

South Australia



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ELIZABETHAE II REGINAE  
A.D. 2001

**WATER RESOURCES (RESERVATION OF WATER) AMENDMENT  
ACT 2001**

No. 42 of 2001

[Assented to 3 August 2001]

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An Act to amend the Water Resources Act 1997.

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**SUMMARY OF PROVISIONS**

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**PART 5A**

**Reservation Of Excess Water By The Minister**

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**The Parliament of South Australia enacts as follows:**

**Short title**

1. (1) This Act may be cited as the *Water Resources (Reservation of Water) Amendment Act 2001*.

(2) The *Water Resources Act 1997* is referred to in this Act as "the principal Act".

**Commencement**

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 8 will be taken to have come into operation on 2 July 1997.

**Amendment of s. 35A—Water (holding) allocations**

3. Section 35A of the principal Act is amended—

(a) by striking out "At" from subsection (7) and substituting "Subject to subsection (7a), at";

(b) by inserting the following subsection after subsection (7):

(7a) Where a water (holding) allocation in relation to which section 122A applies is to be transferred subject to a condition (referred to in section 122A(2)(c)) that the allocation—

(a) be converted to a water (taking) allocation; or

(b) be endorsed on the transferee's licence as a water (taking) allocation,

the application to the Minister to approve the transfer of the licence or to vary the transferring and receiving licences will be taken to include a request under subsection (7) to convert the water (holding) allocation to a water (taking) allocation.

**Insertion of Part 5A**

4. The following Part is inserted after Part 5 of the principal Act:

**PART 5A  
Reservation Of Excess Water By The Minister**

**Interpretation**

44A. In this Part, unless the contrary intention appears—

"reserved water" means water reserved by notice published in the *Gazette* under section 44B.

**Reservation of excess water in a water resource**

44B. (1) Where—

(a) a water allocation plan has been adopted by the Minister in relation to a water resource; and

(b) the water resource includes excess water that is available for allocation; and

- (c) the Minister is satisfied that it is necessary or desirable for the proper management of the water of the resource to reserve the whole or part of that excess water either from allocation under any circumstances or for allocation subject to restrictions,

the Minister may, by notice published in the *Gazette*, reserve the whole or a part of the excess water.

(2) The notice—

- (a) must specify the quantity of water that is reserved; and
- (b) must state whether the water is reserved from allocation under any circumstances or may be allocated by the Minister if the requirements referred to in a regulation under section 44D are satisfied; and
- (c) may, if water can be allocated, specify the requirements (if any) that must be satisfied in addition to those referred to in a regulation under section 44D before water is allocated.

(3) The Minister may, at any time, by subsequent notice published in the *Gazette* vary or revoke a notice under subsection (1).

**Allocation of reserved water**

**44C.** The following provisions apply in relation to the allocation of reserved water despite the other provisions of this Act:

- (a) the restrictions (if any) in the relevant water allocation plan as to the purpose for which allocated water can be used do not apply to the allocation of reserved water (but this paragraph does not prevent the Minister from allocating reserved water subject to the same or similar restrictions);
- (b) the allocation must be for a limited term of not more than 15 years and the licence on which the allocation is for the time being endorsed must specify the date on which the allocation expires;
- (c) the Minister may require an applicant to pay to the Minister for the allocation of reserved water an amount negotiated with the applicant either in one payment or a series of periodic payments;
- (d) subsections (2) and (4) of section 34 do not apply in relation to an allocation of reserved water;
- (e) the Minister cannot grant a water (holding) allocation of reserved water;
- (f) a licensee cannot transfer an allocation of reserved water to another licensee.

**Requirements for the allocation of reserved water**

**44D.** (1) The Minister must not allocate reserved water unless—

- (a) a regulation that sets out requirements that must be satisfied is in force; and
- (b) those requirements have been satisfied.

(2) A regulation referred to in subsection (1)(a) cannot come into operation until it is no longer possible for the regulation to be disallowed under section 10 of the *Subordinate Legislation Act 1978*.

**Public notice of allocation of reserved water**

44E. (1) Where—

- (a) the Minister has by notice in the *Gazette* reserved water under this Part; and
- (b) under the terms of the notice the reserved water may be allocated,

the Minister must, subject to subsection (3), publish notice in the *Gazette* in respect of each quarter setting out—

- (c) the quantity of reserved water allocated to each person during the quarter; and
- (d) the name of each person to whom the water was allocated; and
- (e) the term during which the allocation operates; and
- (f) the amount or amounts payable for the allocation of the water and the date or dates on which those amounts are payable.

(2) A notice under subsection (1) must be published in the *Gazette* as soon as practicable after the end of the quarter to which it relates.

(3) A notice need not be published under subsection (1) if no water was allocated in the relevant quarter.

(4) In this section—

"quarter" means the periods of three months ending on 30 September, 31 December, 31 March and 30 June in each financial year.

**Amendment of s. 120—Interpretation**

5. Section 120 of the principal Act is amended by striking out the definition of "levy" in subsection (1) and substituting the following definition:

"levy" includes—

- (a) an instalment of a levy; and
- (b) a fee payable to the Minister under section 122A(5).

**Insertion of s. 122A**

6. The following section is inserted after section 122 of the principal Act:

**Provisions applying to water (holding) allocations in declared water resources**

122A. (1) This section applies in relation to a water (holding) allocation if the water resource to which the allocation applies has been declared by the Minister by notice published in the *Gazette* to be a water resource in relation to which this section applies and the declaration has not been revoked.

(2) Where this section applies in relation to a water (holding) allocation the following provisions apply:

- (a) subject to paragraph (b), a levy in respect of the allocation is not payable until the end of the financial year for which the levy is declared;
- (b) if the allocation, or a part of it, is transferred to another person during the financial year, the levy or, where part only of the allocation is transferred, a proportionate part of it, is payable by the transferee at the time of transfer;
- (c) the levy for a financial year is not payable if the licensee, on application to the Minister, satisfies the Minister that he or she made a genuine, but unsuccessful, attempt throughout, or through the greater part of, the financial year to find a person who was willing to buy the water (holding) allocation subject to the condition that the allocation—
  - (i) be converted to a water (taking) allocation; or
  - (ii) be endorsed on the transferee's licence as a water (taking) allocation.

(3) Paragraph (c) of subsection (2) applies in relation to the whole or a part of a water (holding) allocation and where it applies to part only of a water (holding) allocation a proportionate part of the levy is not payable in pursuance of that paragraph.

(4) Where the transfer of a water (holding) allocation is subject to a condition referred to in subsection (2)(c), the Minister must not—

- (a) approve the transfer of the licence on which the allocation is endorsed; or
- (b) vary the transferring and receiving licences,

to effect the transfer unless he or she—

- (c) converts the water (holding) allocation to a water (taking) allocation; or
- (d) endorses the allocation on the receiving licence as a water (taking) allocation,

(as the case requires) in accordance with the terms of the condition.

(5) Where a levy is not payable by virtue of subsection (2)(c) the licensee is liable to pay to the Minister a fee instead of the levy.

(6) The amount of the fee referred to in subsection (5) is either—

- (a) \$25; or
- (b) such other amount as is declared by the Minister by notice published in the *Gazette* on or before 31 December in the financial year in relation to which the fee applies.

(7) An application to the Minister under subsection (2)(c) must—

- (a) be in a form approved by the Minister; and
- (b) be accompanied by such information as the Minister requires; and
- (c) be made before the end of the relevant financial year.

(8) The Minister may, by subsequent notice published in the *Gazette*, vary or revoke a notice under subsection (1).

**Amendment of s. 124—Liability for levy**

7. Section 124 of the principal Act is amended by striking out "A levy" from subsection (10) and substituting "Subject to section 122A(2), a levy".

**Amendment of s. 132—Declaration of penalty in relation to the unauthorised taking of water**

8. Section 132 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(2) The Minister may declare different penalties—

- (a) depending on the quantity of water taken;
- (b) for water taken from different water resources.

(2a) A notice declaring a penalty under subsection (1)(a)—

(a) will apply to the taking of water in a consumption period that corresponds to an accounting period specified in the notice; and

(b) —

- (i) may, in respect of accounting periods commencing on or after 1 July 1997 and ending on or before 30 June 2001—be published in the *Gazette* at any time before or during the accounting period;
- (ii) must, in respect of accounting periods occurring after 30 June 2001—be published in the *Gazette* during the first half of the accounting period.

(2b) A notice declaring a penalty under subsection (1)(b)—

- (a) will apply to the taking of water in the period specified in the notice; and
- (b) may be published in the *Gazette* at any time before or during that period.

(2c) Where a person—

- (a) has been served with a notice of liability for a penalty under this section in respect of an accounting period occurring at any time between 1 July 1997 and 30 June 2001; and

- (b) has made a complaint to the Ombudsman under the Ombudsman Act 1972 in relation to the notice,

the following provisions apply:

- (c) the Ombudsman must if—

(i) he or she forms the view on investigating the complaint that the complainant has suffered hardship because of the time at which the notice declaring the penalty was published in the *Gazette* or because of any other relevant circumstance; and

(ii) the penalty has not been paid,

serve notice on the Minister directing the Minister not to proceed with recovery of the penalty until the dispute has been resolved;

- (d) the Ombudsman must direct the parties to attend before him or her in an attempt to reach agreement on the dispute but if agreement cannot be reached the Ombudsman must determine the amount of the penalty (if any) that should, in his or her opinion, be paid by the complainant;

- (e) the amount agreed between the parties or determined by the Ombudsman under paragraph (d) is the amount of the penalty payable by the complainant under this section and any amount that has been overpaid by the complainant must be repaid to him or her by the Minister.

**Amendment of s. 138—Imposition of levy by constituent councils**

9. Section 138 of the principal Act is amended by striking out "owned or" from paragraph (b) of subsection (5).

**Amendment of s. 142—Right of appeal**

10. Section 142 of the principal Act is amended by inserting the following paragraph after paragraph (a) of subsection (1):

- (ab) an applicant for the allocation by the Minister of water (except reserved water within the meaning of Part 5A) from a water resource may appeal to the Court against a refusal to grant the application or the imposition of conditions in relation to the allocation;