

# South Australia



## STATUTES AMENDMENT (WATER RESOURCES) ACT 1997

No. 35 of 1997

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**ELIZABETHAE II REGINAE**

A.D. 1997

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No. 35 of 1997

An Act to amend the Environment Protection Act 1993 and other Acts as a consequence of the enactment of the Water Resources Act 1997; and for other purposes.

[Assented to 19 June 1997]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Water Resources) Act 1997*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Interpretation**

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading of the Part in which the reference occurs.

**PART 2  
AMENDMENT OF DEVELOPMENT ACT 1993**

**Amendment of s. 29—Certain amendments may be made without formal procedures**

4. Section 29 of the principal Act is amended by striking out from subsection (1) "by including in the plan any plan, policy, standard, document or code" and substituting "in accordance with any plan, policy, standard, report, document or code".

**PART 3  
AMENDMENT OF ENVIRONMENT PROTECTION ACT 1993**

**Amendment of s. 39—Notice and submissions in respect of applications for environmental authorisations**

5. Section 39 of the principal Act is amended by inserting the following subsections after subsection (1):

(1a) The Authority must, on receipt of an application for an environmental authorisation that would authorise an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, give notice of the application to the authority under that Act to whom an application for a permit for that activity would otherwise have to be made inviting the authority to make written submissions in relation to the application within a period specified in the notice (being not less than 14 days after the notice is given to the authority).

(1b) Subsection (1a) does not apply in relation to an activity—

- (a) to which section 64(1a) applies; or
- (b) that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act.

**Amendment of s. 46—Notice and submissions in respect of proposed variations of conditions**

6. Section 46 of the principal Act is amended—

(a) by inserting the following subsection after subsection (1):

(1a) Subject to this section, if the Authority proposes to vary the conditions of an environmental authorisation that authorises an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must first give notice to the authority under that Act to whom an application for a permit for that activity would otherwise have to be made that—

- (a) sets out the reasons for the proposed variation; and
- (b) invites the authority to make written submissions in relation to the proposal within a period specified in the notice (being not less than 14 days after the notice is given to the authority);;

(b) by striking out "Public notice of a proposed variation is not required" from subsection (4) and substituting "Public notice under subsection (1)(b) and notice under subsection (1a) are not required".

**Amendment of s. 47—Criteria for grant and conditions of environmental authorisations**

7. Section 47 of the principal Act is amended by inserting the following word and paragraph after paragraph (i) of subsection (1):

and

- (j) where an authority under the *Water Resources Act 1997* has made submissions to the Authority in response to an invitation under section 39(1a) or 46(1a), have regard to those submissions.

**Substitution of s. 61**

8. Section 61 of the principal Act is repealed and the following section is substituted:

**Interpretation**

61. (1) In this Division—

"lake" means a natural lake and includes a natural lagoon, swamp, marsh or spring;

"owner" in relation to a vessel or aircraft includes a person who has, or is entitled to, possession or control of the vessel or aircraft;

"surface water" means water in a watercourse or lake and includes—

- (a) water in a dam, reservoir or artificial lake that is situated in a water protection area; and
- (b) floodwaters that have overflowed the banks of a watercourse or lake;

"underground water" means—

- (a) water occurring naturally below ground level;
- (b) water pumped, diverted or released into a well for storage underground;

"watercourse" means—

- (a) a river, creek or other natural watercourse (whether modified or not);
- (b) an artificial channel (but not a channel declared by regulation to be excluded from the ambit of this definition);

"water protection area" means a part of the State for the time being declared by proclamation to be a water protection area;

"Water Resources Minister" means the Minister for the time being administering the *Water Resources Act 1997*.

(2) A pollutant floating on the surface of water will be taken to have entered the water.

(3) A pollutant that enters surface or underground water in a water protection area of the State will be taken to have degraded the water if the quality of the water is detrimentally affected as the pollutant disperses through or over it notwithstanding that, as dispersion continues, the detrimental effect may be reduced to a negligible level.

(4) For the purposes of this Division a pollutant in a vehicle, or that has entered water from a vehicle, will be taken to be on the land, or to have entered the water from the land, on which the vehicle is standing or moving.

#### **Insertion of s. 61A**

9. The following section is inserted after section 61 of the principal Act:

#### **Proclamation of water protection areas**

61A. (1) The Governor may, by proclamation made on the recommendation of the Authority, declare any part of the State to be a water protection area and may by subsequent proclamation, vary or revoke such a proclamation.

(2) The Authority must consult the Water Resources Minister and the Minister for the time being administering the *Waterworks Act 1932* before making a recommendation to the Governor under subsection (1).

#### **Substitution of s. 62**

10. Section 62 of the principal Act is repealed and the following section is substituted:

#### **Appointment of authorised officers by the Water Resources Minister**

62. (1) The Water Resources Minister may, after consultation with the Authority, appoint pursuant to Part 10 Division 1 a person who is an authorised officer under the *Water Resources Act 1997* to be an authorised officer under this Act.

(2) The Water Resources Minister may, at any time, revoke an appointment made by him or her, or vary or revoke a condition specified in the instrument of appointment or impose a further condition.

#### **Amendment of s. 64—Certain matters to be referred to Water Resources Minister**

11. Section 64 of the principal Act is amended—

- (a) by inserting after "Where an application" in subsection (1) "of a kind prescribed by subsection (1a)";
- (b) by inserting after "water protection area" in subsection (1) "(except a water protection area, or part of a water protection area, excluded from the operation of this section by regulation)";
- (c) by inserting the following subsections after subsection (1):

(1a) The following kinds of applications are prescribed for the purposes of subsection (1):

- (a) an application for an environmental authorisation to drain or discharge any solid, liquid or gaseous material directly or indirectly into a well that is a prescribed well under the *Water Resources Act 1997*;
- (b) an application for an environmental authorisation in respect of any activity that might, in the opinion of the Authority, create a significant risk of environmental harm to a water resource within the meaning of the *Water Resources Act 1997*.

(1b) Subsection (1a) does not apply in relation to an activity that is development for the purposes of the *Development Act 1993* and that is authorised by a development authorisation under that Act.;

- (d) by inserting the following subsection after subsection (8):

(9) The Water Resources Minister may, by notice in writing, instruct the Authority to refer an application of a kind referred to in subsection (1) in respect of an activity that is to be undertaken in the catchment area of a catchment water management board to the board instead of to the Minister and in that event references to the Water Resources Minister in this section and in a regulation made under this section will be taken to be references to the board.

**Insertion of ss. 64A to 64D**

12. The following sections are inserted in Part 8 Division 1 after section 64 of the principal Act:

**Action by Minister in case of unauthorised release of pollutant**

64A. (1) Where the Minister knows of, or has reason to suspect, the unauthorised entry of a pollutant into surface or underground water in a water protection area and is of the opinion that the pollutant has degraded or is likely to degrade the water, the Minister may, by notice served on the owner or occupier of the land, or the owner of the vessel or aircraft, from which the pollutant entered the water, direct the owner or occupier of the land or the owner of the vessel or aircraft to take such action as the Minister specifies in the notice—

- (a) to prevent further entry of a pollutant into the water or any other water;
- (b) to remove a pollutant that has entered the water from the water or from land on which the pollutant has been deposited.

(2) A person on whom a notice has been served is entitled to enter any land in order to comply with the notice.

(3) If the person on whom a notice has been served fails to comply with the notice, the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

(4) In an emergency the Minister is not obliged to serve notice under subsection (1) but may enter the land, vessel or aircraft and take such action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due to the Minister by the owner and occupier of the land or the owner of the vessel or aircraft.

**Risk of escape of pollutant from land, etc.**

64B. (1) Where the Minister is of the opinion that precautions should be taken to ensure that a pollutant on or under any land or on any vessel or aircraft does not enter any surface or underground water in a water protection area, the Minister may by notice served on the owner or occupier of the land or the owner of the vessel or aircraft direct him or her to take such action (to be specified in the notice) as the Minister considers necessary or desirable.

(2) A person who fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: if the offender is a body corporate—\$120 000

if the offender is a natural person—\$75 000.

(3) Where a person on whom a notice has been served fails to comply with the notice, the Minister may enter the land, vessel or aircraft and take the action specified in the notice and such other action as the Minister considers appropriate in the circumstances and the Minister's costs will be a debt due by the person to the Minister.

**Delegation of powers under ss. 64A and 64B**

**64C.** (1) The Minister may delegate any of his or her powers under section 64A or 64B to any person or body.

(2) A delegation under this section—

- (a) must be by instrument in writing; and
- (b) may be absolute or conditional; and
- (c) does not derogate from the power of the Minister to exercise any of those powers; and
- (d) is revocable at will by the Minister.

**Costs to be a charge on land**

**64D.** (1) Where costs are a debt due by a person to the Minister or to a delegate of the Minister under section 64A(3) or (4) or 64B(3)—

- (a) the Minister or delegate may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
- (b) the amount together with any interest charge so payable is until paid a charge in favour of the Minister or delegate on any land owned by the person in relation to which the costs are due under section 64A or 64B.

(2) A charge imposed on land by this section has priority over—

- (a) any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- (b) any other charge on the land other than a charge registered prior to service of the notice referred to in subsection (1)(a) on the owner of the land.

**Amendment of s. 84—Defence where alleged contravention of Part**

13. Section 84 of the principal Act is amended by inserting the following subsection after subsection (1):

(1a) Subsection (1)(c) does not apply where the property harmed comprises water occurring naturally at ground level or water in an underground aquifer.

**Amendment of s. 93—Environment protection orders**

14. Section 93 of the principal Act is amended by inserting the following subsections after subsection (2):

(2a) Where a proposed environment protection order (except an emergency environment protection order) or a proposed variation of an environment protection order would require the undertaking of an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Water Resources Act 1997* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.



(2b) The period of the notice referred to in subsection (2a) must be—

- (a) in the case of an order to confirm an emergency environment protection order—at least 24 hours;
- (b) in all other cases—at least 14 days.

**Amendment of s. 99—Clean-up orders**

15. Section 99 of the principal Act is amended by inserting the following subsections after subsection (2):

(2a) Where a proposed clean-up order (except an emergency clean-up order) or a proposed variation of a clean-up order would require the undertaking of an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Water Resources Act 1997* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.

(2b) The period of the notice referred to in subsection (2a) must be—

- (a) in the case of an order to confirm an emergency clean-up order—at least 24 hours;
- (b) in all other cases—at least 14 days.

**Amendment of s. 118—Service**

16. Section 118 of the principal Act is amended by inserting after "the Authority" in subsection (1) "or the Minister".

**Amendment of s. 135—Recovery of technical costs associated with prosecutions**

17. Section 135 of the principal Act is amended by inserting after "the Authority" wherever occurring "or the Minister".

**Amendment of s. 138—Enforcement of charge on land**

18. Section 138 of the principal Act is amended by inserting after "the Authority" wherever occurring in subsection (1) "or the Minister".

**Amendment of s. 139—Evidentiary provisions**

19. Section 139 of the principal Act is amended—

- (a) by inserting after "the Authority" wherever occurring in subsection (1) "or the Minister";
- (b) by inserting after "the Authority" in paragraph (a) of subsection (6) "or the Minister".

**Amendment of schedule 2—Repeals, Amendments and Transitional Provisions**

20. Schedule 2 of the principal Act is amended—

- (a) by inserting the following subclause after subclause (9) of clause 5:

(10) A proclamation declaring part of the State to be a water protection area under Part 5 of the *Water Resources Act 1990* that was in force immediately before the repeal of that Part will be taken to have been made under section 61A.;

(b) by inserting the following clause after clause 5:

**Transitional provisions on repeal of Water Resources Act 1990**

6. (1) Where the Minister is satisfied that a draft environment protection policy makes provisions designed to preserve as nearly as practicable the effect of provisions made by or under the *Water Resources Act 1990*—

- (a) the normal procedure for making environment protection policies under Part 5 does not apply in relation to the draft policy; and
- (b) the Minister may refer the draft policy directly to the Governor.

(2) The Governor may, on reference of a draft policy under subclause (1), by notice in the *Gazette*—

- (a) declare the draft to be an authorised environment protection policy under Part 5; and
- (b) fix the day on which the policy comes into operation.

**PART 4**

**AMENDMENT OF LOCAL GOVERNMENT ACT 1934**

**Repeal of Division 1 of Part 35**

21. Division 1 of Part 35 of the principal Act is repealed.

**PART 5**

**AMENDMENT OF PASTORAL LAND MANAGEMENT AND CONSERVATION ACT 1989**

**Amendment of s. 41—Property plans**

22. Section 41 of the principal Act is amended by inserting the following subsection after subsection (9):

(9a) Where a proposed property plan (including a property plan prepared or revised by the Board) includes or will include an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Board must not approve the plan or prepare or revise it without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

**Amendment of s. 43—Notices to destock or take other action**

23. Section 43 of the principal Act is amended by inserting the following subsection after subsection (2):

(2a) Where the Board proposes to issue or vary a notice under subsection (1) that would require a lessee to undertake an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the Board must not issue or vary the notice without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

**Amendment of s. 59—Right to take water**

24. Section 59 of the principal Act is amended by inserting the following subsection after subsection (4):

(5) This section is subject to the *Water Resources Act 1997*.

**PART 6****AMENDMENT OF SOIL CONSERVATION AND LAND CARE ACT 1989****Amendment of s. 29—Functions of boards**

25. Section 29 of the principal Act is amended by inserting the following subsection after subsection (1):

(1a) A board has the functions for the time being delegated to the board under another Act.

**Amendment of s. 36—District plans**

26. Section 36 of the principal Act is amended by inserting the following subsection after subsection (4):

(4a) An approved district plan and three year programme must, as far as practicable, be consistent with a water plan under the *Water Resources Act 1997* that applies in relation to the district or a part of the district to which the district plan and three year programme applies.

**Amendment of s. 37—Voluntary property plans**

27. Section 37 of the principal Act is amended by inserting the following subsection after subsection (4):

(4a) Where a property plan includes an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not approve the plan or approve the variation of the plan without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

**Amendment of s. 38—Soil conservation orders**

28. Section 38 of the principal Act is amended by inserting the following subsection after subsection (4):

(4a) Where a board proposes to make or vary a soil conservation order that would require a landowner to undertake an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not make or vary the order without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

**Amendment of s. 39—Provisions relating to compulsory property plans**

29. Section 39 of the principal Act is amended by inserting the following subsection after subsection (2):

(2a) Where a property plan includes an activity for which a permit would, but for section 12 of the *Water Resources Act 1997*, be required under that Act, the board must not approve the plan or approve the variation of the plan without first consulting and having regard to the views of the authority under that Act to whom an application for a permit for that activity would otherwise have to be made.

**PART 7****AMENDMENT OF SUBORDINATE LEGISLATION ACT 1978****Amendment of s. 16A—Regulations to which this Part applies**

30. Section 16A of the principal Act is amended by inserting the following paragraph and word after paragraph (d):

- (e) a regulation under the *Water Resources Act 1997*—
  - (i) declaring a watercourse, lake or well to be a prescribed watercourse, lake or well or declaring that part of the State is a surface water prescribed area; or
  - (ii) appointing a body to be a catchment water management board; or
  - (iii) varying or revoking a regulation referred to in subparagraphs (i) or (ii); and.

**PART 8**  
**AMENDMENT OF WATER RESOURCES ACT 1997**

**Amendment of schedule 3—Repeal and transitional provisions****31. Schedule 3 of the principal Act is amended—**

(a) by striking out subclause (1) of clause 2 and substituting the following subclause:

(1) A proclamation under section 33(1) or (2) of the *Water Resources Act 1990* or section 25 or 41 of the *Water Resources Act 1976* that was in force immediately before the commencement of this Act continues in force as though—

- (a) it were a regulation under section 8(1) of this Act (but not for the purposes of the *Subordinate Legislation Act 1978*); and
- (b) in the case of a proclamation under section 41 (declaring an area to be a Proclaimed Region), it declared the existing and future wells in its Proclaimed Region to be prescribed wells.;

(b) by striking out subclause (2) of clause 2 and substituting the following subclause:

(2) A proclamation referred to in subclause (1)—

- (a) may be varied or revoked by regulation as though it were a regulation under section 8(1); and
- (b) in the case of a proclamation declaring a well, will, unless varied by regulation, be taken to exclude the operation of section 7(5).;

(c) by striking out from subclause (19) of clause 2 "1996/1997 financial year" and substituting "1996/1997 and 1997/1998 financial years";

(d) by striking out from subclause (19) of clause 2 "1997/1998" and substituting "1998/1999".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor