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Water Law in New South Wales, Australia: An Analysis of the Water Management Act, 2000

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ABSTRACT

Water law in NSW, Australia was relatively stable for some 80 years with the Water Act, 1912, containing the fundamental provisions which guided the allocation, distribution and management of water. The legislation, conceived in a pro-development period, gave little guidance on decisions about access to water other than a simple assessment of its availability and the impact, if any, on existing users. Driven by a national water reform agenda the Water Act was repealed and replaced by the Water Management Act in 2000. The need for reform was widely accepted in the face of a range of severe environmental problems and the emergence of water scarcity as a constraint on development.

The Water Management Act (WMA) represents a significant departure from the traditional approach to water management. The Act recognises the limits of the natural systems and attempts to provide a legal framework for the sustainable management of water. Both the objects of the Act and the water management principles contained therein give a clear priority to the "protection, restoration and enhancement" of the environment. The WMA introduces comprehensive and prescriptive planning provisions for management and decision-making at both state and catchment level. The State Water Management Outcomes Plan (SWMOP) is designed to set the overarching policy context, targets and strategic outcomes and to promote the water management principles established by the Act. Water Management Plans prepared at a catchment level by community based committees have a range of requirements including but not limited to the determination of environmental flows, bulk allocations and trading rules. Implementation programs prepared by the Minister set out the means by which the objectives of the plan are to be achieved.

Testing the new legislation against sustainability criteria gives some insight into the effectiveness of the reform process even at this early stage, and the planning provisions of

the legislation shows considerable promise. Protection of biodiversity and ecological processes is given priority, requirements for information facilitate precautionary decision making, monitoring and review provisions enable adaptive decision making, involvement of the community in plan making and review gives broader community values a voice, the hierarchy of plans enables a balance between local and longer term state wide interests for intergenerational equity and socio-economic impact assessment protects intra-generational equity.

In order for the new legislation to reach its promise critical implementation issues need to be resolved such as the adequacy of information, the plan review process and integration with other natural resource planning.