

NORTHERN TERRITORY OF AUSTRALIA

WATER AMENDMENT ACT 2007

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Act No. 33 of 2007

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 33 of 2007

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An Act to amend the *Water Act*

[Assented to 12 December 2007]

[Second reading 18 October 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

**1 Short title**

This Act may be cited as the *Water Amendment Act 2007*.

**2 Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

**3 Act amended**

This Act amends the *Water Act*.

**4 Amendment of section 4 (Interpretation)**

Section 4(1)

*insert (in alphabetical order)*

***water extraction licence*** means:

- (a) a licence under section 45 to take or use water; or
- (b) a licence under section 60 to take water from a bore.

***water extraction licence decision***, see section 71A(1).

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**5 Amendment of Part 3, Division 3 heading**

Part 3, Division 3, heading

*omit*

***Decisions of Controller***

*substitute*

***certain actions and decisions***

**6 New Part 6A**

After section 71

*insert*

**Part 6A Water extraction licence decisions**

**71A Water extraction licence decision and application of Part**

- (1) A water extraction licence decision is a decision about an application to which this Part applies.
- (2) This Part applies to an application:
  - (a) for the grant of a water extraction licence; or
  - (b) for an amendment or modification of a water extraction licence involving an increase in the quantity of water that may be taken or used under the licence.
- (3) This Part does not apply to an application for the renewal of a water extraction licence if the quantity of water that may be taken or used under the renewed licence will not increase.

**71B Notice of intention to make water extraction licence decision**

- (1) Within 30 days after lodgment of an application to which this Part applies, the Controller must give notice of the Controller's intention to make a water extraction licence decision.
- (2) The Controller must publish the notice in a newspaper circulating throughout the Territory and may also publish the notice in a newspaper circulating in the general locality to which the application relates.

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- (3) The notice must include the following information:
- (a) whether the application is for the grant, amendment or modification of a water extraction licence;
  - (b) if the application is for the grant of a water extraction licence – the following details:
    - (i) whether the applicant proposes to take the water by means of extraction, diversion or instream use;
    - (ii) the name of the waterway from which the water will be taken;
    - (iii) the point of the waterway, or the bore, from which the water will be taken;
    - (iv) a description of the areas of land on which the waterway or bore is located and on which the water will be used;
    - (v) the proposed beneficial uses of the water;
    - (vi) the maximum quantity of water in megalitres proposed to be taken annually for each beneficial use;
  - (c) if the application is for the amendment or modification of a water extraction licence – the details of the proposed changes to the licence in relation to any of the matters mentioned in paragraph (b)(i) to (vi);
  - (d) any other information, available to the Controller about the relevant water resource, that the Controller considers relevant to the application, including the following:
    - (i) the total quantity of water that currently may be taken from the water resource under water extraction licences;
    - (ii) the total quantity of water that currently is taken from the water resource under water extraction licences;
    - (iii) the estimated total sustainable yield of water of the water resource.
- (4) The notice must include an invitation to make written comments about the application to the Controller, at a specified address, within 30 days after publication of the notice.
- (5) The applicant for the water extraction licence decision must pay the costs of publishing the notice.

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- (6) The Controller must give a copy of the notice to the owners and occupiers of land immediately adjacent to:
- (a) the land from which the water will be taken; and
  - (b) the land on which the water will be used.

**71C Making water extraction licence decision**

- (1) The Controller must make a water extraction licence decision as soon as practicable after the end of the period allowed for comments (if possible, within 30 days after the end of that period).
- (2) In making the decision, the Controller must take into account all the comments about the relevant application made in accordance with section 71B(4).
- (3) A copy of the full decision must be available to the public and must include the reasons for the decision and the way in which the Controller has taken into account:
- (a) the comments mentioned in subsection (2); and
  - (b) any relevant factors mentioned in section 90(1).

**71D Notice of water extraction licence decision**

- (1) Within 30 days after making a water extraction licence decision, the Controller must:
- (a) give a notice of the decision to the applicant and, if applicable, grant, amend or modify the licence under section 45 or 60; and
  - (b) publish a notice of the decision in the same newspaper (or newspapers) in which notice of the relevant application was given.
- (2) A notice given or published under subsection (1) must include a brief statement:
- (a) of the reasons for the water extraction licence decision; and
  - (b) advising where a person may read or obtain a copy of the full decision; and
  - (c) that a person who is aggrieved by the decision may apply for a review under section 30.

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**71E Notice of substituted or varied water extraction licence decision**

- (1) This section applies if a water extraction licence decision (***the original decision***) is reviewed under section 30 and one of the following decisions (***the review decision***) is made:
  - (a) a decision by the Minister under section 30(3)(a)(ii) in substitution for the original decision;
  - (b) a decision by the Controller, following a referral by the Minister under section 30(3)(a)(iii), that is substantially different from the original decision.
- (2) Within 10 days after the review decision is made, the Controller must publish a notice of the decision in the same newspaper (or newspapers) in which the original decision was published.
- (3) The notice must include a brief statement:
  - (a) of the reasons for the review decision; and
  - (b) advising where a person may read or obtain a copy of the full review decision.
- (4) The review decision must include the reasons for the decision and the way in which the Minister or Controller has taken into account:
  - (a) the comments made in accordance with section 71B(4); and
  - (b) any relevant factors mentioned in section 90(1).

**7 Amendment of section 90 (Factors to be considered)**

- (1) Section 90(1)

*omit*

all the words from "section" to "account –"

*substitute*

section 36, 41, 57, 63, 65, 67, 74 or 93(1), or in making a water extraction licence decision, the Controller must take into account any of the following factors that are relevant to the decision:

- (2) After section 90(1)(a)

*insert*

(ab) any water allocation plan applying to the area in question;

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- (3) Section 90(1)(j) and (k)  
*omit, substitute*
- (j) the provisions under the *Planning Act* relating to the development or use of land in the area in question;
- (k) other factors the Controller considers should be taken into account or that the Controller is required to take into account under any other law in force in the Territory.

- (4) Section 90(1A)  
*omit*

**8 Amendment of section 93 (Power to amend, modify or revoke licence)**

- (1) Section 93(1)  
*omit*  
subsection (3)  
*substitute*  
subsections (3) and (4)
- (2) After section 93(3)  
*insert*
- (4) The Controller must not amend the terms and conditions of a licence under subsection (1) in a manner that will result in an increase in the quantity of water permitted to be taken or used.

**9 Repeal and substitution of section 95**

Section 95  
*repeal, substitute*

**95 Registers**

- (1) The Controller must keep registers of licences.
- (2) There must be a register of water extraction licences.
- (3) The register of water extraction licences:
- (a) must be publicly available on the Agency's website; and

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(b) must contain information required by the Regulations.

- (4) If the Controller is satisfied, on application by the holder of a water extraction licence, that information relating to the licence should be suppressed from publication on the grounds of commercial confidentiality, the Controller may suppress the information from the register of water extraction licences.

**10 Amendment of section 108 (Regulations)**

Section 108(2)(k) and (m), after "licences"

*insert*

(except a water extraction licence)

**11 New section 110**

After section 109

*insert*

**110 Transitional matters for *Water Amendment Act 2007***

- (1) This section applies in relation to an application for the grant, amendment or modification of a water extraction licence that is lodged with the Controller but not decided before the commencement day (an ***existing application***).
- (2) Subject to this section, Part 6A applies in relation to a decision of the Controller about an existing application.
- (3) The Controller must publish a notice under section 71B about an existing application within 7 days after the commencement day.
- (4) The Controller may publish a single notice under section 71B that relates to more than one existing application and, if the Controller does so, the Agency must pay the costs of publication.
- (5) In this section:

***commencement day*** means the day on which the *Water Amendment Act 2007* commences.