



New South Wales

Water Amendment (Flood Control Works) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

Part 8 of the *Water Act 1912* provides for the regulation of “controlled works”. Controlled works are certain works, such as levees, that are constructed on the bank of a river or lake, or within a declared floodplain, which may prevent or mitigate the effect of floods. The construction of a controlled work requires the approval of the Water Administration Ministerial Corporation (***the Ministerial Corporation***) under the *Water Act 1912*. The Ministerial Corporation may also take steps to remove or modify an unauthorised controlled work.

The object of this Bill is to amend those provisions, as follows:

- (a) to expand the scope of Part 8, so that it covers works that affect the flow of water to or from a river or lake and that are used to prevent land from being flooded, and that are not constructed on the bank of a river or lake,

- (b) to allow the Ministerial Corporation to prepare and adopt floodplain management plans and to simplify the procedure for approval of works that conform with the relevant floodplain management plan,
- (c) to allow the Ministerial Corporation to take into account a wide variety of matters when exercising its functions with respect to approvals under Part 8,
- (d) to require an increased level of co-operation from participants in the approval process,
- (e) to remove the requirement that objections to an approval and protests against conditions of an approval be referred to a local land board for resolution,
- (f) to allow the Ministerial Corporation to impose conditions on an approval during the currency of the approval,
- (g) to make it an offence to fail to comply with the conditions of an approval,
- (h) to increase the penalties for offences under Part 8,
- (i) to give the Ministerial Corporation additional enforcement powers under Part 8,
- (j) to extend the period in which proceedings may be brought for an offence under Part 8 from 6 months to 2 years,
- (k) to allow third parties to take action in the Land and Environment Court to restrain a contravention or threatened contravention of Part 8,
- (l) to make it clear that the Ministerial Corporation, and certain other persons, are not liable for acts done in good faith under Part 8,
- (m) to make other miscellaneous changes to the flood control works scheme.

The Bill also makes consequential amendments to the *Land and Environment Court Act 1979*.

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 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 *Land and Environment Court Act 1979* set out in Schedule 2.

Schedule 1 Amendment of Water Act 1912

Definition of “controlled work”

At present, “controlled work” is defined to mean an earthwork, embankment or levee, or other prescribed work:

- (a) that is constructed on land that is or forms part of the bank of a river or lake, or
- (b) that is within a floodplain.

The amendments extend the definition to include an earthwork, embankment, levee, or other work that is the subject of an order by the Ministerial Corporation, that affects the flow of water to or from a river or lake and that is used or to be used for, or has the effect of, preventing land from being flooded by water. It does not matter where the work is situated or proposed to be constructed. (See **Schedule 1 [12]** and **[16]**.) The effect of the extension is that those works will require approval under Part 8 of the Act. At present, similar works are required to be licensed under Part 2 of the Act. That requirement is removed. (See **Schedule 1 [5]** and consequential amendments in **Schedule 1 [4], [6]–[8]**.)

The amendments also replace a provision that allows regulations to be made that extend or limit the definition of “controlled work” with a provision that allows the Ministerial Corporation to extend or limit the definition by order published in the Gazette.

Floodplain management plans

Floodplains are declared by order of the Ministerial Corporation under section 166 of the Act.

The amendments allow the Ministerial Corporation to prepare and adopt a floodplain management plan for each floodplain or proposed floodplain. The plan is to be prepared and adopted, after public consultation, in accordance with the general principles and policies set out in the relevant floodplain development manual. (See **Schedule 1 [19]**, proposed section 166A.)

The Ministerial Corporation will be able to establish committees to assist in the preparation of floodplain management plans and to monitor their implementation. (See **Schedule 1 [19]**, proposed section 166B.)

The amendments simplify the approval procedure for controlled works that conform with a relevant floodplain management plan. If the Ministerial Corporation is satisfied that a controlled work conforms with the relevant floodplain management plan, it will be able to approve the application without advertising the application or taking objections to the application. The formal objection procedure under the Act will apply only if the controlled work does not conform with the relevant floodplain management plan. (See **Schedule 1 [24]**, proposed section 168B, and **Schedule 1 [25], [26] and [27].**)

Matters to be taken into account by Ministerial Corporation in exercising approval functions

At present, the Ministerial Corporation is required, when determining whether to grant or refuse to grant an approval, to renew an approval, or to impose conditions on an approval, to have regard to whether the controlled work concerned is likely to affect materially and prejudicially the distribution of flood waters in the vicinity of the work.

The amendments remove this requirement, and give the Ministerial Corporation a broad discretion to take into account any relevant matter in exercising its functions with respect to approvals under Part 8. (See **Schedule 1 [20], [29]** (proposed section 171) and **[37].**)

In particular, the matters that may be taken into account by the Ministerial Corporation include the following:

- (a) the contents of any relevant floodplain management plan or any other relevant Government policy,
- (b) the need to maintain the natural flood regimes in wetlands and related ecosystems and the preservation of any habitat, animals or plants that benefit from periodic flooding,
- (c) any geographical features, or other matters, of Aboriginal interest,
- (d) the protection of the environment.

Other matters are set out in proposed section 166C (see **Schedule 1 [20]**).

Approval process

The amendments will allow the Ministerial Corporation:

- (a) to refuse to determine an application for approval that does not comply with the requirements relating to applications, and
- (b) to require an applicant for approval to provide further information in connection with the application, and

- (c) to require a person who formally objects to the granting of an application for approval to provide further information about the objection, and
- (d) to require the applicant and objector to participate in a mediation session, to be conducted by a person appointed by the Ministerial Corporation, for the purpose of resolving an objection to the granting of an approval.

(See **Schedule 1 [23]** and **[24]**, proposed section 168A, and **Schedule 1 [28]**.)

Referral of determination to prescribed tribunal

At present, if the Ministerial Corporation grants an application for an approval despite an objection having been made to the granting of the approval, or grants an approval subject to a condition that is objected to by the applicant, the Ministerial Corporation is required to refer its determination to a “prescribed tribunal” for inquiry and report. A prescribed tribunal is a Magistrate or a local land board. The prescribed tribunal may confirm or vary the determination of the Ministerial Corporation in respect of the application, or cancel an approval granted by the Ministerial Corporation. A determination of a prescribed tribunal may be appealed to the Land and Environment Court.

The amendments remove this review process. Instead, appeals against determinations of the Ministerial Corporation are to be made directly to the Land and Environment Court. (See **Schedule 1 [32]** and **[43]**.)

Conditions of approvals

At present, the Ministerial Corporation may grant or renew an approval subject to conditions. The amendments will allow the Ministerial Corporation to impose conditions on an approval during the currency of the approval. The Ministerial Corporation will be required to give notice to the affected person of its intention to impose conditions on an approval or to vary or revoke conditions. (See **Schedule 1 [40]**.) An affected person will be able to appeal to the Land and Environment Court against a decision of the Ministerial Corporation to impose conditions on an approval or to vary or revoke conditions. (See **Schedule 1 [43]**.)

Offences

Under Part 8, it is an offence to construct a controlled work otherwise than in accordance with an approval that is in force. The penalty for that offence is increased from 200 penalty units to 2,500 penalty units (in the case of a corporation) and from 100 penalty units to 1,200 penalty units in the case of an individual. (See **Schedule 1 [46]**.)

In addition, it will be an offence to fail to comply with the conditions of an approval. (See **Schedule 1 [47]**, proposed section 180A.)

The amendments extend the time limit for taking proceedings for an offence against Part 8 from 6 months to 2 years. (See **Schedule 1 [52]**.)

Enforcement powers of Ministerial Corporation

The amendments will give the Ministerial Corporation power:

- (a) to issue a stop work order where a person is engaging or about to engage in any activity that is an offence under Part 8 (see **Schedule 1 [47]**, proposed section 180B), and
- (b) to apply to the Land and Environment Court for an injunction restraining a threatened or apprehended offence or the continuation of an offence (see **Schedule 1 [47]**, proposed section 180C).

At present, the Ministerial Corporation is also able to remove or modify any controlled work in respect of which an approval is not in force. The amendments will instead allow the Ministerial Corporation to require the occupier of land, by notice served on the occupier, to carry out work for the purpose of removing, modifying, repairing or rendering ineffectual an unauthorised controlled work. In addition, the Ministerial Corporation will be able to require the occupier to carry out other work of a remedial nature, such as work to correct or restore any alterations caused to water flow by the unauthorised controlled work. (See **Schedule 1 [47]**, proposed section 180D.) The Ministerial Corporation will also be able to exercise these powers if a controlled work is constructed in contravention of an approval.

If an occupier fails to comply with such a requirement, the Ministerial Corporation will be able to carry out the work, and recover the costs and expenses incurred in carrying out that work from the occupier or from a person who constructed the controlled work in contravention of Part 8. At present the Ministerial Corporation is able to recover costs and expenses of work carried out by or on behalf of the Ministerial Corporation for the purpose of removing or modifying an unauthorised controlled work. However, it will no longer be a necessary pre-requisite to such recovery that a person be convicted of an offence against Part 8 in respect of the controlled work. In addition, the amendments will allow the occupier to recover from the person who caused the controlled work to be constructed in contravention of Part 8 any costs and expenses incurred by the occupier in carrying out the remedial work or any costs recovered from the occupier by the Ministerial Corporation. (See **Schedule 1 [47]**, proposed section 180G and **Schedule 1 [49]**.)

The Ministerial Corporation will not be required to give any person prior notice of its decision to exercise its new powers. (See **Schedule 1 [47]**, proposed section 180H.) However, a person aggrieved by a decision of the Ministerial Corporation under the new provisions will be able to appeal against the decision to the Land and Environment Court. (See **Schedule 1 [47]**, proposed section 180J.)

The Ministerial Corporation is also given power to require any person to give the Corporation information about a possible offence under Part 8 or to produce a document containing information about a possible offence under Part 8. (See **Schedule 1 [47]**, proposed section 180I.)

It will remain an offence to remove, damage or modify any work carried out by or on behalf of the Ministerial Corporation under Part 8. However, the penalty for that offence is increased in line with the increased penalties referred to above. (See **Schedule 1 [47]**, proposed section 180F, which replaces section 180 (3) of the Act.) It will also remain an offence to obstruct or hinder an officer of the Ministerial Corporation in carrying out such work. (See **Schedule 1 [47]**, proposed section 180E, which replaces section 180 (2) of the Act.)

Third party enforcement

The amendments will allow any person to bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention, or a threatened or apprehended contravention, by a person of the relevant offence provisions under Part 8. (See **Schedule 1 [47]**, proposed section 180K.)

Exclusion of liability

At present, the Ministerial Corporation is not liable to pay compensation to any person in respect of any loss or damage suffered by the person as a consequence of the removal or modification of an unauthorised controlled work by the Ministerial Corporation. This provision is replaced with a provision to the effect that the Ministerial Corporation, and certain other persons, do not incur any liability for any advice furnished, or any act done or omitted to be done, in good faith in the exercise of a function under Part 8. The new provision extends to acts done in accordance with the principles contained in the floodplain development manual notified under the *Local Government Act 1993*, similar to the immunity conferred on councils by section 733 of the *Local Government Act 1993*. (See **Schedule 1 [50]**.)

Miscellaneous matters

Amendments are made for the purpose of removing the requirement to prescribe forms and fees under Part 8. Instead these will be approved by the Ministerial Corporation. (See **Schedule 1** [21], [22] and [34]–[36].)

An application for an approval will be required to be accompanied by an assessment of the likely impact of the controlled work. (See **Schedule 1** [22].)

The period in which an appeal can be made against a refusal to grant an application for an approval is reduced from 90 days to 28 days, consistent with the period in which other appeals may be made under Part 8. (See **Schedule 1** [43].)

The Ministerial Corporation is also given power to determine the period in which an approval remains in force, up to a maximum period of 10 years (at present all approvals remain in force for 5 years, subject to any cancellation). (See **Schedule 1** [34] and [39].)

Schedule 1 [53] allows savings and transitional regulations to be made and **Schedule 1** [54] contains other provisions of a savings and transitional nature. These include a provision that allows the Ministerial Corporation to adopt a floodplain management plan that was prepared before the amendments commence.

Other amendments are of a consequential nature. (See **Schedule 1** [1]–[3], [9]–[15], [17], [18], [30], [31], [33], [38], [41], [42], [44], [45], [48] and [51].)

Schedule 2 Amendment of Land and Environment Court Act 1979

The amendments to the *Land and Environment Court Act 1979* are consequential to the additional enforcement powers conferred on the Ministerial Corporation and the enforcement powers conferred on third parties under the amendments described above. The amendments allocate the proceedings concerned to the appropriate classes of jurisdiction of the Land and Environment Court.



New South Wales

Water Amendment (Flood Control Works) Bill 1999

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Water Act 1912 No 44	2
4 Amendment of Land and Environment Court Act 1979 No 204	2

Schedules

1 Amendment of Water Act 1912	3
2 Amendment of Land and Environment Court Act 1979	31



New South Wales

Water Amendment (Flood Control Works) Bill 1999

No. , 1999

A Bill for

An Act to amend the *Water Act 1912* to make further provision with respect to the approval of certain works that may affect or prevent flooding; to make consequential amendments to the *Land and Environment Court Act 1979*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Water Amendment (Flood Control Works) Act 1999</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Water Act 1912 No 44	7
The <i>Water Act 1912</i> is amended as set out in Schedule 1.	8
4 Amendment of Land and Environment Court Act 1979 No 204	9
The <i>Land and Environment Court Act 1979</i> is amended as set out in Schedule 2.	10 11

Schedule 1 Amendment of Water Act 1912

	(Section 3)	1
[1] Section 4 Definitions		3
Insert in alphabetical order in section 4:		4
<i>exercise</i> a function includes perform a duty.		5
<i>function</i> includes a power, authority or duty.		6
[2] Section 4L Objectors rights of appeal		7
Omit “, section 114, section 172 (2) or section 173 (2) or (3)” from section 4L (2) (b).		8
Insert instead “or section 114”.		9
[3] Section 4L (2) (c)		10
Omit “section 174 (4) (b) or (5)”. Insert instead “section 171AA (2)”.		11
[4] Section 5 Definitions		12
Insert “or” at the end of paragraph (d) of the definition of Work to which this Part extends in section 5 (1).		13
[5] Section 5 (1), definition of “Work to which this Part extends”		14
Omit paragraph (e) of the definition.		15
[6] Section 10 Application for licences		16
Omit section 10 (1) (b).		17
[7] Section 18F Permits		18
Omit section 18F (b).		19
[8] Section 22 Power of entry		20
Omit “or any unlawful levee for the prevention of the overflow of water from a river or lake” from section 22 (3) (a).		21
		22
		23
		24

[9] Part 8, heading	1
Omit the heading. Insert instead “ Part 8 Flood control works ”.	2
[10] Part 8, Division 1, heading	3
Insert “ Division 1 Preliminary ” before section 165.	4
[11] Section 165 Definitions	5
Insert in alphabetical order in section 165 (1):	6
<i>complying controlled work</i> means a controlled work that is	7
assessed as a complying controlled work under section 168B.	8
<i>floodplain management committee</i> means a committee	9
established under section 166B.	10
<i>floodplain management plan</i> means a floodplain management	11
plan adopted by the Ministerial Corporation under section	12
166A.	13
<i>non-complying controlled work</i> means a controlled work that	14
is assessed as a non-complying controlled work under section	15
168B.	16
<i>objection</i> means an objection made under section 170 to the	17
granting of an approval for a non-complying controlled work.	18
[12] Section 165 (1), definition of “controlled work”	19
Omit the definition. Insert instead:	20
<i>controlled work</i> —see section 165A.	21
[13] Section 165 (1), definition of “flood plain”	22
Omit “ <i>flood plain</i> ”. Insert instead “ <i>floodplain</i> ”.	23
[14] Section 165 (1), definitions of “local land board”, “prescribed tribunal”	24
and “referred determination”	25
Omit the definitions.	26
[15] Section 165 (3)	27
Omit the subsection. Insert instead:	28

(3)	A reference in this Part to the construction of a controlled work includes a reference to the enlargement, extension or modification of the controlled work, but does not include a reference to any work carried out by or on behalf of the Ministerial Corporation under section 180D.	1 2 3 4 5
[16] Section 165A		6
	Insert after section 165:	7
165A Controlled work—meaning		8
(1)	In this Part, a <i>controlled work</i> means:	9
(a)	an earthwork, embankment or levee that is situated, or proposed to be constructed, on land that:	10 11
(i)	is, or forms part of, the bank of a river or lake, or	12
(ii)	is within a floodplain, or	13
(b)	any work that is situated, or proposed to be constructed, on land that:	14 15
(i)	is, or forms part of, the bank of a river or lake, or	16
(ii)	is within a floodplain,	17
	and that is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work, or	18 19 20
(c)	an earthwork, embankment or levee, wherever situated or proposed to be constructed, that:	21 22
(i)	affects or is reasonably likely to affect the flow of water to or from a river or lake, and	23 24
(ii)	is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, or	25 26 27
(d)	any work, wherever situated or proposed to be constructed, that:	28 29
(i)	affects or is reasonably likely to affect the flow of water to or from a river or lake, and	30 31
(ii)	is used or is to be used for, or has the effect or likely effect of, preventing land from being flooded by water, and	32 33 34
(iii)	is declared by order of the Ministerial Corporation published in the Gazette to be a controlled work.	35 36 37

(2) However, a controlled work does not include:	1
(a) a work declared, by order of the Ministerial Corporation published in the Gazette, not to be a controlled work, and any work that forms or is intended to form part of, or is or is intended to be ancillary to, such a declared work, or	2 3 4 5 6
(b) a work or bore in respect of which a licence, group licence, authority, permit, consent or authorisation is in force under Part 2, 3, 5, 6, 7 or 9.	7 8 9
[17] Part 8, Division 2, heading	10
Insert “ Division 2 Floodplains ” before section 166.	11
[18] Section 166 Designation of floodplains	12
Omit “flood plain” wherever occurring. Insert instead “floodplain”.	13
[19] Section 166A	14
Insert after section 166:	15
166A Floodplain management plans	16
(1) The Ministerial Corporation may prepare and adopt a floodplain management plan for a floodplain or proposed floodplain.	17 18 19
(2) A floodplain management plan is to set out a scheme for the management of flood waters within the floodplain.	20 21
(3) A floodplain management plan is to accord with the general principles and policies set out in the relevant floodplain development manual.	22 23 24
(4) Before adopting a floodplain management plan, the Ministerial Corporation:	25 26
(a) is to give the public an opportunity to make submissions on the proposed plan in accordance with the procedure provided for by the relevant floodplain development manual, and	27 28 29 30
(b) is to take those submissions into account.	31

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|---|----|
| (5) After adopting a floodplain management plan, the Ministerial Corporation is required: | 1 |
| | 2 |
| (a) to give notice of the adoption of the plan in the Gazette | 3 |
| and in a newspaper circulating in the area to which the | 4 |
| plan relates, and | 5 |
| (b) to ensure that copies of the floodplain management plan | 6 |
| are available for public inspection, free of charge, at the | 7 |
| office of the Ministerial Corporation for the region in | 8 |
| which the floodplain is situated. | 9 |
| (6) A floodplain management plan may be amended or revoked by | 10 |
| the adoption of a new plan in accordance with this section. | 11 |
| (7) In this section: | 12 |
| <i>relevant floodplain development manual</i> means the most | 13 |
| recent manual relating to the management of flood liable land | 14 |
| (being the manual most recently notified under section 733 (5) | 15 |
| (a) of the <i>Local Government Act 1993</i>). | 16 |
| 166B Establishment of floodplain management committees | 17 |
| (1) The Ministerial Corporation may establish a floodplain | 18 |
| management committee in respect of a floodplain or proposed | 19 |
| floodplain. | 20 |
| (2) A floodplain management committee has the following | 21 |
| functions: | 22 |
| (a) assisting the Ministerial Corporation in the preparation | 23 |
| of a floodplain management plan for the floodplain for | 24 |
| which the committee is established, | 25 |
| (b) monitoring and reviewing the floodplain management | 26 |
| plan after it is adopted, | 27 |
| (c) such other functions as may be conferred or imposed on | 28 |
| it by the Ministerial Corporation. | 29 |
| (3) The membership and procedure of a floodplain management | 30 |
| committee are to be determined by the Ministerial Corporation. | 31 |

[20] Part 8, Division 3, heading and section 166C	1
Insert before section 167:	2
 Division 3 Approval of controlled works	3
 166C Matters for general consideration	4
The Ministerial Corporation, in exercising its functions under	5
this Division with respect to approvals, may have regard to	6
such matters as it considers relevant, including (but not limited	7
to) the following:	8
(a) the contents of any relevant floodplain management	9
plan or any other relevant Government policy,	10
(b) the need to maintain the natural flood regimes in	11
wetlands and related ecosystems and the preservation of	12
any habitat, animals (including fish) or plants that	13
benefit from periodic flooding,	14
(c) the effect or likely effect on water flows in downstream	15
river sections,	16
(d) any geographical features, or other matters, of	17
Aboriginal interest that may be affected by a controlled	18
work,	19
(e) the effect or likely effect of a controlled work on the	20
passage, flow and distribution of any flood waters,	21
(f) the effect or likely effect of a controlled work on	22
existing dominant flood ways or exits from flood ways,	23
rates of flow, flood water levels and the duration of	24
inundation,	25
(g) the protection of the environment,	26
(h) any other matter relating to the desirability or otherwise	27
of a controlled work.	28
[21] Section 167 Applications for approval	29
Omit “prescribed form” from section 167 (1) (a).	30
Insert instead “form approved by the Ministerial Corporation”.	31

[22] Section 167 (1) (b)	1
Omit the paragraph. Insert instead:	2
(b) be accompanied by:	3
(i) the application fee approved by the Ministerial Corporation, and	4
(ii) an assessment of the likely impact of the controlled work, and	5
(iii) such other information as may be required by the application form, and	6
	7
	8
	9
[23] Section 168 Ministerial Corporation may refuse to determine certain applications	10
	11
Insert at the end of section 168 (1) (b):	12
, or	13
(c) if the applicant has failed to comply with section 167.	14
[24] Sections 168A and 168B	15
Insert after section 168:	16
168A Ministerial Corporation may request further information	17
(1) The Ministerial Corporation may, by notice in writing served on an applicant for approval, request the applicant to give to it any additional information about a controlled work that the Ministerial Corporation considers necessary for its assessment of the application.	18
	19
	20
	21
	22
(2) The information that the Ministerial Corporation may request includes, but is not limited to, the following:	23
	24
(a) information relating to any matter referred to in section 166C or in any relevant floodplain management plan,	25
	26
(b) information that is necessary for the purpose of assessing whether the controlled work is a complying or a non-complying controlled work under section 168B,	27
	28
	29
(c) hydrological calculations and projections in relation to the controlled work.	30
	31
(3) The information is to be provided by the applicant within the time specified in the request.	32
	33

	(4) The Ministerial Corporation may refuse to determine an application if the applicant fails to comply with the request.	1 2
168B	Preliminary assessment of whether controlled work complies with floodplain management plan	3 4
	(1) After receiving an application for an approval, and before determining the application under section 171, the Ministerial Corporation is to make an assessment of whether the controlled work the subject of the application is a complying or a non-complying controlled work.	5 6 7 8 9
	(2) A controlled work is to be assessed as a complying controlled work if the Ministerial Corporation is satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed.	10 11 12 13 14
	(3) A controlled work is to be assessed as a non-complying controlled work if:	15 16
	(a) the Ministerial Corporation is not satisfied that the controlled work complies with the floodplain management plan for the area in which the controlled work is situated or proposed to be constructed, or	17 18 19 20
	(b) the controlled work is situated or proposed to be constructed in an area that is not the subject of a floodplain management plan.	21 22 23
	(4) If the controlled work concerned is a complying controlled work, the Ministerial Corporation may determine the application in accordance with section 171.	24 25 26
	(5) If the controlled work concerned is a non-complying controlled work, the Ministerial Corporation is to publicise the application in accordance with section 169 before determining the application.	27 28 29 30
	(6) The Ministerial Corporation may refuse to make an assessment under this section if any information required or requested to be provided in relation to the application has not been provided to the Ministerial Corporation.	31 32 33 34

[25] Section 169	1
Omit the section. Insert instead:	2
169 Publication of applications relating to non-complying controlled works	3
	4
(1) The Ministerial Corporation is to cause notice of an application for approval of a non-complying controlled work to be published in:	5
	6
	7
(a) the Gazette, and	8
(b) at least one newspaper circulating generally in the area in which the controlled work the subject of the application is situated or proposed to be constructed.	9
	10
	11
(2) The notice:	12
(a) is to contain the particulars approved by the Ministerial Corporation, and	13
	14
(b) is to specify:	15
(i) the manner in which objections may be made to the granting of an approval for the controlled work, and	16
	17
	18
(ii) the closing date for such objections (being no sooner than 28 days after the date of publication of the notice).	19
	20
	21
(3) The Ministerial Corporation must not determine under section 171 an application for approval of a non-complying controlled work before the closing date referred to in subsection (2) (b) (ii).	22
	23
	24
	25
[26] Section 170 Objections to non-complying controlled works	26
Omit “a controlled work” from section 170 (1).	27
Insert instead “a non-complying controlled work”.	28
[27] Section 170 (2) (c)	29
Omit “the date specified pursuant to section 169 (d) (i)”.	30
Insert instead “the closing date specified under section 169 (2) (b) (ii)”.	31

[28] Sections 170A and 170B	1
Insert after section 170:	2
170A Ministerial Corporation may require further information about objection	3 4
(1) The Ministerial Corporation may require a person who has made an objection to provide such additional information as the Ministerial Corporation may reasonably require to assess the objection.	5 6 7 8
(2) Such a requirement is to be made by notice in writing to the person who made the objection and is to specify a time in which it must be complied with by the person.	9 10 11
(3) If the information is not provided by the person, within the time specified by the Ministerial Corporation in the notice, the Ministerial Corporation may reject the objection.	12 13 14
170B Compulsory mediation session	15
(1) The Ministerial Corporation may, by notice in writing, require an applicant for an approval and a person who has made an objection to the granting of the approval to attend a conference (a mediation session) for the purpose of resolving the objection by mediation.	16 17 18 19 20
(2) The Ministerial Corporation may make such a requirement on its own initiative or on the request of an applicant for an approval or a person who has made an objection to the granting of the approval.	21 22 23 24
(3) A mediation session is to be conducted, by a person appointed by the Ministerial Corporation as chairperson of the mediation session, in accordance with the procedures determined by the Ministerial Corporation.	25 26 27 28
(4) The Ministerial Corporation may refuse to determine an application for approval if the applicant for approval fails to take part in a mediation session as required by the Ministerial Corporation.	29 30 31 32
(5) The Ministerial Corporation may reject an objection if the person who made the objection fails to take part in a mediation session as required by the Ministerial Corporation.	33 34 35

(6) A person is taken to have failed to take part in a mediation session if, in the opinion of the Ministerial Corporation, the person:	1
(a) has unreasonably failed to attend, or unreasonably delayed attending, a mediation session, or	2
(b) has not taken part in a mediation session in good faith.	3
(7) Any statement or admission made in the course of a mediation session is not admissible in any legal proceedings.	4
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[29] Sections 171 and 171AA	6
Omit section 171. Insert instead:	7
171 Determination of applications	8
(1) The Ministerial Corporation is to determine an application for an approval:	9
(a) by granting an approval for the controlled work the subject of the application, or	10
(b) by refusing to grant an approval.	11
(2) The Ministerial Corporation must, as soon as practicable after it determines an application for an approval, cause notice of its determination to be served on the applicant.	12
(3) The Ministerial Corporation is not to grant an approval to the applicant or applicants if the whole or any part of the land on which the controlled work the subject of the application is situated or proposed to be constructed is not occupied by the applicant or by at least one of the applicants.	13
(4) This section does not apply in respect of any application for approval that is withdrawn before the application is determined.	14
171AA Notice of determination to be given to objector	15
(1) If the Ministerial Corporation determines an application for an approval by granting the approval and an objection was made to the granting of an approval under section 170, the Ministerial Corporation is to cause notice of its determination to be served on the person who made the objection.	16
(2) The person who made the objection may appeal against the determination to the Land and Environment Court.	17

(3) Such an appeal may be made:	1
(a) no later than 28 days after notice of the determination of the application is served on the person, and	2
(b) in accordance with the rules of the Land and Environment Court.	3
(4) This section does not apply in respect of an objection that:	4
(a) is withdrawn before the application for the approval concerned is determined, or	5
(b) is rejected by the Ministerial Corporation because of a failure to comply with a requirement under this Division.	6
(5) This section is subject to section 171A.	7
[30] Section 171A Determination of application affected by public inquiry under the Environmental Planning and Assessment Act 1979	8
Omit “particulars prescribed for the purposes of” from section 171A (2) (a) (i).	9
Insert instead “information required under”.	10
[31] Section 171A (4)	11
Omit the subsection. Insert instead:	12
(4) The Ministerial Corporation’s determination under section 171 (1) on the application is final, and the provisions of sections 171AA (2) and 178A do not have effect in relation to that determination.	13
[32] Sections 172, 173 and 174	14
Omit the sections.	15
[33] Section 175 Approvals	16
Omit section 175 (a). Insert instead:	17
(a) takes effect, and is to specify that it takes effect, at the expiration of 28 days after the Ministerial Corporation has caused notice of its determination to grant the approval to be served on the applicant, and	18
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[34] Section 175 (b), (c) and (d)	1
Omit the paragraphs. Insert instead:	2
(b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and	3 4 5 6 7
(c) is to be in a form approved by the Ministerial Corporation.	8 9
[35] Section 176 Renewal of approvals	10
Omit “prescribed form” from section 176 (1) (a).	11
Insert instead “form approved by the Ministerial Corporation”.	12
[36] Section 176 (1) (b)	13
Omit “prescribed fee”.	14
Insert instead “application fee approved by the Ministerial Corporation”.	15
[37] Section 176 (5)	16
Omit the subsection.	17
[38] Section 176 (8)	18
Omit the subsection.	19
[39] Section 176 (9) (b), (c) and (d)	20
Omit the paragraphs. Insert instead:	21
(b) remains in force (unless sooner cancelled under section 178) for the period specified in the approval (being a period ending not more than 10 years after the date on which the Ministerial Corporation made the determination referred to in paragraph (a)), and	22 23 24 25 26
(c) is to be in a form approved by the Ministerial Corporation.	27 28

[40] Section 176A	1
Omit the section. Insert instead:	2
176A Conditions of approval	3
(1) An approval is subject to such conditions as may be imposed by the Ministerial Corporation, by notice served on the affected person:	4
(a) on the grant or renewal of the approval, or	5
(b) at any time during the currency of the approval.	6
(2) The Ministerial Corporation may, by notice served on an affected person, vary or revoke any conditions of an approval.	7
(3) If the Ministerial Corporation intends to impose a condition on an approval, or to vary or revoke a condition, the Ministerial Corporation:	8
(a) must cause notice of its intention to be served on the affected person, and	9
(b) must give that person a reasonable opportunity to make written submissions to the Ministerial Corporation with respect to the condition concerned, and	10
(c) must have regard to any submission that is made.	11
(4) Without limiting section 166C, the conditions to which an approval is subject may include conditions relating to the protection of the environment.	12
(5) This section does not affect section 93 of the <i>Environmental Planning and Assessment Act 1979</i> (which relates to integrated development).	13
(6) In this section:	14
<i>affected person</i> means:	15
(a) in the case of a condition imposed on the grant or renewal of an approval—the person who applied for the grant or renewal, or	16
(b) in any other case—the occupier of the land on which the controlled work that is the subject of the approval is situated.	17
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[41] Section 178 Cancellation of approvals	1
Omit subsection (2).	2
[42] Section 178 (3)	3
Omit “under subsection (2)”. Insert instead “under section 178A”.	4
[43] Section 178A	5
Insert after section 178:	6
178A Appeals to Land and Environment Court	7
(1) A person who applies for the grant or renewal of an approval may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:	8
(a) to refuse to grant the approval under section 171, or	9
(b) to grant the approval subject to any condition, or	10
(c) to refuse to renew the approval under section 176, or	11
(d) to renew the approval subject to any condition other than a condition to which the approval was subject immediately before it was renewed.	12
(2) An occupier of any land on which a controlled work that is the subject of an approval is situated may appeal to the Land and Environment Court against a determination of the Ministerial Corporation:	13
(a) to impose a condition on the approval, or to vary or revoke a condition of the approval, during the currency of the approval, or	14
(b) to cancel the approval.	15
(3) An appeal under this section may be made:	16
(a) no later than 28 days after the notice of the determination of the Ministerial Corporation is served on the person concerned, and	17
(b) in accordance with the rules of the Land and Environment Court.	18
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[44] Section 179 Removal and modification of unapproved works	1
Omit the section.	2
[45] Part 8, Division 4, heading	3
Insert “ Division 4 Offences and enforcement ” before section 180.	4
[46] Section 180	5
Omit the section. Insert instead:	6
180 Construction of unauthorised works	7
A person must not construct a controlled work otherwise than	8
in accordance with an approval that is in force in respect of the	9
work.	10
Maximum penalty: 2,500 penalty units in the case of a	11
corporation or 1,200 penalty units in the case of an individual.	12
[47] Sections 180A–180K	13
Insert after section 180:	14
180A Compliance with conditions of approval	15
(1) The occupier of land on which a controlled work is situated,	16
being a controlled work in respect of which an approval is in	17
force, must comply with the conditions (if any) of that	18
approval.	19
(2) A person who contravenes subsection (1) is guilty of an offence	20
and is liable on conviction:	21
(a) in the case of a corporation—to a penalty not exceeding	22
2,500 penalty units and, in the case of a continuing	23
offence, to a further penalty not exceeding 1,200 penalty	24
units for each day the offence continues, or	25
(b) in the case of an individual—to a penalty not exceeding	26
1,200 penalty units and, in the case of a continuing	27
offence, to a further penalty not exceeding 600 penalty	28
units for each day the offence continues.	29

180B Stop work orders

- (1) If the Ministerial Corporation is of the opinion that a person is engaging in or about to engage in any activity in contravention of section 180 or 180A, the Ministerial Corporation may, by notice in writing served on the person, order the person not to engage in that activity.
- (2) The order:
 - (a) takes effect immediately (or from a later date specified in the notice), and
 - (b) is subject to such conditions as the Ministerial Corporation may specify in the notice.
- (3) The Ministerial Corporation may vary or revoke the order or the conditions of the order by further notice in writing served on the person subject to the order.
- (4) An order under this section remains in force until whichever of the following happens first:
 - (a) the order is revoked by the Ministerial Corporation,
 - (b) the period (if any) for which the order is expressed in the notice to be in force ends,
 - (c) the period of 2 years from the day on which the order took effect ends.
- (5) A person who fails to comply with an order in force under this section is guilty of an offence and is liable on conviction:
 - (a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.

180C Injunctions

- (1) On application by the Ministerial Corporation, the Land and Environment Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of section 180 or 180A.

- (2) An injunction may be granted without the Ministerial Corporation's being required to show a likelihood of damage.

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- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.

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- (4) When the Ministerial Corporation makes an application for the grant of an injunction under this section, the Court is not to require the Ministerial Corporation or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

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- 180D Directions for remedial work**

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- (1) If the Ministerial Corporation is satisfied that:

 - (a) there is no approval in force with respect to a controlled work, or
 - (b) a controlled work has been constructed in contravention of an approval, or
 - (c) a controlled work does not comply with the conditions to which an approval is subject,

the Ministerial Corporation may, by notice in writing served on the occupier of the land on which the controlled work is situated, direct the occupier to carry out specified work in a specified manner and within a specified time.

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- (2) Any one or more of the following types of work may be directed to be carried out by a notice under this section:

 - (a) work to remove, modify, repair or restore the controlled work or to render the work ineffectual,
 - (b) work to repair any damage caused by the controlled work (including any damage caused to any specified land, structure, river, lake or vegetation, or to the environment),
 - (c) work to ensure that any specified land, structure, river, lake or vegetation, or the environment, will not be damaged or adversely affected or further damaged or adversely affected, by the controlled work,

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| <p>(d) without limiting paragraphs (a)–(c), work to correct or restore any alteration caused by the controlled work to the flow of water in, to or from, or the quantity of water contained in, any specified river or lake.</p> <p>(3) A direction under this section may be varied or revoked by a further notice in writing served on the person the subject of the direction.</p> <p>(4) A person who fails to comply with a direction under this section is guilty of an offence and is liable on conviction:</p> <p style="padding-left: 20px;">(a) in the case of a corporation—to a penalty not exceeding 2,500 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,200 penalty units for each day the offence continues, or</p> <p style="padding-left: 20px;">(b) in the case of an individual—to a penalty not exceeding 1,200 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 600 penalty units for each day the offence continues.</p> <p>(5) If a person fails to comply with a direction under this section, the Ministerial Corporation may authorise any other person to enter the land and carry out the specified work.</p> <p>(6) The Ministerial Corporation must not exercise its powers under this section in relation to a controlled work that is within a floodplain before the expiration of 28 days after the date on which the order designating that land as a floodplain has taken effect.</p> <p>180E Obstruction of persons</p> <p>A person must not hinder or obstruct the Ministerial Corporation, or any of its officers, employees or agents, in the exercise of any function under section 180D.</p> <p>Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units in the case of an individual.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> |
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180F	Interference with work done by Ministerial Corporation	1
(1)	A person must not remove, damage or modify any work carried out by or on behalf of the Ministerial Corporation under section 180D.	2
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	Maximum penalty: 2,500 penalty units in the case of a corporation or 1,200 penalty units in the case of an individual.	5
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(2)	It is a defence to any proceedings against a person for an offence under this section if the person establishes that the person was acting with the approval of the Ministerial Corporation.	7
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180G	Recovery of cost of work done by Ministerial Corporation	11
(1)	The Ministerial Corporation may recover the cost of any work carried out by or on behalf of the Ministerial Corporation under section 180D from:	12
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(a)	the occupier of the land on which the work is carried out, or	15
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(b)	a person who caused the controlled work concerned to be constructed in contravention of section 180.	17
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(2)	The occupier of the land on which work is carried out under section 180D may recover:	19
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(a)	the cost of any work carried out by the occupier in compliance with a notice under section 180D, or	21
		22
(b)	any amount that is recovered by the Ministerial Corporation from the occupier under subsection (1),	23
		24
	from any person who, without the consent of the occupier, caused the controlled work concerned to be constructed in contravention of section 180.	25
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(3)	An amount recoverable under this section may be recovered as a debt in any court of competent jurisdiction.	28
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(4)	The recovery of an amount payable under this section is not dependent on any person having been convicted of an offence for contravening section 180 or 180A.	30
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180H Prior notification not required

The Ministerial Corporation is not required, before making an order or giving a direction or taking any other action under this Division, to notify any person who may be affected by the order, direction or action.

180I Power to require information

(1) The Ministerial Corporation may, by notice in writing served on a person, require the person:

- (a) to give an authorised officer orally or in writing signed by the person (or, if the person is a corporation, by a competent officer) and within the time and in the manner specified in the notice, any information about a possible offence under this Division, or
- (b) to produce to an authorised officer, in accordance with the notice, any document containing information about a possible offence under this Division.

(2) An authorised officer may inspect a document produced in response to such a notice and may take copies of, or take extracts or notes from, the document.

(3) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
- (b) in purported compliance with such a notice, give information or an answer to a question, or produce a document, knowing that it is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

(4) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.

(5) Any information or document obtained from a person under this section is not admissible against the person in criminal proceedings other than proceedings for an offence under this section.

(6)	An authorised officer exercising any power under this section must, if requested to do so, produce the authorised officer's identification card to a person served with a notice under this section.	1 2 3 4
(7)	In this section: <i>authorised officer</i> means a person authorised by the Ministerial Corporation to exercise the functions of an authorised officer under this section.	5 6 7 8
180J	Appeals	9
(1)	A person aggrieved by a decision of the Ministerial Corporation under this Division may appeal against the decision to the Land and Environment Court in accordance with the rules of that court.	10 11 12 13
(2)	The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the decision appealed against.	14 15 16 17
180K	Restraint of contravention of Division	18
(1)	Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention, or a threatened or apprehended contravention, of this Division.	19 20 21 22
(2)	Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporated association (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.	23 24 25 26 27 28
(3)	Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.	29 30 31
[48]	Part 8, Division 5, heading	32
	Insert " Division 5 Miscellaneous " before section 181.	33

[49] Section 181 Recovery of expenses of removal and modification of certain works	1
	2
Omit the section.	3
[50] Section 182	4
Insert before section 183:	5
182 Exclusion of liability	6
(1) The Ministerial Corporation does not incur any liability for any advice furnished, or anything done or omitted to be done, in good faith by the Ministerial Corporation in the exercise of its functions under this Part.	7
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(2) Without limiting subsection (1), that subsection applies to the following:	11
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(a) the preparation or adoption of a floodplain management plan,	13
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(b) the granting of or refusal to grant an approval,	15
(c) the renewal of or refusal to renew an approval,	16
(d) the imposition of any condition on an approval, or the variation or revocation of a condition of an approval,	17
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(e) the cancellation of an approval,	19
(f) anything done or omitted to be done under Division 4.	20
(3) Without limiting any other circumstances in which the Ministerial Corporation may have acted in good faith, the Ministerial Corporation is, unless the contrary is proved, taken to have acted in good faith for the purposes of this section if the advice was furnished, or the thing was done or omitted to be done, substantially in accordance with the principles contained in the relevant floodplain development manual.	21
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(4) This section applies to and in respect of:	28
(a) the Crown, and	29
(b) a public servant, and	30
(c) a person acting under the direction of the Ministerial Corporation, and	31
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	(d) a floodplain management committee or a member of a floodplain management committee,	1
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	in the same way as it applies to and in respect of the Ministerial Corporation.	3
		4
	(5) In this section:	5
	<i>relevant floodplain development manual</i> means the most	6
	recent manual relating to the management of flood liable land	7
	(being the manual most recently notified under section 733 (5)	8
	(a) of the <i>Local Government Act 1993</i>).	9
[51]	Section 184	10
	Omit the section. Insert instead:	11
	184 Service of notices	12
	Any notice under this Part that is required to be served on or	13
	given to a person may be served or given:	14
	(a) by delivering it personally to the person, or	15
	(b) by delivering it to the place of residence or business of	16
	the person to whom it is addressed and by leaving it	17
	with any person apparently of or above the age of 14	18
	years who apparently resides or is employed there, or	19
	(c) by letter sent by post and addressed to the person at the	20
	person's address last known to the Ministerial	21
	Corporation.	22
[52]	Section 184A	23
	Insert after section 184:	24
	184A Proceedings for offences	25
	(1) Proceedings for an offence under this Part or the regulations	26
	under this Part may be commenced not later than 2 years after	27
	the date on which the offence is alleged to have been	28
	committed.	29
	(2) This section has effect despite:	30
	(a) section 4G (5) of this Act, and	31
	(b) the <i>Justices Act 1902</i> or any other Act.	32

[53] Schedule 2 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Water Amendment (Flood Control Works) Act 1999</i>	3
[54] Schedule 2, Part 6	4
Insert after Part 5 of Schedule 2:	5
 Part 6 Provisions consequent on enactment of Water Amendment (Flood Control Works) Act 1999	 6 7 8
 14 Definitions	 9
In this Part:	10
<i>amending Act</i> means the <i>Water Amendment (Flood Control Works) Act 1999</i> .	11 12
<i>approval</i> means an approval under Part 8.	13
 15 Existing floodplain management plans	 14
(1) The Ministerial Corporation may adopt as a floodplain management plan a plan that was prepared before the commencement of section 166A, which relates to the management of flood waters within a floodplain.	15 16 17 18
(2) If the plan was exhibited, and public comment was sought and taken into account before the plan was finalised, as required by the relevant floodplain development manual, the Ministerial Corporation may adopt the plan under section 166A without complying with section 166A (4).	19 20 21 22 23
(3) In this clause:	24
<i>relevant floodplain development manual</i> means the manual relating to the management of flood liable land which, at the time of the preparation of the plan, was the most recently notified manual under section 733 (5) (a) of the <i>Local Government Act 1993</i> .	25 26 27 28 29

16 Existing controlled works	1
The amendments made to this Act by the amending Act apply to controlled works constructed before or after the commencement of those amendments.	2 3 4
17 Effect on pending applications	5
(1) The amendments made to this Act by the amending Act extend to pending applications, except as provided by subclause (2).	6 7
(2) Section 168B, section 169 (as substituted by the amending Act) and the amendments made to section 170 by the amending Act do not apply to pending applications.	8 9 10
(3) In this clause:	11
<i>pending application</i> means an application for approval that was made, but not determined by the Ministerial Corporation, before the commencement of Schedule 1 [29] to the amending Act.	12 13 14 15
18 Continuation of certain provisions	16
(1) The former provisions continue to have effect, as if the amending Act had not been enacted, with respect to any determination made by the Ministerial Corporation, before the relevant commencement date:	17 18 19 20
(a) to grant an approval under section 171 (including with respect to any objection that was made to the grant of that approval), or	21 22 23
(b) to refuse to grant an approval under section 171, or	24
(c) to grant an approval under section 171 subject to conditions, or	25 26
(d) to renew or refuse to renew an approval under section 176, or	27 28
(e) to renew an approval under section 176 subject to conditions other than those to which the approval was subject immediately before it was renewed.	29 30 31

(2) Accordingly:	1
(a) such a determination is to be dealt with by the Ministerial Corporation in accordance with the former provisions (including by referring the determination to a prescribed tribunal for inquiry and report, if that is required under the former provisions), and	2 3 4 5 6
(b) the former provisions have effect with respect to any determination that is referred to a prescribed tribunal for inquiry and report (whether before or after the relevant commencement date), and	7 8 9 10
(c) the former provisions have effect with respect to the decision of the prescribed tribunal in relation to such a referred determination.	11 12 13
(3) In this clause:	14
<i>former provisions</i> means the provisions of this Act, as in force immediately before the relevant commencement date.	15 16
<i>prescribed tribunal</i> means a Magistrate or a local land board.	17
<i>relevant commencement date</i> means the date of commencement of Schedule 1 [29] to the amending Act.	18 19
19 Conditions of approvals	20
Section 176A, as substituted by the amending Act, extends to approvals granted or renewed before the substitution of that section.	21 22 23
20 Recovery of costs of removal or modification of works	24
Section 181, as in force immediately before the commencement of Schedule 1 [49] to the amending Act, continues to apply in respect of any expenses incurred by the Ministerial Corporation in the exercise of its powers under section 179 (as in force immediately before the commencement of Schedule 1 [44] to the amending Act), as if section 181 had not been repealed.	25 26 27 28 29 30
21 Extension of time limit for prosecution of offences	31
Section 184A applies only to an offence under Part 8 or the regulations under Part 8 that is alleged to have been committed after the commencement of that section.	32 33 34

22 Saving of existing entitlements under Part 2

(1) An entitlement with respect to a work to which Part 2 applied because of paragraph (e) of the definition of **Work to which this Part extends** in section 5 (1) (as in force immediately before the relevant commencement date), being a work to which Part 2 no longer extends because of the repeal of that paragraph by the amending Act, continues in force, subject to Part 2, as if the amending Act had not been enacted.

(2) However, the entitlement cannot be renewed under that Part.

(3) In this clause:

entitlement means a licence, permit, authority or group licence issued under Part 2, and in force immediately before the relevant commencement date.

relevant commencement date means the date of commencement of Schedule 1 [5] to the amending Act.

Schedule 2	Amendment of Land and Environment Court Act 1979	1
		2
	(Section 4)	3
[1]	Section 17 Class 1—environmental planning and protection appeals	4
	Insert after section 17 (cb):	5
	(cc) appeals under section 180J of the <i>Water Act 1912</i> ,	6
[2]	Section 20 Class 4—environmental planning and protection and development contract civil enforcement	7
		8
	Insert after section 20 (1) (de):	9
	(df) proceedings under section 180C or 180K of the <i>Water Act 1912</i> ,	10
		11