporation".
- No. 3 Page 3, Schedule 1 [2], proposed section 4A. Insert after line 27:
- (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body.
- No. 4 Page 3, Schedule 1 [2], proposed section 4A, line 31. Omit "by the Ministerial Corporation".
- No. 5 Page 4, Schedule 1 [2], proposed section 4A, lines 17 to 19. Omit ", identified by the Ministerial Corporation for the purposes of this section from time to time,".
- No. 6 Page 4, Schedule 1 [2], proposed section 4A. Insert after line 21:
- (3) 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.
- No. 7 Pages 5 to 10, Schedule 1 [6] to [8], line 1 on page 5 to line 35 on page 10. Omit all words on those lines.
- No. 8 Page 12, Schedule 1 [10], proposed section 25, lines 1 to 3. Omit "(such as conditions that are designed to prevent any harmful effects that the works might have in relation to any flora or fauna or any fish habitat)".
- No. 9 Page 12, Schedule 1 [11], lines 4 to 8. Omit all words on those lines.
- No. 10 Page 12, Schedule 1 [12], proposed section 116AA, lines 14 to 17. Omit "(such as conditions that are designed to prevent any harmful effects that the bore might have in relation to any flora or fauna or any fish habitat)".
- No. 11 Page 14, Schedule 1 [17], proposed section 176A, lines 21 to 24. Omit "(such as conditions that are designed to prevent any harmful effects that the controlled works might have in relation to any flora or fauna or any fish habitat)".
- No. 12 Page 16, Schedule 2 [1], lines 4 to 13. Omit all words on those lines.
- No. 13 Page 19, Schedule 3 [3], line 1. Omit "14". Insert instead "28".
- No. 14 Long title. Omit "water allocation transfers,".
-



LOCAL GOVERNMENT AMENDMENT (PARKING AND WHEEL CLAMPING) BILL

Schedule of the amendment referred to in the Legislative Council's Message of 17 June 1998.

Page 3, Schedule 1. Insert after line 8:

- (7) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:
- (a) the circumstances in which a council may enter into such an agreement, and
 - (b) the matters for which such an agreement must or must not make provision, and
 - (c) the exercise by a council of any functions conferred on it by such an agreement.
-



New South Wales

Water and Environmental Planning 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 as follows:

- to provide a scheme for interstate water allocation transfers that is similar to the existing scheme for the intra-state transfer of water allocations,
 - to enable conditions relating to environmental protection to be included in the conditions to which licences (and other entitlements) under the *Water Act 1912* are subject,
 - to provide for relevant governmental policies and certain other matters to be taken into account by the Land and Environment Court, and by local land boards, when carrying out inquiry and appeal functions under the *Water Act*,
-

- to enable a Commission of Inquiry under the *Environmental Planning and Assessment Act 1979* to consider applications for approvals (under the Water Act) for the carrying out of certain water-related works in the same way as a Commission of Inquiry may presently consider applications for water licences and, in so doing, co-ordinate the consideration of such applications for approvals and the consideration of the proposed activities or development in respect of which such applications are made,
- to make other amendments of an administrative and machinery nature.

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. Most of the provisions commence on the date of assent, while others (ie the amendments relating to the scheme for the interstate transfer of water, and the amendments enabling a Commission of Inquiry to consider applications for water approvals) commence 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 the *Water Administration Act 1986* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 3.

Schedule 1 Amendment of Water Act 1912

Schedule 1 [2] provides that the Land and Environment Court and local land boards are required to take into account, and have due regard to, certain matters when conducting inquiries and appeals under the Water Act. These matters include State-wide water resource management objectives and the actual state of water resources at local, regional and State-wide levels. The court and the boards will also be required to consider the impact that their decisions might have in relation to these matters.

The new section 4A is designed to ensure that any decision under the Water Act by a judicial-type body should not be based solely on the particular circumstances of the case, and that any such decision should not be considered in isolation of relevant matters and policies or in isolation from the wider implications of the decision.

Schedule 1 [3]–[5] and [9] qualify the general rule that an entitlement under the Water Act runs with the land to which the entitlement relates (eg the rule provides that the benefit of a water licence lies with the occupier for the time being of the land that is supplied with water by means of the licensed work). This general rule has, in cases involving the transfer of water allocations, resulted in the anomalous situation where the entitlement holder is prevented from being able to complete the transfer of the holder's water allocation if the land to which the entitlement relates has been sold to another party.

The new section 22D provides that if the land to which an entitlement relates is sold before the completion of the transfer of the water allocation for the entitlement, the sale does not operate to pass the benefit of the entitlement to the new occupier of the land. This provision will enable the scheme for the transfer of water allocations to operate independently of the general rule described above.

The new section also applies in respect of the scheme under the *Water (Part 2) Regulations* which makes provision for the transfer of water rights from water sources other than those that are covered by the transfer scheme under the Water Act.

Schedule 1 [8] provides a scheme for the interstate transfer of water to, and from, other States. Under the new Division 4E (which is based on the existing Division 4C applying to intra-State water transfers) the Ministerial Corporation (ie the Water Administration Ministerial Corporation established under the *Water Administration Act 1986* and which is the corporate "arm" of the Department of Land and Water Conservation) will be able to approve the following:

- the transfer, by a NSW entitlement holder, of the holder's water allocation to a person outside NSW,
- the transfer, by a person from another State, of that person's water rights to a person in NSW.

The Ministerial Corporation will be able to determine the water sources and the types of transfers (ie permanent and temporary) to which the new Division 4E applies. If it approves the transfer of a NSW entitlement holder's water allocation to an interstate licensee, the Ministerial Corporation may give effect to the transfer by making the necessary adjustments and modifications to the holder's NSW water allocation (or by cancelling the entitlement if the transfer is permanent). The Ministerial Corporation's approval will be subject to advice being given by the relevant interstate licensing authority that it also approves the transfer and has granted the interstate transferee an interstate licence in respect of the transferred water.

Explanatory note

In the case of the transfer of water rights into NSW from interstate, the Ministerial Corporation may approve a NSW transferee obtaining an interstate transferor's water rights, but again only if the Ministerial Corporation is advised by the interstate licensing authority that it also approves the transfer. The transfer to NSW will be effected by the Ministerial Corporation adjusting or modifying the NSW transferee's existing entitlement, or by granting a new entitlement.

In both cases, the Ministerial Corporation will be able to make arrangements with the relevant interstate licensing authority to jointly assess and process the application for the interstate transfer, and to liaise with that authority to determine the administrative arrangements that are to apply with respect to the transfer. A transfer under the new Division will be subject to such conditions as the Ministerial Corporation thinks fit to impose when approving the transfer.

Schedule 1 [6] and [7] are consequential on the amendment made by **Schedule 1 [8]**, and make it clear that the existing scheme under the Water Act for the transfer of water allocations is an intra-State scheme (ie it applies to water transfers within NSW only).

Schedule 1 [11] enables regulations to be made with respect to any matter that is relevant to the scheme for the interstate transfer of water.

Schedule 1 [10], [12] and [17] provide that the conditions to which the various types of entitlements (eg water licences) and approvals under the Water Act are subject may include conditions relating to the protection of the environment. These amendments remove any doubt that the conditions relating to those entitlements and approvals can only be "water-related" conditions. The term *environment* is defined widely (see **Schedule 1 [1]**).

Schedule 1 [13] enables the Ministerial Corporation to fix an annual charge with respect to licences under Part 5 of the Water Act (ie bore licences). At present, the charge payable under section 117B of the Water Act is on the basis of the quantity of the water taken from the licensed bore. As a result of this amendment, the charge will be payable on the basis of a fixed charge determined by the Ministerial Corporation or on the basis of the quantity of water taken (or a combination of both). This will bring bore water licence charges into line with the charges payable under section 22C of the Water Act in relation to other entitlements such as water licences.

Schedule 1 [15] inserts a new section 171A which will apply to applications for approvals under Part 8 of the Water Act that relate to a controlled work in respect of which the Ministerial Corporation receives a notice under section 120A of the *Environmental Planning and Assessment Act 1979* (see **Schedule 4**).

The new section requires the Ministerial Corporation to refer an application for an approval under Part 8 of the Water Act, and any objections relating to the application, to the Commission of Inquiry by which the notice was given, and to defer making a decision on the application until it receives the Commission of Inquiry's report on the application. The Ministerial Corporation will be required to have regard to the Commission of Inquiry's report in making its decision on the application. The provisions of Part 8 of the Water Act relating to public inquiries by local land boards, and for appeals to the Land and Environment Court, will not apply to decisions made by the Ministerial Corporation on an application to which the proposed section applies.

Schedule 1 [14] and [16] are consequential amendments that ensure that the provisions of Part 8 of the Water Act are construed subject to the provisions of the proposed section 171A.

Schedule 1 [18]–[20] deal with matters of a savings and transitional nature.

Schedule 2 Amendment of Water Administration Act 1986

Schedule 2 [1] expressly enables the Ministerial Corporation to implement, and give effect to, any scheme for the interstate transfer of water.

Schedule 2 [2] provides for water management charges to be payable to the Ministerial Corporation by Sydney Water Corporation and Hunter Water Corporation.

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

The amendments made by **Schedule 3** extend the current operation of section 120A of the *Environmental Planning and Assessment Act 1979* so that it will apply with respect to approvals under Part 8 of the Water Act (ie approvals to carry out certain works on river banks and flood plains) and not just to water licences.

As a result of the amendments, a Commission of Inquiry that is investigating a development application under Part 4, or an activity the subject of environmental assessment under Part 5, of the EP&A Act will be required to notify the Ministerial Corporation if it becomes aware that the development or activity involves a work that may require an approval under Part 8 of the

Water and Environmental Planning Legislation Amendment Bill 1997

Explanatory note

Water Act. The Commission of Inquiry will be required to advise the applicant or proponent to make prompt application for such an approval, and must defer concluding its inquiry for so long as is necessary to enable such an application to be made. As soon as practicable after an application for an approval is referred to it under proposed section 171A of the Water Act (see **Schedule 1 [15]**), the Commission of Inquiry will be required to hold a public hearing into the application before making its report on the development or activity. To the extent to which the report relates to the application for an approval under Part 8 of the Water Act, a copy of the report must be given to the Ministerial Corporation.



New South Wales

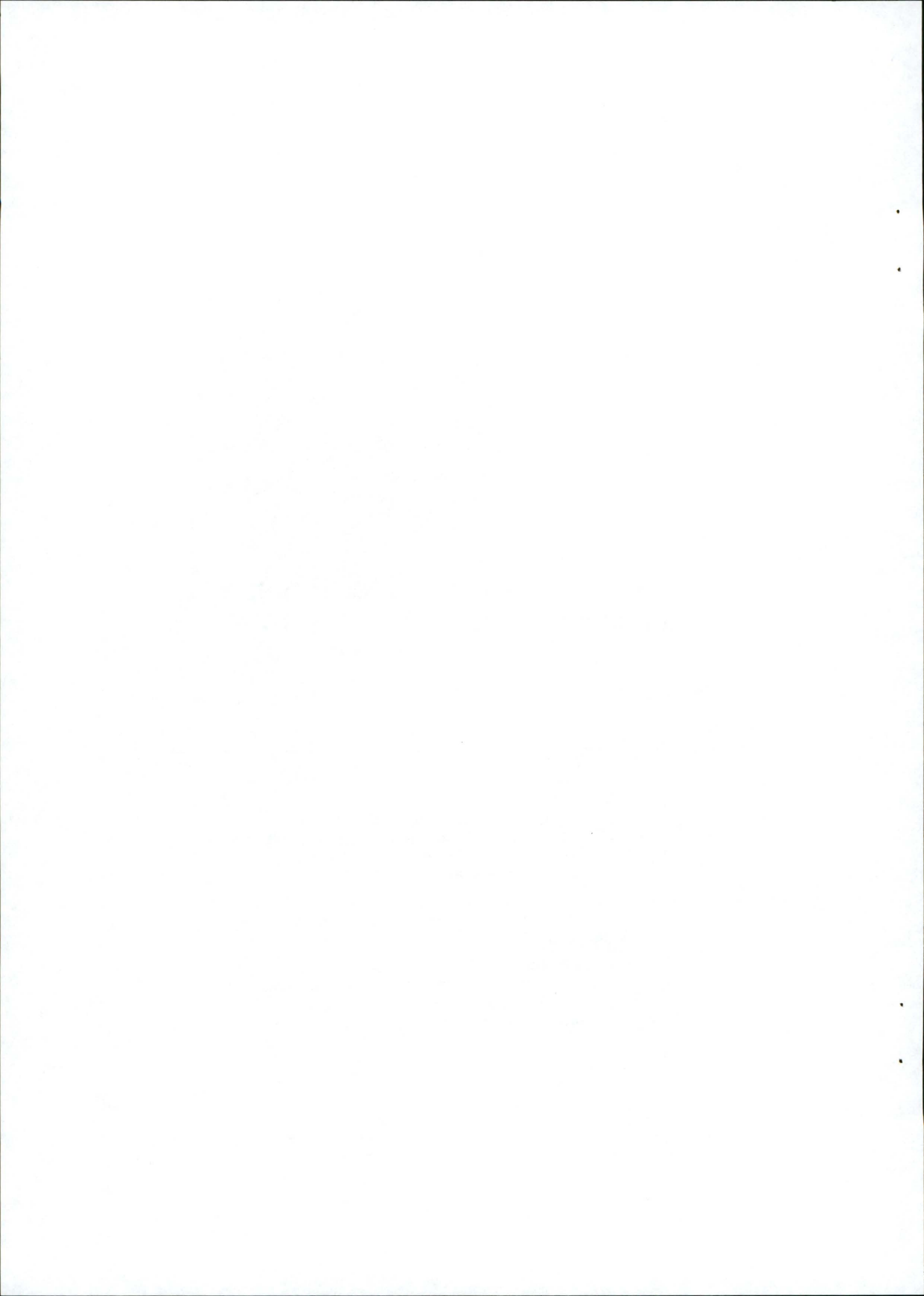
Water and Environmental Planning Legislation Amendment Bill 1997

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Act 1912 No 44	2
4 Amendment of Water Administration Act 1986 No 195	2
5 Amendment of Environmental Planning and Assessment Act 1979 No 203	2

Schedules

1 Amendment of Water Act 1912	3
2 Amendment of Water Administration Act 1986	16
3 Amendment of Environmental Planning and Assessment Act 1979	18





New South Wales

Water and Environmental Planning Legislation Amendment Bill 1997

No. , 1997

A Bill for

An Act to amend the *Water Act 1912* and the *Water Administration Act 1986* to make further provision with respect to water allocation transfers, licence conditions, charges and other miscellaneous matters; to amend the *Environmental Planning and Assessment Act 1979* to provide for a Commission of Inquiry to inquire into matters concerning approvals for certain water related works; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water and Environmental Planning Legislation Amendment Act 1997*.

2 Commencement

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(1) This Act commences on the date of assent, except as provided by subsection (2).

(2) The following provisions of this Act commence on a day or days to be appointed by proclamation:

(a) Schedule 1 [6]–[8] and [14]–[16],

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(b) Schedule 4.

3 Amendment of Water Act 1912 No 44

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

4 Amendment of Water Administration Act 1986 No 195

The *Water Administration Act 1986* is amended as set out in Schedule 2.

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5 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 3.

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Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

- environment* includes any one or more of the following: 5
- (a) land, air and water,
 - (b) any organic or inorganic matter and any living organism,
 - (c) human-made or modified structures and areas,
 - (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b). 10

[2] Section 4A

Insert after section 4:

- 4A Inquiries and appeals—requirement to take certain matters into account** 15
- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters: 20
 - (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body by the Ministerial Corporation,
 - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body by the Ministerial Corporation, 25
 - (c) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body by the Ministerial Corporation, 30

- (d) the impact that the judicial body's determination or recommendation could or might have:
 - (i) on the allocation of water resources at a local, regional and State-wide level, and
 - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and 5
 - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and 10
 - (iv) in relation to the management, protection and enhancement of the State's water resources.
- (2) In this section:
 - judicial body* means the Land and Environment Court, a local land board or a Magistrate. 15
 - relevant policy* means any governmental policy, identified by the Ministerial Corporation for the purposes of this section from time to time, relating to the management, protection and enhancement of the State's water resources. 20
- [3] **Section 16 Benefit of licence**
 - Insert after section 16 (2):
 - (3) This section is subject to section 22D.
- [4] **Section 18Q Permit to pass with land** 25
 - Insert "and to section 22D," after "Subject to the provisions of this Division".
- [5] **Section 20F Benefit of authority**
 - Insert at the end of the section:
 - (2) This section is subject to section 22D. 30

[6] Part 2, Division 4C, heading

Omit "Transfer". Insert instead "Intra-State transfer".

[7] Section 20AG

Omit the section. Insert instead:

20AG Interpretation and application of Division

5

- (1) This Division is to be construed with, and as if it formed part of, Division 4B.
- (2) This Division applies to the transfer of water allocations within New South Wales.

[8] Part 2, Division 4E

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Insert after Division 4D:

Division 4E Interstate transfer of water rights

20AS Interpretation

- (1) This Division is to be construed with, and as if it formed part of, Division 4B.
- (2) In this Division, and without limiting subsection (1):
interstate licensing authority means the interstate body that is responsible for the granting of rights to take and use water in the State concerned.

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interstate water licence means a licence (or other similar authorisation) granted by an interstate licensing authority to take and use water in a State other than New South Wales.

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20AT Application of Division

- (1) This Division applies:
 - (a) to the transfer, by the holder of an entitlement, of the whole or part of the water allocation for the entitlement to a person who is the holder of land outside New South Wales, and

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- (b) to the transfer, by a person from another State, of that person's water rights under the law of that State to a person in New South Wales.
- (2) This Division applies only:
 - (a) in respect of those water sources (or to those parts of water sources) that the Ministerial Corporation has, by notice published in the Gazette, determined to be subject to this Division, and 5
 - (b) in respect of those types of transfers that the Ministerial Corporation may specify in any such determination. 10
- (3) This Division is, to the extent of any inconsistency with the provisions of the Agreement set out in the *Murray-Darling Basin Act 1992* that relate to the interstate transfer of water allocations, subject to those provisions. 15

20AU Transfer of NSW water allocations interstate

- (1) The holder of an entitlement (the *transferor*) may, with the approval of the Ministerial Corporation, transfer the whole or part of the water allocation for the entitlement to a person who is the holder of an interstate water licence (the *interstate transferee*). 20
- (2) Any such transfer may:
 - (a) 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 25
 - (b) 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. 30
- (3) An application for the Ministerial Corporation's approval may be made by the transferor in the form approved by the Ministerial Corporation.

-
- (4) 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
 - (b) such information and consents as the Ministerial Corporation may require. 5
- (5) The Ministerial Corporation may:
- (a) assess the application, and
 - (b) decide whether or not to refer the application to the relevant interstate licensing authority, and 10
 - (c) if it decides to refer the application to the relevant interstate licensing authority:
 - (i) make such arrangements with the authority as are necessary for the joint assessment and processing of the application, and 15
 - (ii) liaise with the authority for the purposes of determining the administrative arrangements that are to apply with respect to the transfer if it is approved.
- (6) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer. 20
- (7) The Ministerial Corporation may not approve the transfer until it has been advised by the relevant interstate licensing authority that the authority:
- (a) has approved the water allocation being transferred to the interstate transferee, and 25
 - (b) has granted the interstate licensee an interstate water licence for the water that is the subject of the transfer (or it has amended the interstate transferee's existing interstate water licence accordingly). 30

- (8) If the Ministerial Corporation approves the transfer, it may give effect to the transfer:
- (a) in the case of a transfer referred to in subsection (2) (a)—by making an appropriate modification or adjustment under Division 4B of the water allocation to which the transferor's entitlement relates, and 5
 - (b) in the case of a transfer referred to in subsection (2) (b)—by making such adjustments with respect to the transferor's entitlement as the Ministerial Corporation considers necessary (eg by cancelling the entitlement if the whole of the water allocation for the entitlement is transferred, or by amending it accordingly if only part of the water allocation is transferred). 10 15
- (9) 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.
- (10) In determining whether or not to approve a transfer under this section, 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. 20
- (11) The regulations may make further provision with respect to the transfer of water allocations in accordance with this section. 25

20AV Transfer of water rights into NSW from interstate

- (1) A person (the *NSW transferee*) may, with the approval of the Ministerial Corporation, obtain the whole or part of the rights of a person to take and use water under an interstate water licence (the *interstate transferor*). 30
- (2) The NSW transferee may obtain those water rights by way of a transfer being effected in accordance with this section. 35

-
- (3) Any such transfer may:
- (a) be a temporary transfer for such limited period as may be determined by the Ministerial Corporation either generally or in a particular case, or
 - (b) be a transfer without limitation as to its duration. 5
- (4) An application for the Ministerial Corporation's approval may be made by the NSW 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 10
 - (b) such information and evidence as the Ministerial Corporation may require.
- (6) The Ministerial Corporation may: 15
- (a) assess the application, and
 - (b) decide whether or not to refer the application to the relevant interstate licensing authority, and
 - (c) if it decides to refer the application to the relevant interstate licensing authority: 20
 - (i) make such arrangements with the authority as are necessary for the joint assessment and processing of the application, and
 - (ii) liaise with the authority for the purposes of determining the administrative arrangements that are to apply with respect to the transfer if it is approved. 25
- (7) The Ministerial Corporation may approve the transfer, or it may refuse to approve the transfer.
- (8) The Ministerial Corporation may not approve the transfer until it has been advised by the relevant interstate licensing authority that the authority has approved the transfer by the interstate transferor to the NSW transferee. 30

- (9) The Ministerial Corporation may, if it approves the transfer, give effect to the transfer:
- (a) in the case of a transfer referred to in subsection (3) (a):
 - (i) by making, if the NSW transferee is the holder of an existing entitlement, an appropriate modification or adjustment under Division 4B of the water allocation to which the NSW transferee's entitlement relates, or 5
10
 - (ii) by granting, if the NSW transferee is not the holder of an existing entitlement, a new entitlement to the NSW transferee in accordance with this Part, and
 - (b) in the case of a transfer referred to in subsection (3) (b)—by granting a new entitlement to the NSW transferee in accordance with this Part (or, if the Ministerial Corporation considers it appropriate to do so, by amending the existing entitlement of the NSW transferee accordingly). 15
20
- (10) A notice in force under section 20Y does not apply to an application for an entitlement made in order to give effect to an approved transfer under this section.
- (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
- (12) In determining whether or not to approve a transfer under this section, 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. 30
- (13) The regulations may make further provision with respect to the transfer of water rights to a NSW transferee in accordance with this section. 35

[9] Section 22D

Insert after section 22C:

22D Effect of land being sold before transfer of water allocation (or water rights) is completed

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under Part 8 of the *Water (Part 2) Regulations*) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or in accordance with Part 8 of those Regulations), the sale of the land does not:
- (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
 - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and
 - (c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or in accordance with Part 8 of those Regulations.
- (2) In this section, *entitlement* and *water allocation* have the same meanings as in section 20V.

[10] Section 25

Insert after section 24:

25 Conditions relating to environmental protection

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection

of the environment (such as conditions that are designed to prevent any harmful effects that the works might have in relation to any flora or fauna or any fish habitat).

[11] Section 27 Regulations

Insert after section 27 (1) (c1): 5

(c2) any matter relevant to the scheme under Division 4E for the transfer of water allocations and water rights from, or to, New South Wales,

[12] Section 116AA

Insert before section 116A: 10

116AA Conditions relating to environmental protection

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment (such as conditions that are designed to prevent any harmful effects that the bore might have in relation to any flora or fauna or any fish habitat). 15

[13] Section 117B Charges

Omit section 117B (5) (e). Insert instead:

(e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and 20

[14] Section 171 Determinations

Insert after section 171 (6):

(7) This section is subject to section 171A. 25

[15] Section 171A

Insert after section 171:

- 171A Determinations of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979** 5
- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171. 10
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars prescribed for the purposes of section 167 (1) (b)), and 15
- (ii) any objection to the granting of an approval that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and 20
- (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report. 25
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171 (5) and (6), 172, 173 and 174 do not have effect in relation to that determination. 30

- (5) This section extends to applications made (but not determined) before the commencement of this section.
- (6) In this section:
Commission of Inquiry means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*. 5
section 119 report means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.
section 120A notice means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*. 10

[16] Section 172 Protests against conditions

Insert after section 172 (2):

- (3) This section is subject to section 171A. 15

[17] Section 176A

Insert after section 176:

176A Conditions relating to environmental protection

The conditions subject to which an approval is issued or renewed under this Part may include conditions relating to the protection of the environment (such as conditions that are designed to prevent any harmful effects that the controlled works might have in relation to any flora or fauna or any fish habitat). 20

[18] Schedule 2 Savings and transitional provisions 25

Omit "following Act" from clause 1 (1).
Insert instead "following Acts".

[19] Schedule 2, clause 1 (1)

Insert at the end of clause 1 (1):

Water and Environmental Planning Legislation Amendment Act 1997 30

[20] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Water and Environmental Planning
Legislation Amendment Act 1997** 5

4 Definition

In this Part:

amending Act means the *Water and Environmental Planning Legislation Amendment Act 1997*.

5 Pending inquiries and appeals 10

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

6 Transfer of water allocations and rights 15

(1) Section 22D of this Act, as inserted by Schedule 1 [9] to the amending Act, extends to any application:

- (a) to transfer a water allocation under Part 2 of this Act, and
- (b) to transfer water rights under Part 8 of the *Water (Part 2) Regulations*, 20

that was made, but not completed, before the date of assent to the amending Act.

(2) Any thing done under:

- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act, or 25
- (b) Part 8 of the *Water (Part 2) Regulations* with respect to the transfer of water rights under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated. 30

Schedule 2 Amendment of Water Administration Act 1986

(Section 4)

[1] Section 11A

Insert after section 11: 5

11A Implementation of measures relating to interstate transfers of water allocations

The Ministerial Corporation may do all things that are necessary in order to implement, and give effect to, any measures providing for the interstate transfer of water rights and water allocations, regardless of whether those measures are authorised under an agreement or arrangement entered into by the State. 10

[2] Section 15A

Insert after section 15: 15

15A Water management charges payable by metropolitan water corporations

(1) Sydney Water Corporation and Hunter Water Corporation are each liable to pay water management charges to the Ministerial Corporation in accordance with this section. 20

(2) The charges payable by Sydney Water Corporation and Hunter Water Corporation:

(a) are payable in respect of the financial year that began on 1 July 1996, and in respect of each subsequent financial year, and 25

(b) are to be fixed by the Independent Pricing and Regulatory Tribunal in accordance with such pricing policies as may be determined by the Tribunal, and 30

-
- (c) relate to the Ministerial Corporation's costs for or in connection with:
- (i) monitoring the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the operations of Sydney Water Corporation or Hunter Water Corporation, and 5
 - (ii) exercising any other water resource management function in relation to Sydney Water Corporation or Hunter Water Corporation. 10

**Schedule 3 Amendment of Environmental
Planning and Assessment Act 1979**

(Section 5)

- [1] Section 120A Additional procedural requirements where water licence or water approval is involved** 5
- Insert "or a work that may require a water approval" after "water licence" in section 120A (1).
- [2] Section 120A (3) and (7) (a)**
- Insert "or for a water approval" after "water licence" wherever occurring. 10
- [3] Section 120A (4) and (5)**
- Omit the subsections. Insert instead:
- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent: 15
- (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*, or
- (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act. 20
- (5) As soon as practicable after the applicant's or proponent's:
- (a) application for a water licence is referred to it under section 11A of the *Water Act 1912*, or 25
- (b) application for a water approval is referred to it under section 171A of that Act,

the Commission of Inquiry must give at least 14 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held. 5

[4] Section 120A (7) (b)

Omit the paragraph. Insert instead:

- (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the *Water Act 1912*. 10

[5] Section 120A (8) (a) and (11)

Insert "or a water approval" after "water licence" wherever occurring. 15

[6] Section 120A (8) (b)

Insert "or approval" after "licence".

[7] Section 120A (12)

Omit the subsection. Insert instead:

- (12) In this section: 20

Water and Environmental Planning Legislation Amendment Bill 1997

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

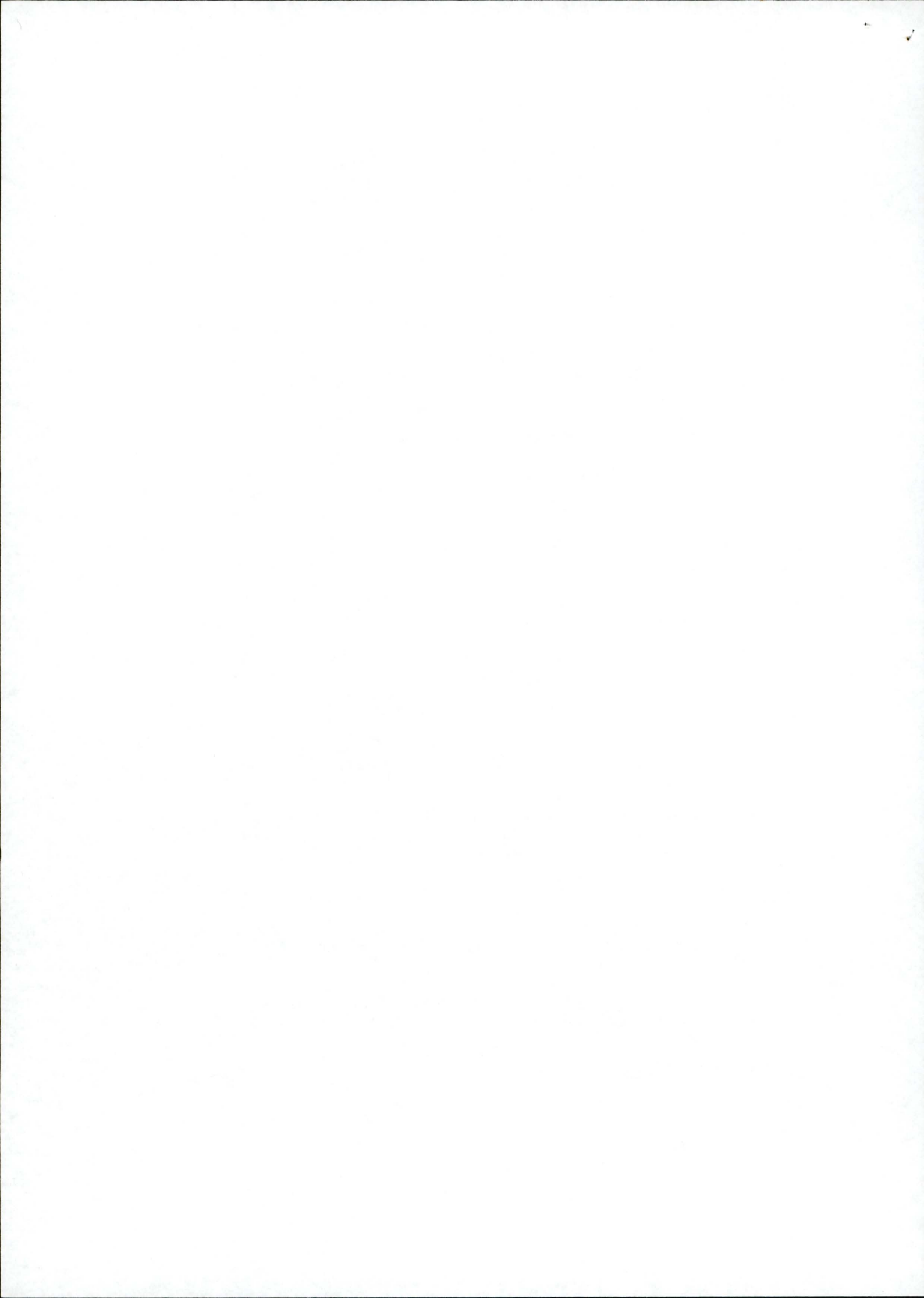
water approval means an approval under Part 8 of the *Water Act 1912*.

water licence means a licence under Division 3 of Part 2 of the *Water Act 1912*.

WATER AND ENVIRONMENTAL PLANNING LEGISLATION AMENDMENT BILL

Schedule of the amendments referred to in the Legislative Council's Message of 26 June 1997.

- No. 1 Page 3, Schedule 1 [2], proposed section 4A, lines 23 and 24. Omit "by the Ministerial Corporation".
- No. 2 Page 3, Schedule 1 [2], proposed section 4A, line 27. Omit "by the Ministerial Corporation".
- No. 3 Page 3, Schedule 1 [2], proposed section 4A. Insert after line 27:
- (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body.
- No. 4 Page 3, Schedule 1 [2], proposed section 4A, line 31. Omit "by the Ministerial Corporation".
- No. 5 Page 4, Schedule 1 [2], proposed section 4A, lines 17 to 19. Omit ", identified by the Ministerial Corporation for the purposes of this section from time to time,".
- No. 6 Page 4, Schedule 1 [2], proposed section 4A. Insert after line 21:
- (3) 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.
- No. 7 Pages 5 to 10, Schedule 1 [6] to [8], line 1 on page 5 to line 35 on page 10. Omit all words on those lines.
- No. 8 Page 12, Schedule 1 [10], proposed section 25, lines 1 to 3. Omit "(such as conditions that are designed to prevent any harmful effects that the works might have in relation to any flora or fauna or any fish habitat)".
- No. 9 Page 12, Schedule 1 [11], lines 4 to 8. Omit all words on those lines.
- No. 10 Page 12, Schedule 1 [12], proposed section 116AA, lines 14 to 17. Omit "(such as conditions that are designed to prevent any harmful effects that the bore might have in relation to any flora or fauna or any fish habitat)".
- No. 11 Page 14, Schedule 1 [17], proposed section 176A, lines 21 to 24. Omit "(such as conditions that are designed to prevent any harmful effects that the controlled works might have in relation to any flora or fauna or any fish habitat)".
- No. 12 Page 16, Schedule 2 [1], lines 4 to 13. Omit all words on those lines.
- No. 13 Page 19, Schedule 3 [3], line 1. Omit "14". Insert instead "28".
- No. 14 Long title. Omit "water allocation transfers,".
-



LOCAL GOVERNMENT AMENDMENT (PARKING AND WHEEL CLAMPING) BILL

Schedule of the amendment referred to in the Legislative Council's Message of 17 June 1998.

Page 3, Schedule 1. Insert after line 8:

- (7) It is the duty of the Director-General to establish guidelines to be followed by councils in relation to agreements of the kind referred to in subsection (6), including guidelines as to:
- (a) the circumstances in which a council may enter into such an agreement, and
 - (b) the matters for which such an agreement must or must not make provision, and
 - (c) the exercise by a council of any functions conferred on it by such an agreement.
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New South Wales

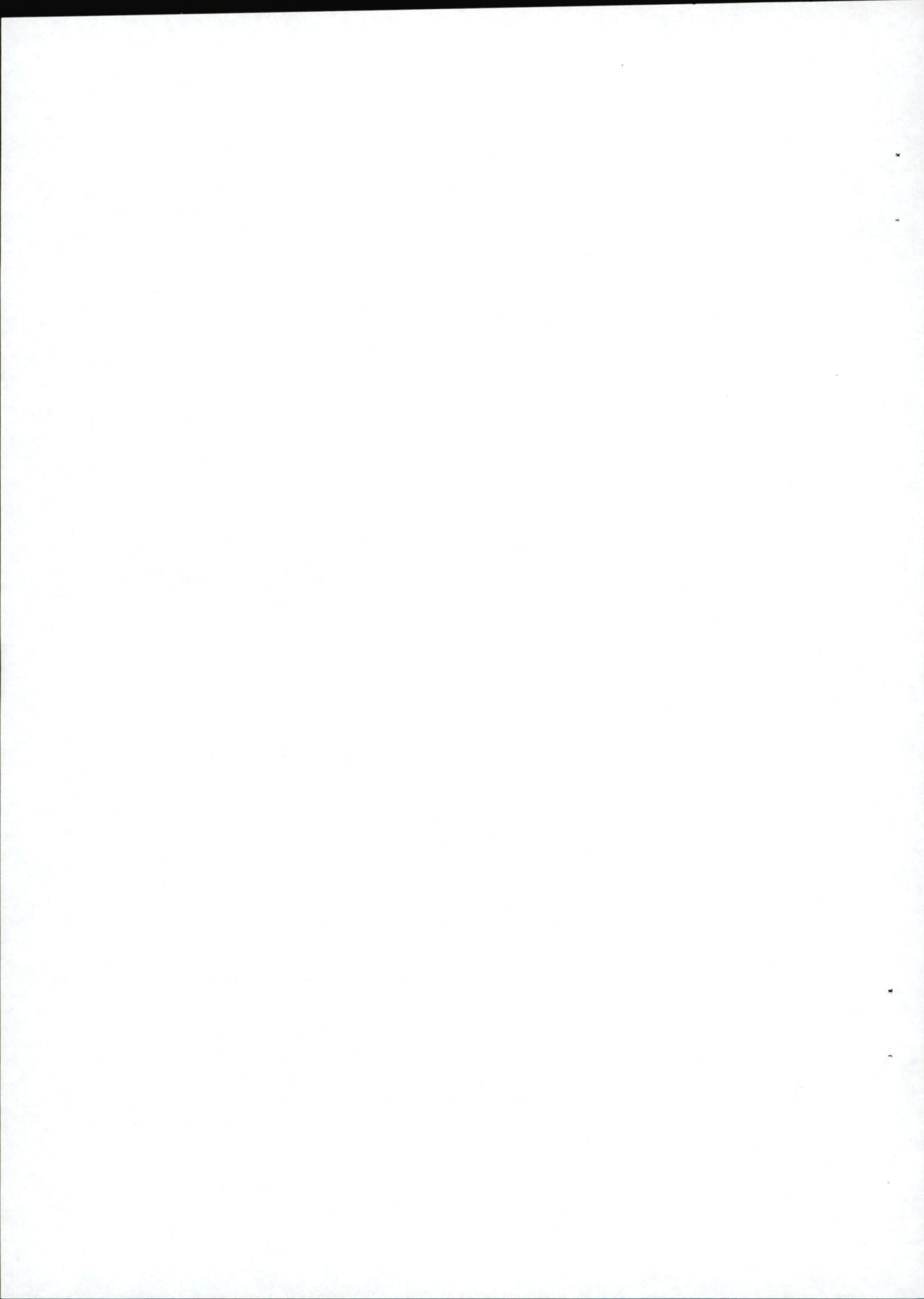
Water and Environmental Planning Legislation Amendment Act 1997 No 63

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Act 1912 No 44	2
4 Amendment of Water Administration Act 1986 No 195	2
5 Amendment of Environmental Planning and Assessment Act 1979 No 203	2

Schedules

1 Amendment of Water Act 1912	3
2 Amendment of Water Administration Act 1986	11
3 Amendment of Environmental Planning and Assessment Act 1979	12





New South Wales

Water and Environmental Planning Legislation Amendment Act 1997 No 63

Act No 63, 1997

An Act to amend the *Water Act 1912* and the *Water Administration Act 1986* to make further provision with respect to licence conditions, charges and other miscellaneous matters; to amend the *Environmental Planning and Assessment Act 1979* to provide for a Commission of Inquiry to inquire into matters concerning approvals for certain water related works; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Water and Environmental Planning Legislation Amendment Act 1997*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
 - (a) Schedule 1 [10]–[12],
 - (b) Schedule 3.

3 Amendment of Water Act 1912 No 44

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

4 Amendment of Water Administration Act 1986 No 195

The *Water Administration Act 1986* is amended as set out in Schedule 2.

5 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 3.

Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

environment includes any one or more of the following:

- (a) land, air and water,
- (b) any organic or inorganic matter and any living organism,
- (c) human-made or modified structures and areas,
- (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b).

[2] Section 4A

Insert after section 4:

4A Inquiries and appeals—requirement to take certain matters into account

- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters:
 - (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body,
 - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body,
 - (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body,

- (d) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body,
- (e) the impact that the judicial body's determination or recommendation could or might have:
 - (i) on the allocation of water resources at a local, regional and State-wide level, and
 - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and
 - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and
 - (iv) in relation to the management, protection and enhancement of the State's water resources.

(2) In this section:

judicial body means the Land and Environment Court, a local land board or a Magistrate.

relevant policy means any governmental policy relating to the management, protection and enhancement of the State's water resources.

(3) 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.

[3] **Section 16 Benefit of licence**

Insert after section 16 (2):

(3) This section is subject to section 22D.

[4] Section 18Q Permit to pass with land

Insert “and to section 22D,” after “Subject to the provisions of this Division”.

[5] Section 20F Benefit of authority

Insert at the end of the section:

- (2) This section is subject to section 22D.

[6] Section 22D

Insert after section 22C:

22D Effect of land being sold before transfer of water allocation (or water rights) is completed

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under Part 8 of the *Water (Part 2) Regulations*) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or in accordance with Part 8 of those Regulations), the sale of the land does not:
 - (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
 - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and

- (c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or in accordance with Part 8 of those Regulations.
- (2) In this section, *entitlement* and *water allocation* have the same meanings as in section 20V.

[7] Section 25

Insert after section 24:

25 Conditions relating to environmental protection

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection of the environment.

[8] Section 116AA

Insert before section 116A:

116AA Conditions relating to environmental protection

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment.

[9] Section 117B Charges

Omit section 117B (5) (e). Insert instead:

- (e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and

[10] Section 171 Determinations

Insert after section 171 (6):

- (7) This section is subject to section 171A.

[11] Section 171A

Insert after section 171:

171A Determinations of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979

- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171.
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars prescribed for the purposes of section 167 (1) (b)), and
- (ii) any objection to the granting of an approval that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and
- (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report.
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.

- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171 (5) and (6), 172, 173 and 174 do not have effect in relation to that determination.
- (5) This section extends to applications made (but not determined) before the commencement of this section.
- (6) In this section:

Commission of Inquiry means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.

section 119 report means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.

section 120A notice means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*.

[12] Section 172 Protests against conditions

Insert after section 172 (2):

- (3) This section is subject to section 171A.

[13] Section 176A

Insert after section 176:

176A Conditions relating to environmental protection

The conditions subject to which an approval is issued or renewed under this Part may include conditions relating to the protection of the environment.

[14] Schedule 2 Savings and transitional provisions

Omit "following Act" from clause 1 (1).
Insert instead "following Acts".

[15] Schedule 2, clause 1 (1)

Insert at the end of clause 1 (1):

*Water and Environmental Planning Legislation
Amendment Act 1997*

[16] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Water and Environmental Planning
Legislation Amendment Act 1997**

4 Definition

In this Part:

amending Act means the *Water and Environmental
Planning Legislation Amendment Act 1997*.

5 Pending inquiries and appeals

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

6 Transfer of water allocations and rights

(1) Section 22D of this Act, as inserted by Schedule 1 [6] to the amending Act, extends to any application:

- (a) to transfer a water allocation under Part 2 of this Act, and
- (b) to transfer water rights under Part 8 of the *Water (Part 2) Regulations*,

that was made, but not completed, before the date of assent to the amending Act.

- (2) Any thing done under:
- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act, or
 - (b) Part 8 of the *Water (Part 2) Regulations* with respect to the transfer of water rights under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated.

Schedule 2 Amendment of Water Administration Act 1986

(Section 4)

Section 15A

Insert after section 15:

15A Water management charges payable by metropolitan water corporations

- (1) Sydney Water Corporation and Hunter Water Corporation are each liable to pay water management charges to the Ministerial Corporation in accordance with this section.
- (2) The charges payable by Sydney Water Corporation and Hunter Water Corporation:
 - (a) are payable in respect of the financial year that began on 1 July 1996, and in respect of each subsequent financial year, and
 - (b) are to be fixed by the Independent Pricing and Regulatory Tribunal in accordance with such pricing policies as may be determined by the Tribunal, and
 - (c) relate to the Ministerial Corporation's costs for or in connection with:
 - (i) monitoring the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the operations of Sydney Water Corporation or Hunter Water Corporation, and
 - (ii) exercising any other water resource management function in relation to Sydney Water Corporation or Hunter Water Corporation.

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

(Section 5)

[1] Section 120A Additional procedural requirements where water licence or water approval is involved

Insert "or a work that may require a water approval" after "water licence" in section 120A (1).

[2] Section 120A (3) and (7) (a)

Insert "or for a water approval" after "water licence" wherever occurring.

[3] Section 120A (4) and (5)

Omit the subsections. Insert instead:

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent:
 - (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*, or
 - (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act.
- (5) As soon as practicable after the applicant's or proponent's:
 - (a) application for a water licence is referred to it under section 11A of the *Water Act 1912*, or
 - (b) application for a water approval is referred to it under section 171A of that Act,

the Commission of Inquiry must give at least 28 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held.

[4] Section 120A (7) (b)

Omit the paragraph. Insert instead:

- (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the *Water Act 1912*.

[5] Section 120A (8) (a) and (11)

Insert "or a water approval" after "water licence" wherever occurring.

[6] Section 120A (8) (b)

Insert "or approval" after "licence".

[7] Section 120A (12)

Omit the subsection. Insert instead:

- (12) In this section:

water approval means an approval under Part 8 of the *Water Act 1912*.

water licence means a licence under Division 3 of Part 2 of the *Water Act 1912*.

[Minister's second reading speech made in—
Legislative Assembly on 17 June 1997
Legislative Council on 26 June 1997]

BY AUTHORITY



New South Wales

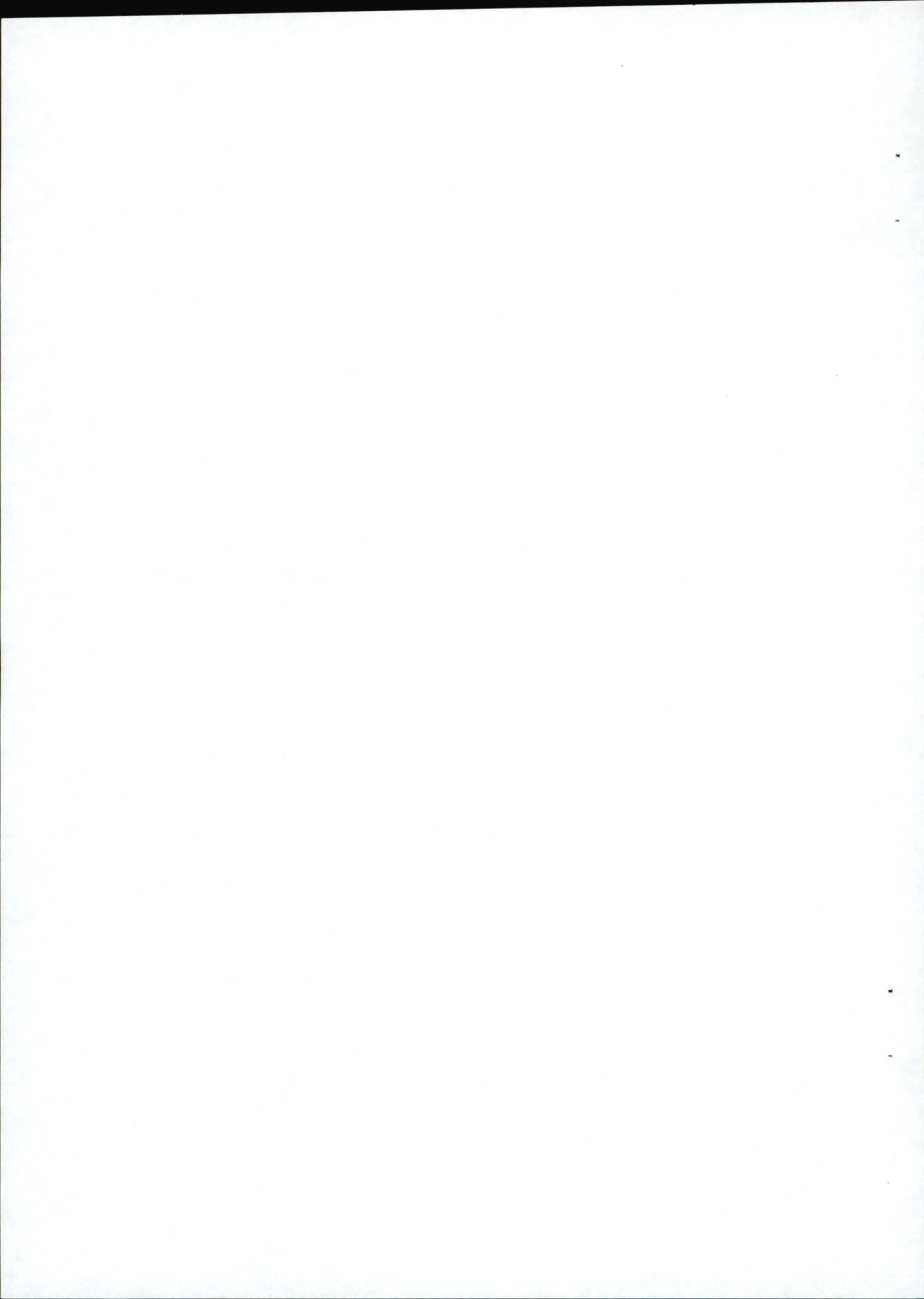
Water and Environmental Planning Legislation Amendment Act 1997 No 63

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Act 1912 No 44	2
4 Amendment of Water Administration Act 1986 No 195	2
5 Amendment of Environmental Planning and Assessment Act 1979 No 203	2

Schedules

1 Amendment of Water Act 1912	3
2 Amendment of Water Administration Act 1986	11
3 Amendment of Environmental Planning and Assessment Act 1979	12





New South Wales

Water and Environmental Planning Legislation Amendment Act 1997 No 63

Act No 63, 1997

An Act to amend the *Water Act 1912* and the *Water Administration Act 1986* to make further provision with respect to licence conditions, charges and other miscellaneous matters; to amend the *Environmental Planning and Assessment Act 1979* to provide for a Commission of Inquiry to inquire into matters concerning approvals for certain water related works; and for other purposes. [Assented to 2 July 1997]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Water and Environmental Planning Legislation Amendment Act 1997*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
 - (a) Schedule 1 [10]–[12],
 - (b) Schedule 3.

3 Amendment of Water Act 1912 No 44

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

4 Amendment of Water Administration Act 1986 No 195

The *Water Administration Act 1986* is amended as set out in Schedule 2.

5 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 3.

Schedule 1 Amendment of Water Act 1912

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

environment includes any one or more of the following:

- (a) land, air and water,
- (b) any organic or inorganic matter and any living organism,
- (c) human-made or modified structures and areas,
- (d) interacting natural ecosystems that include components referred to in paragraphs (a) and (b).

[2] Section 4A

Insert after section 4:

4A Inquiries and appeals—requirement to take certain matters into account

- (1) A judicial body is required, in carrying out any of its inquiry or appeal functions under this Act and in making any determination or recommendation with respect to any such inquiry or appeal, to take into account, and to have due regard to, the following matters:
 - (a) any relevant policy that concerns the subject-matter of the inquiry or appeal and that is brought to the attention of the judicial body,
 - (b) any State-wide water resource management objectives that are brought to the attention of the judicial body,
 - (c) any relevant inter-government agreement, treaty or arrangement relating to the management, preservation or sharing of the State's water resources that is brought to the attention of the judicial body,

- (d) the state of water resources, and the state of the environment generally, at a local, regional and State-wide level as brought to the attention of the judicial body,
- (e) the impact that the judicial body's determination or recommendation could or might have:
 - (i) on the allocation of water resources at a local, regional and State-wide level, and
 - (ii) on other persons who are entitled to take and use water (apart from those to whom the inquiry or appeal relates), and
 - (iii) on the state of water resources, and on the state of the environment generally, at a local, regional and State-wide level, and
 - (iv) in relation to the management, protection and enhancement of the State's water resources.

(2) In this section:

judicial body means the Land and Environment Court, a local land board or a Magistrate.

relevant policy means any governmental policy relating to the management, protection and enhancement of the State's water resources.

(3) 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.

[3] **Section 16 Benefit of licence**

Insert after section 16 (2):

(3) This section is subject to section 22D.

[4] Section 18Q Permit to pass with land

Insert “and to section 22D,” after “Subject to the provisions of this Division”.

[5] Section 20F Benefit of authority

Insert at the end of the section:

- (2) This section is subject to section 22D.

[6] Section 22D

Insert after section 22C:

22D Effect of land being sold before transfer of water allocation (or water rights) is completed

- (1) Despite any other provision of this Act, if the land to which an entitlement relates is sold before a transfer under this Part (or under Part 8 of the *Water (Part 2) Regulations*) of the whole or part of the water allocation (or the water rights) in respect of the entitlement has been completed in accordance with this Part (or in accordance with Part 8 of those Regulations), the sale of the land does not:
 - (a) if the whole of the water allocation (or the water rights) in respect of the entitlement is being transferred—operate to pass the benefit of the entitlement to the occupier for the time being of the land, and
 - (b) if only part of the water allocation (or the water rights) for the entitlement is being transferred—operate to pass the benefit of the relevant part of the entitlement to the occupier for the time being of the land, and

- (c) prevent the transfer of the whole or the part of the water allocation (or the water rights) from being completed in accordance with this Part or in accordance with Part 8 of those Regulations.
- (2) In this section, *entitlement* and *water allocation* have the same meanings as in section 20V.

[7] Section 25

Insert after section 24:

25 Conditions relating to environmental protection

The conditions subject to which a licence, permit, authority or group licence is granted or renewed under this Part may include conditions relating to the protection of the environment.

[8] Section 116AA

Insert before section 116A:

116AA Conditions relating to environmental protection

The conditions subject to which a licence is issued or renewed under this Part may include conditions relating to the protection of the environment.

[9] Section 117B Charges

Omit section 117B (5) (e). Insert instead:

- (e) be on the basis of a fixed charge or on the basis of the quantity of water taken from the bore (or a combination of both), and

[10] Section 171 Determinations

Insert after section 171 (6):

- (7) This section is subject to section 171A.

[11] Section 171A

Insert after section 171:

171A Determinations of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979

- (1) This section applies to any application under section 167 that concerns a controlled work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its determination on the application under section 171.
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars prescribed for the purposes of section 167 (1) (b)), and
- (ii) any objection to the granting of an approval that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and
- (b) must defer making any determination on the application under section 171 (1) until it receives the Commission of Inquiry's section 119 report.
- (3) In making its determination on the application under section 171 (1), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.

- (4) The Ministerial Corporation's determination under section 171 (1) on the application is final, and the provisions of sections 171 (5) and (6), 172, 173 and 174 do not have effect in relation to that determination.
- (5) This section extends to applications made (but not determined) before the commencement of this section.
- (6) In this section:

Commission of Inquiry means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.

section 119 report means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.

section 120A notice means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*.

[12] Section 172 Protests against conditions

Insert after section 172 (2):

- (3) This section is subject to section 171A.

[13] Section 176A

Insert after section 176:

176A Conditions relating to environmental protection

The conditions subject to which an approval is issued or renewed under this Part may include conditions relating to the protection of the environment.

[14] Schedule 2 Savings and transitional provisions

Omit "following Act" from clause 1 (1).
Insert instead "following Acts".

[15] Schedule 2, clause 1 (1)

Insert at the end of clause 1 (1):

*Water and Environmental Planning Legislation
Amendment Act 1997*

[16] Schedule 2, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Water and Environmental Planning
Legislation Amendment Act 1997**

4 Definition

In this Part:

amending Act means the *Water and Environmental
Planning Legislation Amendment Act 1997*.

5 Pending inquiries and appeals

Section 4A of this Act, as inserted by Schedule 1 [2] to the amending Act, does not apply to an inquiry or appeal that commenced before the date of assent to the amending Act.

6 Transfer of water allocations and rights

(1) Section 22D of this Act, as inserted by Schedule 1 [6] to the amending Act, extends to any application:

- (a) to transfer a water allocation under Part 2 of this Act, and
- (b) to transfer water rights under Part 8 of the *Water (Part 2) Regulations*,

that was made, but not completed, before the date of assent to the amending Act.

- (2) Any thing done under:
- (a) this Act with respect to the transfer of a water allocation under Part 2 of this Act, or
 - (b) Part 8 of the *Water (Part 2) Regulations* with respect to the transfer of water rights under that Part,

that would have been validly done had section 22D been in force at the time the thing was done is validated.

Schedule 2 Amendment of Water Administration Act 1986

(Section 4)

Section 15A

Insert after section 15:

15A Water management charges payable by metropolitan water corporations

- (1) Sydney Water Corporation and Hunter Water Corporation are each liable to pay water management charges to the Ministerial Corporation in accordance with this section.
- (2) The charges payable by Sydney Water Corporation and Hunter Water Corporation:
 - (a) are payable in respect of the financial year that began on 1 July 1996, and in respect of each subsequent financial year, and
 - (b) are to be fixed by the Independent Pricing and Regulatory Tribunal in accordance with such pricing policies as may be determined by the Tribunal, and
 - (c) relate to the Ministerial Corporation's costs for or in connection with:
 - (i) monitoring the extraction of water from, and the flow of water along, the rivers and lakes that are affected by the operations of Sydney Water Corporation or Hunter Water Corporation, and
 - (ii) exercising any other water resource management function in relation to Sydney Water Corporation or Hunter Water Corporation.

Schedule 3 Amendment of Environmental Planning and Assessment Act 1979

(Section 5)

[1] Section 120A Additional procedural requirements where water licence or water approval is involved

Insert "or a work that may require a water approval" after "water licence" in section 120A (1).

[2] Section 120A (3) and (7) (a)

Insert "or for a water approval" after "water licence" wherever occurring.

[3] Section 120A (4) and (5)

Omit the subsections. Insert instead:

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent:
 - (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*, or
 - (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act.
- (5) As soon as practicable after the applicant's or proponent's:
 - (a) application for a water licence is referred to it under section 11A of the *Water Act 1912*, or
 - (b) application for a water approval is referred to it under section 171A of that Act,

the Commission of Inquiry must give at least 28 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held.

[4] Section 120A (7) (b)

Omit the paragraph. Insert instead:

- (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the *Water Act 1912*.

[5] Section 120A (8) (a) and (11)

Insert "or a water approval" after "water licence" wherever occurring.

[6] Section 120A (8) (b)

Insert "or approval" after "licence".

[7] Section 120A (12)

Omit the subsection. Insert instead:

- (12) In this section:

water approval means an approval under Part 8 of the *Water Act 1912*.

water licence means a licence under Division 3 of Part 2 of the *Water Act 1912*.

[Minister's second reading speech made in—
Legislative Assembly on 17 June 1997
Legislative Council on 26 June 1997]

BY AUTHORITY