

New South Wales

Water Management Amendment (Water Access Licence Register) Bill 2023

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the Water Management Act 2000 (the WM Act), the Constitution Act 1902 and Constitution (Disclosures by Members) Regulation 1983 as follows—

- (a) to require holders and co-holders of water access licences to hold a *UIN*, a unique identification number allocated to a person for the WM Act,
- (b) to make amendments relating to the Water Access Licence Register (the *Access Register*),
- (c) to impose requirements relating to the holders (*WAL subsidiary holders*) of rights to exercise entitlements conferred by an access licence, or a holding in an access licence, held by an irrigation corporation,
- (d) to provide for a code of conduct for brokers,
- (e) to require annual reporting of the foreign beneficiaries of trusts that have an interest in a water access licence,
- (f) to require Members of Parliament to publicly disclose interests in water access licences held by the Member or the Member's spouse,
- (g) to make other minor or consequential amendments,
- (h) to insert provisions of a savings and transitional nature.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Water Management Act 2000 No 92

Schedule 1[2] inserts a requirement for holders and co-holders of access licences and WAL subsidiary holders to hold a UIN. The proposed provisions require a corporation applying for a UIN to provide certain information, including information about the directors and members of the corporation. Further, a corporation to which a UIN is allocated must give written notice to the Minister for Water (the *Minister*) of changes relating to the directors and members of the corporation. **Schedule 1[1]** provides that the Minister must refuse an application for an access licence if it does not include an applicant's UIN.

Schedule 1[3]–[9] and [14]–[17] make various amendments relating to the Access Register. In particular, the proposed amendments require additional matters relating to access licences and holdings in access licences to be recorded in the Access Register, including UINs, the details of WAL subsidiary holders and the rights held by WAL subsidiary holders. The proposed provisions also insert standards for the electronic search facility for the Access Register.

Schedule 1[10] provides for the regulations to prescribe a code of conduct for brokers and to create offences for failing to comply with the code of conduct. A broker is a person who provides advice to another person in relation to access licences or holdings in access licences, or deals in access licences or holdings in access licences for another person. **Schedule 1[13]** makes a related amendment.

Schedule 1[11] requires a person who holds or co-holds an access licence in the person's capacity as a trustee of a trust to notify the Minister if a foreign person was the beneficiary of the trust.

Schedule 1[12] imposes various requirements on irrigation corporations in relation to WAL subsidiary holders.

Schedule 1[18] inserts provisions of a savings and transitional nature that impose requirements on the existing holders and co-holders of access licences and WAL subsidiary holders to obtain a UIN and provide certain information to the Minister. Failure to comply with these requirements may result in the cancellation of the licence, or the removal of relevant rights, by the Minister.

Schedule 1[19] inserts definitions of UIN and WAL subsidiary holder.

Schedule 2 Amendment of other legislation

Schedule 2.1[1] amends the *Constitution Act 1902* to specify that the regulations made under that Act may require the disclosure, by Members of either House of Parliament, of pecuniary interests or other matters held by or relating to the spouses of Members. **Schedule 2.1[2]** inserts a definition of *spouse*.

Schedule 2.2[3] amends the *Constitution (Disclosures by Members) Regulation 1983* to require a Member of Parliament to disclose, with limited exceptions, the water access licence number of each water access licence in which the Member or Member's spouse has an interest and the nature of the interest. The requirement extends to interests in access licences held by trusts. **Schedule 2.2[1], [2] and [4]–[12]** make consequential amendments.

Schedule 2.3 makes a consequential amendment.



New South Wales

Water Management Amendment (Water Access Licence Register) Bill 2023

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Water Management Amendment (Water Access Licence Register) Bill 2023

No , 2023

A Bill for

An Act to amend the *Water Management Act 2000* in relation to information on the water access licence register; to amend the *Constitution Act 1902* and *Constitution (Disclosures by Members) Regulation 1983* to require Members of Parliament to disclose certain water interests held by the Members; and for related purposes.

The	Legislature of New South Wales enacts—	1
1	Name of Act	2
	This Act is the Water Management Amendment (Water Access Licence Register) Act 2023.	3 4
2	Commencement	5
	This Act commences on the date of assent to this Act.	6

Scl	hedu	le 1	Amendment of Water Management Act 2000 No 92	:			
[1]	Sect	ion 61	1 Applications for granting of access licences	;			
	Inser	t after	r section 61(6)—	4			
		(6A)	The Minister must refuse to accept an application for an access licence if the application does not include an applicant's UIN.	(
[2]	Cha	oter 3,	, Part 2, Division 3AA	7			
	Inser	t befor	ore Chapter 3, Part 2, Division 3A—	8			
	Divi	sion	3AA Unique identification numbers	g			
	70A	Requ	uirement to have a UIN	10			
		(1)	Each of the following must have a UIN—	11			
			(a) the holder of an access licence,	12			
			(b) a co-holder of an access licence,	13			
			(c) a WAL subsidiary holder.	14			
		(2)	A UIN may not be transferred.	15			
	70B	App	olying for a UIN	16			
		(1)) A person may apply to the Minister for a UIN.				
		(2)	The application must be in the approved form and include the following—	18			
			(a) the applicant's name,	19			
			(b) for a corporation—	20			
			(i) the corporation's registered address, and	21			
			(ii) the corporation's ACN or, if applicable, ARBN, and	22			
			(iii) the names of the directors of the corporation, and	23			
			(iv) details of each related body corporate of the corporation, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, and	2 ² 25 26			
			(v) without limiting subparagraph (iv), the name of—	27			
			(A) for a company limited by guarantee—each member of the company with voting rights, or	28 29			
			(B) otherwise—each person entitled to 20% or more of the voting shares in the corporation,	30 31			
			(c) other matters prescribed by the regulations.	32			
		(3)	The regulations may make further provision for UINs, including—	33			
			(a) applications for UINs, and	34			
			(b) application fees.	35			
	70C	Dete	ermination of UIN applications	36			
		(1)	The Minister may determine an application for a UIN by allocating or refusing to allocate a UIN.	37 38			
		(2)	The Minister must not allocate a UIN to a person who has previously been allocated a UIN.	39			

	70D	Char	nge in particulars must be notified	1
		(1)	A corporation to which a UIN is allocated must, within 28 days after the occurrence of one of the following events, give written notice to the Minister—	2 3 4
			(a) a change in the name of the corporation,	5
			(b) a change in the registered address of the corporation,	6
			(c) a change in the directors of the corporation,	7
			(d) a change to the related bodies corporate of the corporation, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth,	8 9
			(e) without limiting paragraph (d)—	10
			(i) for a company limited by guarantee—a person ceasing to be, or becoming, a member of the company with voting rights, or	11 12
			(ii) otherwise—a person ceasing to be, or becoming, entitled to 20% or more of the voting shares in the corporation.	13 14
			Tier 3 penalty.	15
		(2)	The notice must—	16
			(a) be in the approved form, and	17
			(b) set out the details of the change.	18
		(3)	The regulations may prescribe other events or matters that must be notified to the Minister by a UIN holder.	19 20
[3]	Sect	ion 71	Water Access Licence Register	21
	Omit	sectio	on 71(3) and (4). Insert instead—	22
		(3)	Subject to sections 71J and 71JA, the Access Register must be kept in the form and way determined by the Minister.	23 24
		(4)	The purposes of the Access Register include—	25
			(a) to create, maintain and update records of—	26
			(i) the rights, interests and entitlements held in and claimed over access licences, and	27 28
			(ii) the persons holding or claiming the rights, interests and entitlements, and	29 30
			(b) to facilitate public access to the records.	31
[4]	Sect	ion 71	AA	32
	Inser	t after	section 71A—	33
	71AA	Matte	ers relating to irrigation corporations to be recorded in Access Register	34
		(1)	This section applies to—	35
			(a) an access licence, including a replacement access licence, held by an irrigation corporation, and	36 37
			(b) a holding in an access licence held by an irrigation corporation.	38
		(2)	The following matters must be recorded in the General Division of the Access Register in relation to the access licence or holding—	39 40
			(a) details of each WAL subsidiary holder who acquires a right to exercise an entitlement conferred by the access licence or holding,	41 42

			(b)	applicable,	ne right acquired by the WAL subsidiary holder, including, if the proportion of the share component of the access licence the entitlement.	1 2 3
		(3)	The	details requi	red to be recorded include the following—	4
			(a)	the name o	f the WAL subsidiary holder,	5
			(b)	the UIN of	the WAL subsidiary holder,	6
			(c)	if the WAI	subsidiary holder is a corporation—	7
				(i) the c	corporation's registered address, and	8
				(ii) the o	corporation's ACN or, if applicable, ARBN, and	9
					names of the directors of the corporation, and	10
				corp	ils of each corporation that is a related body corporate of the oration, within the meaning of the <i>Corporations Act 2001</i> of Commonwealth, and	11 12 13
				(v) with	out limiting subparagraph (iv), the name of—	14
				(A)	for a company limited by guarantee—each member of the company with voting rights, or	15 16
				(B)	otherwise—each person entitled to 20% or more of the voting shares in the corporation,	17 18
			(d)	the amoun	t paid by the WAL subsidiary holder to acquire the right.	19
[5]	Sect	ion 71	CA			20
	Inser	t after	section	n 71C—		21
7	1CA	Pers	onal i	nformation	not to be recorded in Access Register	22
					formation must not be recorded in the Access Register—	23
			(a)	_	tial address of an individual,	24
			(b)		ne number or email address of an individual.	25
[6]	Sect	ion 71	FA	-		26
[-]				on 71G—		27
	71FA		nition			
,	IFA	Deili		is subdivisio	_	28
					cess licence, or a holding in an access licence, means the	29 30
			~		ation recorded in the Access Register—	31
			(a)	matters rec or holding,	orded under sections 71A and 71AA in relation to the licence	32 33
			(b)	matters rec holding.	orded under Schedule 1A, Part 1 in relation to the licence or	34 35
[7]	Sect	ion 71	H Sea	rches of the	Access Register	36
	Omit	the se	ction.		-	37
[8]	Sect	ion 71	l Corr	ection and a	amendment of Access Register	38
r-1				f the section	_	39
	111501	(2)			ist ensure the Access Register is kept up to date and, in	40
		(2)			e Access Register is updated to record changes of details of	40

					nces or holdings in access licences that are notified to the Minister the Minister otherwise becomes aware.	1
[9]	Sect	ions 7	1J an	d 71JA		3
[-]					instead—	4
	71J	Publ	ic acc	ess to	information in Access Register	E
		(1)			er must make the information recorded in the Access Register	6
		(1)			members of the public in accordance with this section.	7
		(2)			ation must be made available through an electronic search facility ly accessible website.	3
		(3)		e may, e availa	if approved by the Minister, be imposed before the information is able.	10 11
		(4)	A fe	e appro	oved under subsection (3)—	12
			(a)	may	be charged—	13
				(i)	in relation to searches carried out within a specified period of time, or	14 15
				(ii)	in relation to individual searches, or	16
				(iii)	on another basis, and	17
			(b)	if cha searc	arged in relation to individual searches—must be \$10 or less per h.	18 19
		(5)		ept as p	rovided by subsections (3) and (4), access to the information must icted.	20 21
		(6)	The	regulat	ions may make provision for—	22
			(a)	the a	uthentication of searches of the Access Register, and	23
			(b)	the c	ertification of the results of searches.	24
	71JA	Stan	dards	for Ac	ccess Register search facility	25
			detai	ils of ar	onic search facility referred to in section 71J(2) must enable the a access licence or a holding in an access licence to be obtained by ne or more of the following—	26 27 28
			(a)	the n	ame of an individual or corporation, including—	29
				(i)	an irrigation corporation, and	30
				(ii)	a WAL subsidiary holder,	31
			(b)	a UII	N,	32
			(c)	an A	CN or ARBN,	33
			(d)	an A	BN,	34
			(e)	the n	ame of a government department,	35
			(f)	other	matters prescribed by the regulations, except for the following—	36
				(i)	the residential address of an individual,	37
				(ii)	the telephone number or email address of an individual.	38
[10]	Sect	ion 71	ZB			39
	Inser	t at the	e end c	of Char	oter 3, Part 2, Division 4—	40

	71ZB	Code	of co	onduct for brokers	1
		(1)	The	regulations may prescribe a code of conduct for brokers.	2
		(2)		regulations may create an offence of failing to comply with the code of luct or a specific provision of the code of conduct (a <i>relevant offence</i>).	3
		(3)		Secretary may issue a public statement, in a way determined by the etary—	5 6
			(a)	identifying a broker found guilty of a relevant offence, and	7
			(b)	providing details of the commission of the relevant offence.	8
		(4)	In th	is section—	9
				<i>er</i> means a person who provides brokerage services to another person in on for a commission, fee or other financial benefit.	10 11
			brok	erage services means one or more of the following services—	12
			(a)	providing advice about a dealing in an access licence or holding in an access licence,	13 14
			(b)	dealing in an access licence or holding in an access licence for another person,	15 16
			(c)	investigating a prospective dealing in an access licence or holding in an access licence for another person,	17 18
			(d)	preparing and submitting documents necessary for a dealing in an access licence or holding in an access licence for another person.	19 20
[11]	Sect	ion 87	E		21
	Inser	t befor	e secti	ion 88—	22
	87E	Annı	ıal rep	porting of foreign beneficiaries	23
		(1)		section applies to an access licence held or co-held by a person in the on's capacity as a trustee of a trust.	24 25
		(2)	end durir	person must give written notice to the Minister, within 2 months after the of each financial year, if a foreign person was a beneficiary of the trust ag the financial year.	26 27 28
				3 penalty.	29
		(3)	bene	person is not required to give notice of a foreign person who was a ficiary if notice of the foreign person has already been given by another ee of the trust.	30 31 32
		(4)	In th	is section—	33
			Take	ign person has the same meaning as in the Foreign Acquisitions and evers Act 1975 of the Commonwealth, but does not include an Australian en, whether or not ordinarily resident in Australia.	34 35 36
[12]	Chap	oter 4,	Part 1	I, Division 5A	37
	Inser	t after	Chapt	er 4, Part 1, Division 5—	38
	Divi	sion	5A	WAL subsidiary holders	39
	135A	Defir	nition		40
			In th	is Act—	41

				L subsidiary holder is a person or body that acquires, by contractual ngement or otherwise, a right to exercise an entitlement conferred by—	1 2
			(a)	an access licence, including a replacement access licence, held by an irrigation corporation, or	3 4
			(b)	a holding in an access licence held by an irrigation corporation.	5
	135B	Requ	uirem	ent to keep records	6
		(1)	An i	rrigation corporation must make and keep records of—	7
			(a)	all WAL subsidiary holders who acquire a right to exercise an entitlement conferred by an access licence or holding in an access licence held by the irrigation corporation, and	8 9 10
			(b)	details of the right acquired by the WAL subsidiary holder.	11
		(2)		nout limiting subsection (1), the records must include the details referred a section 71AA.	12 13
	135C	Cha	nge in	particulars must be notified	14
		(1)	corp right	n director of an irrigation corporation must ensure the irrigation poration notifies the Minister, in the approved form, of the acquisition of a treferred to in section 135B(1)(a) within 28 days after the acquisition. 3 penalty.	15 16 17 18
		(2)	the 2 the r	rirrigation corporation fails to notify the Minister of an acquisition within 28-day period, the irrigation corporation must give a written statement to members of the irrigation corporation informing them of the failure. 3 penalty.	19 20 21 22
[13]	Sect	ion 40	0 Reg	gulations	23
	Inser	t after	sectio	on 400(3)—	24
		(3A)	pena	pite subsection (3), a regulation may create an offence punishable by a alty of not more than 100 penalty units if the offence relates to a failure to ply with a code of conduct or a specific provision of a code of conduct cribed under section 71ZA.	25 26 27 28
[14]	Sche	edule '	1A Ac	cess Register	29
	Omit	in su	ich for	rm as the Minister considers appropriate" from clause 1(1).	30
[15]	Sche	edule '	1A, cla	ause 1(1)(a1)	31
	Inser	t after	clause	e 1(1)(a)—	32
			(a1)	the UIN of each holder or co-holder of the access licence,	33
[16]	Sche	edule '	1A, cla	ause 1(1)(f)–(k)	34
	Inser	t after	clause	e 1(1)(e)—	35
			(f)	the category or subcategory of the licence,	36
			(g)	the date on which the licence is granted,	37
			(h)	the purchase price, if any, of the licence,	38
			(i)	details of the purpose for which the licence is granted,	39
			(j)	details of water sources from which water is proposed to be extracted,	40
			(k)	details of the land where water taken under the licence will be used.	41

recorded in the Access Register.

[17]	Schedule '	A, clause 1(4)		1
	Omit "The	Minister". Inse	ert instead "Subject to section 71CA, the Minister".	2
[18]	Schedule 9	Savings, trar	nsitional and other provisions	3
	Insert at the	end of the sch	edule, with appropriate part and clause numbering—	4
	Part	Managen	ns consequent on enactment of Water nent Amendment (Water Access Licence) Act 2023	5 6 7
	Defi	ition		8
		In this part—		9
		amending Ad	ct means the Water Management Amendment (Water Access ster) Act 2023.	10 11
	Prov	sion of additi	onal details for Access Register	12
	(1)	This clause ap	pplies to an access licence—	13
		(a) that is i Act, or	in force immediately before the commencement of the amending	14 15
			ich an application was made but not determined immediately the commencement of the amending Act.	16 17
	(2)		o-holder of an access licence to which this clause applies must, nths after the commencement of the amending Act—	18 19
		(a) obtain	a UIN, and	20
		the ap	e the Minister with information that would have been required by proved form if the licence had been applied for after the encement of the amending Act, and	21 22 23
		subsidi the lice been re	ary holder holds a right to exercise an entitlement conferred by ence—provide the Minister with information that would have equired by the approved form if the right had been acquired after amendement of the amending Act.	24 25 26 27 28
	(3)	If a holder or	co-holder fails to comply with subclause (2)—	29
		(a) the Min	nister may cancel the licence, and	30
			der or co-holder is not eligible to apply for further access licences are holder or co-holder complies with the subclause.	31 32
	(4)		sidiary holder who holds a right to exercise an entitlement an access licence to which this clause applies must obtain a UIN.	33 34
	(5)	If a WAL submay—	bsidiary holder fails to comply with subclause (4), the Minister	35 36
		(a) remove	e the right from the WAL subsidiary holder, and	37
			the right to the irrigation corporation that holds the licence to the right relates.	38 39
	(6)	The Minister	must ensure the information provided under this clause is	40

41

[19]	Dictionary	1
	Insert in alphabetical order—	2
	details, for Chapter 3, Part 2, Division 3A, Subdivision 4—see section 71FA.	3
	UIN means a unique identification number allocated to a person for this Act.	4
	WAL subsidiary holder—see section 135A.	5

Sch	nedu	le 2	Amendment of other legislation	1
2.1	Con	stitut	tion Act 1902 No 32	2
[1]	Sect	ion 14	A Disclosure of pecuniary interests and other matters by Members	3
	Inser	t "the s	spouse or other" before "members of the" in section 14A(4A).	4
[2]	Sect	ion 14	A(8)	5
	Inser	t after	section 14A(7)—	6
		(8)	In this section—	7
			spouse , of a person (the first person), means the following but, if more than 1 person would qualify as the first person's spouse, means only the latest person to qualify—	8 9 10
			(a) a person to whom the first person is legally married, including a husband or wife of the first person,	11 12
			(b) the first person's de facto partner.	13
2.2	Con	stitut	tion (Disclosures by Members) Regulation 1983	14
[1]	Clau	se 3 In	iterpretation	15
	Inser	t in alp	shabetical order in clause 3(1)—	16
			spouse, of a person, has the same meaning as in the Act, section 14A.	17
			water access licence means an access licence within the meaning of the Water Management Act 2000.	18 19
[2]	Clau	se 6A	Supplementary ordinary returns	20
	Inser	t "8A,'	'after "8," in clause 6A(4)(a).	21
[3]	Clau	se 8A		22
	Inser	t after	clause 8—	23
	8 A	Wate	er access licences	24
		(1)	A Member must disclose in a primary return and an ordinary return—	25
			(a) the water access licence number of each water access licence in which the Member or, if applicable, the Member's spouse, had an interest—	26 27
			(i) for a primary return—on the primary return date or during the period of 5 years ending on the primary return date, or	28 29
			(ii) for an ordinary return—during the ordinary return period, and	30
			(b) the nature of the interest in each water access licence.	31
		(2)	Without limiting subclause (1), if a Member or a Member's spouse had a relevant connection with a trust on the primary return date, during the period of 5 years ending on the primary return date or during the ordinary return period, the Member must also disclose in a primary return and an ordinary return—	32 33 34 35 36
			(a) the water access licence number of each water access licence in which a person in the person's capacity as a trustee of the trust had an interest—	37 38 39
			(i) for a primary return—on the primary return date or during the period of 5 years ending on the primary return date, or	40 41

	(ii) for an ordinary	return—during the ordinary return period, and
	(b) the nature of the inter	rest in each water access licence.
(3)	A person has a relevant con	<i>nection</i> with a trust if the person—
	(a) is a trustee of the trus	
	(b) is a settlor of the trust	
	· · ·	ble for the affairs of the trust, or
	(d) is a beneficiary of the	
(4)	An interest in a water acce Member if the Member or N	ss licence is not required to be disclosed by the Member's spouse—
		y in the Member's or spouse's capacity as the ator of the estate of a deceased person, and
	(b) was not a beneficiary	under the will or intestacy.
Schedule	1 Forms	
Insert "8A,	" after "8," in Form 1, matter	headed "Directions", item 2.
Schedule	1, Form 1, Section 1, Part 1A	1
Insert after	Part 1—	
Part 1A \	Vater access licences	
	Constitution (Disclosures by Part 1A of the return—	Members) Regulation 1983, clause 8A, you must
spou		of each water access licence in which you or your on which you took the pledge of loyalty or during at date, and
(b) the r	ature of the interest in each w	rater access licence.
8A(3), on t		nection with a trust, within the meaning of clause e pledge of loyalty or during the period of 5 years se—
perso		each water access licence in which a person in the he trust had an interest on that date or during the ate, and
(b) the r	ature of the interest in each w	rater access licence.
Make a sep return.	arate entry for each water acc	eess licence, separated by a line, in Part 1A of the
<u> </u>	tries only—	
Water acc	ess licence number	Nature of interest
WAL12345	678	Co-holder
WAL87654	321	Holder
Schedule	1, Form 1, Section 2, Part 1	A
	Part 1—	
Insert after		
	ater access licences	

	er access licence number	Nature of interest		
Sch	edule 1, Form 2, Section 1, Part	: 1A		
	rt after Part 1—			
Par	11A Water access licences			
Und		by Members) Regulation 1983, clause 8A, you must		
(a) the water access licence number of each water access licence in which you or your spouse had an interest during the ordinary return period, and				
(b)	the nature of the interest in each			
lf yc 8A(:	ou or your spouse had a relevant on the control of the ordinary return peri	connection with a trust, within the meaning of clause od, you must also disclose—		
(a) the water access licence number of each water access licence in which a person in person's capacity as a trustee of the trust had an interest during that period, and				
(b)	the nature of the interest in each	h water access licence.		
Mak retui		access licence, separated by a line, in Part 1A of the		
	nple entries only—			
Wat	er access licence number	Nature of interest		
	L12345678	Co-holder		
WA]	L87654321	Holder		
ich	edule 1, Form 2, Section 2, Part	: 1A		
	rt after Part 1—			
Inse				
	1A Water access licences			

Water access licence number

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WAL12345678 Co-holder WAL87654321 Holder	interinter Example er Water acc	ess licence number	Nature of interest		

31

Nature of interest

Insert after Part 1—

Water access licence number	Nature of interest	
Water Management Amendm	ent Act 2018 No 31	
J		

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Omit Schedule 1[26].