

South Australia



**WATER RESOURCES (IMPOSITION OF LEVIES) AMENDMENT ACT  
1995**

**No. 107 of 1995**

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A.D. 1995

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No. 107 of 1995

**An Act to amend the Water Resources Act 1990.**

*[Assented to 14 December 1995]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Water Resources (Imposition of Levies) Amendment Act 1995*.

(2) The *Water Resources Act 1990* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended—

(a) by inserting after "the Council" in subsection (1) the following definition:

"domestic purpose" in relation to the taking of water does not include—

- (a) taking water for the purpose of watering or irrigating more than 0.4 of a hectare of land; or
- (b) taking water to be used in carrying on a business (except for the personal use of employees of the business);;

(b) by inserting after "to drill" in subsection (1) the following definition:

"intensive farming" means a method of farming animals in which the animals are confined to a small space or area;;

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- (c) by striking out the definition of "water allocation" from subsection (1) and substituting the following definition:

**"water allocation"—**

- (a) in respect of a licence means the volume of water that the licensee is entitled to take pursuant to the licence;
- (b) in respect of water taken pursuant to an authorisation under section 39 means the maximum volume of water that can be taken pursuant to the authorisation;

**Amendment of s. 29—Powers of authorised officers**

**4. Section 29 of the principal Act is amended—**

- (a) by inserting after paragraph (c) of subsection (1) the following paragraph:

- (ca) inspect and read a meter or other instrument installed to measure the volume of water taken from a watercourse, lake or well and record the reading or other information provided by the meter or instrument.;

- (b) by striking out paragraph (k) of subsection (1) and substituting the following paragraphs:

- (k) require any person on land or the person in charge of a vehicle, vessel or aircraft to produce for inspection or inspection and copying—
  - (i) any document or record that, in the opinion of the authorised officer, will be, or may be, of assistance in the administration of this Act;
  - (ii) without limiting subparagraph (i), any document or records relating to any material that, in the officer's opinion, has, or may have, entered or may enter surface or underground water;
- (ka) in the case of a document or record referred to in paragraph (k) that is not in English, require the person to produce a written statement in English of the contents of the document or record.

**Amendment of s. 31—Right of Minister to water**

5. Section 31 of the principal Act is amended by striking out "watering stock" from subsection (2) and substituting "providing stock (other than stock subject to intensive farming) with drinking water".

**Amendment of s. 32—Riparian rights**

6. Section 32 of the principal Act is amended by striking out "or to water stock kept on land adjacent to the watercourse, lake or well" from paragraph (b) and substituting "or to provide stock kept on land adjacent to the watercourse, lake or well (other than stock subject to intensive farming) with drinking water".

**Amendment of s. 34—Taking water from a proclaimed watercourse, etc.**

7. Section 34 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

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(3) Where a person takes water in contravention of subsection (1), Division 3A applies to, and in relation to, that person subject to the following:

- (a) Division 3A applies as though the person taking the water held a licence under Division 3 and the water taken was taken in excess of the water allocation of the licence; and
- (b) the volume of water taken for the purpose of determining the levy is the volume estimated by the Minister whether or not a meter has been installed.

**Amendment of s. 35—Licences for taking water**

8. Section 35 of the principal Act is amended by striking out paragraph (c) of subsection (3).

**Amendment of s. 38—Contravention, etc., of licence**

9. Section 38 of the principal Act is amended by inserting the following subsection after subsection (2):

(3) The Minister may, by notice served on a licensee, cancel the licence if the Minister is satisfied that the licensee has failed to pay the levy or an instalment of the levy under Division 3A within 28 days after the levy or instalment became due.

**Insertion of Division 3A in Part 4**

10. The following Division is inserted after Division 3 of Part 4 of the principal Act:

**DIVISION 3A—LEVIES FOR TAKING WATER**

**Interpretation**

38A. In this Division, unless the contrary intention appears—

"accounting period" means a financial year, or part of a financial year, in respect of which a levy is payable in accordance with a notice served under section 38E;

"consumption period" in relation to an accounting period means a period of approximately the same length as the accounting period that commences or terminates during the accounting period and in respect of which the volume of water taken is measured by meter readings;

"to irrigate" land includes to water land by any means for the purpose of growing any kind of plant or plants.

**Report as to degradation of water in watercourse, etc.**

38B. (1) The Minister or a catchment water management board may prepare a report—

- (a) on the degradation of water in a proclaimed watercourse, lake or well and the factors causing the degradation; and
- (b) suggesting measures to improve the quality of the water; and
- (c) setting out an estimate of the cost of implementing those measures.

(2) The Minister or the board may cause the report to be published in a newspaper circulating generally throughout the State.

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**Declaration of levies by the Minister**

**38C. (1)** Where a report has been prepared and published under section 38B in relation to a proclaimed watercourse, lake or well, the Minister may, by notice in the *Gazette*, declare levies in relation to the taking of water from the watercourse, lake or well for a financial year that does not commence more than five years after the report was published.

(2) Levies declared under subsection (1) may raise the amount estimated in the report as the cost of implementing measures to improve the quality of the water or an amount that is more or less than that amount.

(3) Levies may be declared under subsection (1) for the right to take water or for the water taken or both.

(4) Levies for the right to take water can only be declared in respect of water to be taken pursuant to a licence and must be based on—

- (a) the water allocation of the licence; or
- (b) a combination of that factor and one or more of the factors referred to in subsection (6).

(5) Levies for water taken may be declared in respect of water taken pursuant to a licence or pursuant to an authorisation under section 39 and must be based on—

- (a) the volume of water taken (the levy may remain constant or increase as the volume of water taken increases or impose a penalty for water taken in excess of the water allocation); or
- (b) a combination of that factor and one or more of the factors referred to in subsection (6).

(6) The other factors on which levies may be based are as follows:

- (a) whether the water is to be taken or is taken from a watercourse or a lake or a well;
- (b) the particular watercourse, lake or well from which the water is to be taken or is taken;
- (c) the part of the State in which the watercourse, lake or well is situated or, in the case of a watercourse, the point on the watercourse at which the water is to be taken or is taken;
- (d) the purpose for which the water will be used.

(7) The Minister may declare a levy under subsection (1) for water taken in excess of the water allocation without declaring any levy for water taken within the water allocation.

(8) A notice under subsection (1)—

- (a) has effect in relation to the financial year specified in the notice; and

- (b) subject to subsections (9) and (10), must be published in the *Gazette* on or before the first day of that year.

(9) A notice under subsection (1) in relation to water to be taken, or that is taken, from a watercourse, lake or well may be published in the *Gazette* within one month after the watercourse, lake or well became a proclaimed watercourse, lake or well.

(10) A notice under subsection (1) in relation to the 1995/1996 financial year may be published in the *Gazette* within one month after the commencement of the *Water Resources (Imposition of Levies) Amendment Act 1995*.

#### **Liability for levy**

**38D.** (1) Subject to subsection (8), a person who holds a licence at any time during a financial year in respect of which a levy for the right to take water has been declared is liable to pay to the Minister the full amount of that levy whether he or she holds the licence throughout the year or not.

(2) A person who holds a licence at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken pursuant to the licence.

(3) A person who takes water pursuant to an authorisation under section 39 at any time during a financial year in respect of which a levy for the taking of water has been declared is liable to pay to the Minister the amount of the levy for the water taken.

(4) Where a levy for the right to take water or for the taking of water applies in relation to water that is intended to be used, or is used, by the person taking it for irrigating land or in the course of carrying on a business on land, the following persons are jointly and severally liable to the Minister for payment of the levy in addition to the person primarily liable under subsection (1), (2) or (3):

- (a) in the case of a levy for the right to take water—the owner of the land (if the owner is not the person primarily liable under subsection (1))—
- (i) where the levy was declared during a financial year—at the time the levy was declared; or
  - (ii) where the licence was granted after the commencement of the financial year—at the time when the licence was granted; or
  - (iii) where the levy is for an increase in the water allocation—at the time of the increase; or
  - (iv) in any other case—at the commencement of the financial year to which the levy relates; and
- (b) in the case of a levy for water taken—the owner of the land (if the owner is not the person primarily liable under subsection (2) or (3)) when the water was taken; and

- (c) all persons who own or occupy the land at any time—
- (i) after the person primarily liable under subsection (1), (2) or (3) or the person referred to in paragraph (a) or (b); and
  - (ii) before the levy is paid.

(5) A person who makes a payment to the Minister in respect of his or her liability under subsection (4) may recover the amount of the payment from the person primarily liable under subsection (1), (2) or (3).

(6) Where two or more persons are liable under subsection (2) or (3) for water taken during different parts of an accounting period and the water used by those persons is used to irrigate the same land or is used in the course of carrying on a business on the same land, the following provisions apply:

- (a) the last of those persons to take water during the accounting period will be taken to be liable under subsection (2) or (3) to the Minister for the amount of the levy for water taken during the whole of that period; and
- (b) that person is entitled to contribution from the other person or persons who have taken water during another part or parts of the accounting period on the basis of the volume of water taken by each of them.

(7) A person is liable under this section for a levy for the right to take water, or for water taken, pursuant to a licence whether the licence was granted before or after the commencement of the *Water Resources (Imposition of Levies) Amendment Act 1995*.

(8) Where—

- (a) a licence is granted after the commencement of a financial year or the water allocation of a licence is increased after the commencement of a financial year; and
- (b) the water allocation, or part of the water allocation, of the licence or the increase, or part of the increase, in the water allocation of the licence is attributable to the surrender of another licence or a reduction in the water allocation of another licence,

a levy for the right to take water is not payable for that year in respect of that part of the water allocation of the licence that is attributable to the surrender of the other licence or the reduction in the water allocation of the other licence.

(9) A levy for the right to take water is payable even though taking water has been prohibited or restricted under this Act or under the licence concerned.

(10) A levy (whether payable in instalments or not) becomes payable on the date for payment stated in the notice under section 38E.

(11) A levy or instalments of a levy are payable pursuant to a notice served under section 38E notwithstanding that the person liable disputes the amount of the levy but any overpayment must be refunded by the Minister when the correct amount is finally determined.

**Notice to person liable for levy**

**38E.** (1) The Minister may serve the notice referred to in subsection (2) on a person who is liable to pay a levy under section 38D(1), (2) or (3).

(2) The notice must—

- (a) state whether the levy is for the right to take water, or for water taken; and
- (b) state the amount of the levy payable for the accounting period or periods to which the notice relates; and
- (c) state the factor, or combination of factors, on which the levy is based; and
- (d) state the date on or before which the levy must be paid or, where the Minister is prepared to accept payment in instalments, state the amount of each instalment and the date on or before which it must be paid.

(3) The accounting period or periods to which a notice relates must be confined to one financial year or to part of a financial year.

**Determination of volume of water taken**

**38F.** (1) Where a levy is based on the volume of water taken the following provisions apply:

- (a) meter readings will be used to determine the volume of water taken pursuant to a licence except where—
  - (i) a meter has not been installed; or
  - (ii) the readings given by the meter are unreliable in the opinion of the Minister;
- (b) where meter readings are used, the volume of water taken during an accounting period will be taken to be the volume of water taken during the consumption period for that accounting period;
- (c) where water is taken pursuant to an authorisation under section 39 or where water is taken pursuant to a licence and meter readings are not used, the volume of water taken during an accounting period will, subject to subsection (3), be assessed by the Minister on—
  - (i) the basis of the pumping capacity of the pump (if any) used to take the water; or
  - (ii) the basis of the area of land irrigated and the crop grown on that land; or
  - (iii) such other basis as the Minister thinks fit;
- (d) water taken by the occupier of land for domestic purposes on the land or for providing stock (other than stock subject to intensive farming) kept on the land with drinking water must be disregarded;



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- (e) where water taken for domestic or stock purposes is not measured by meter, the Minister must make an assessment of the volume of water taken for those purposes under paragraph (c).

(2) Where the Minister uses meter readings or uses any other measuring instrument to determine the volume of water taken under this Act, he or she will be taken not to be using a measuring instrument for trade for the purposes of the *Trade Measurement Act 1993*.

(3) The Minister cannot make an assessment under subsection (1)(c) of the volume of water taken unless, before the commencement of the accounting period in relation to which the assessment is to be made, he or she had published in the *Gazette*—

- (a) where the basis of assessment is to be pumping capacity—the method to be used in assessing the volume of water on that basis;
- (b) where the basis of assessment is to be crop area—water use rates for the crop and the part of the State concerned;
- (c) where some other basis of assessment is to be used—the basis to be used and the method by which it will be used.

(4) If a person liable to pay a levy for water taken from a proclaimed watercourse, lake or well appeals to the Court on the ground that the meter is inaccurate or unreliable the following provisions apply:

- (a) if the Court finds that the volume of water measured by the meter was not more than five per cent more or less than the volume of water actually taken, the volume of water measured by the meter will be the volume in respect of which the levy is payable;
- (b) if the Court finds that the volume of water as measured by the meter was inaccurate by more than five per cent and makes a finding as to the degree of inaccuracy, the Minister may serve a further notice under section 38E based on the volume of water taken appropriately adjusted;
- (c) if the Court finds that the volume of water as measured by the meter was inaccurate by more than five per cent but does not make a finding as to the degree of inaccuracy, the Minister may serve a further notice under section 38E based on the Minister's assessment under subsection (1)(c).

(5) Where the Minister assesses the volume of water—

- (a) taken under subsection (1)(c); or
- (b) used for domestic or stock purposes under subsection (1)(e); or
- (c) taken illegally under section 34(3),

the assessment and the basis on which it was made cannot be called into question by, or before, any court, tribunal or other authority except on the ground that the assessment was not made in good faith.

**Interest**

**38G.** (1) Interest accrues on—

- (a) an unpaid levy; and
- (b) on unpaid instalments of a levy; and
- (c) on unpaid interest

in accordance with the regulations.

(2) Where a levy is payable in instalments, interest is payable in accordance with the regulations on instalments that are due but unpaid and on instalments that have not yet fallen due.

(3) A person who is liable to pay a levy is also liable to pay interest that accrues, or has accrued, on or in relation to the levy under subsection (1).

**Levy first charge on land**

**38H.** A levy for the right to take water, or for taking water, that is intended to be used, or is used, by the person taking it for irrigating land, or in the course of carrying on a business on land, and interest in relation to the levy are a first charge on the land.

**Sale of land for non-payment of a levy**

**38I.** (1) Where a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for one year or more, the Minister may sell the land.

(2) Before the Minister sells land in pursuance of this section, he or she must serve notice on the owner and occupier of the land—

- (a) stating the period for which the levy and interest have been in arrears; and
- (b) stating the amount of the total liability for the levy and interest presently outstanding and charged on the land; and
- (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the levy or interest.

(3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).

(4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.

(5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).

(6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.

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(7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.

(8) If—

- (a) an auction fails; or
- (b) the land is held from the Crown under a lease, licence or agreement to purchase,

the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.

(9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
- (b) secondly—in discharging the liability for the levy and interest and any other liabilities to the Minister in respect of the land;
- (c) thirdly—in discharging any other liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land), or any other liability prescribed by regulation in respect of the land;
- (d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
- (e) fifthly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
- (f) sixthly—in payment to the owner of the land.

(10) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.

(11) Where land is sold by the Minister in pursuance of this section, an instrument of transfer under the Minister's hand will operate to vest title to the land in the purchaser.

(12) The title vested in a purchaser under subsection (11) will be free of—

- (a) all mortgages and charges; and
- (b) except in the case of land held from the Crown under lease or licence—all leases and licences.

(13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Chief Executive of the Department of Environment and Natural Resources stating that the requirements of this section in relation to the sale of the land have been observed.

(14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event he or she will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

(15) A reference in this section to land, or title to land, is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.

#### **Discounting levies**

**38J.** The Minister may discount a levy in accordance with the regulations to encourage early payment of the levy.

#### **Appropriation of money received by way of levies and interest**

**38K.** (1) Money paid to the Minister in satisfaction of a liability for levies or interest under this Division must be paid into a fund to be called the *Water Resources Levy Fund*.

(2) The Fund must be applied for the following purposes in such shares as the Minister thinks fit:

- (a) providing funds to boards established under the *Catchment Water Management Act 1995*;
- (b) any other purpose relating to the management, or improving the quality, of the State's water resources.

(3) The Minister must, as far as practicable, allocate money comprising the Fund so as to benefit proportionately the water resources in relation to which the money was paid.

(4) Before allocating money under subsection (1) the Minister must consult the Treasurer and have regard to his or her views.

(5) The Minister may invest money standing to the credit of the Fund that is not immediately required for the purposes referred to in subsection (2) in such manner as is approved by the Treasurer.

(6) Income derived from investment of the Fund must be credited to the Fund.

#### **Accounts and audit**

**38L.** (1) The Minister must cause proper accounts to be kept of money paid to and from the Fund.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

#### **Amendment of s. 70—Right of appeal**

**11.** Section 70 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (1) the following paragraph:

- (c) a person liable to pay a levy for water taken from a proclaimed watercourse, lake or well may appeal to the Court—

- (i) on the ground that the meter used to establish the volume of water taken was inaccurate or unreliable; or
- (ii) against the Minister's assessment of the volume of water taken or the volume of water taken for domestic or stock purposes but only on the ground that the assessment was not made in good faith.;

(b) by inserting after "decision," in subsection (3) "assessment,".

**Amendment of s. 83—Regulations**

12. Section 83 of the principal Act is amended by striking out from subparagraph (ii) of paragraph (e) of subsection (2) "(including charges at penalty rates for taking excess water)."

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

ROMA MITCHELL Governor