

WATER MANAGEMENT LEGISLATION AMENDMENT (STRONGER ENFORCEMENT AND PENALTIES) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Management of NSW's valuable water resources relies on the orderly, efficient and equitable sharing of water. In 2023, water shared under NSW's more than 39,000 water access licences was estimated to be worth up to \$41 billion. This includes up to \$34 billion of tradable water primarily used for agriculture.

Regulatory, enforcement and compliance arrangements under the *Water Management Act 2000* (WM Act) need to continually evolve and improve to respond effectively to the:

- increasing competition for water between human and environmental needs, as well as between the various types of human uses
- significant risks posed to this increasingly valuable and variable resource by changing climate conditions.

As water variability increases, in times of water scarcity some water users may be more likely to take water unlawfully. A 2023 public sentiment survey showed 70 percent of respondents believe water theft continues in NSW.

Since its inception in 2018, the Natural Resources Access Regulator (NRAR) has undertaken over 2,500 enforcement/compliance actions under the WM Act (including commencing 41 prosecutions for water crimes). NRAR's regulatory enforcement activities have tested the efficacy of water laws and identified legislative challenges.

The Water Management Legislation Amendment (Stronger Enforcement and Penalties) Bill 2025 (the Bill) is needed to shore up NRAR's ability to hold offenders to account, pursue alleged offenders and deter would-be offenders, particularly corporate offenders. It is also needed to ensure public confidence in the regulatory regime and its enforcement, responding to public sentiment surveys that suggest more should be done to address the unlawful use of water.

Objectives: What is the policy's objective couched in terms of the public interest?

There is significant public interest and concern in maintaining a strong regulatory regime that protects the State's water resources and ensures the integrity of water sharing in NSW. Non-compliance undermines the regulatory scheme and impacts on water users who are doing the right thing. The Bill aims to serve this public interest by:

- improving deterrence
- clarifying NRAR's existing enforcement and compliance functions and powers and providing more regulatory certainty
- ensuring NSW's water management enforcement framework better reflects the complex nature and impacts of non-compliance.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Legislative and non-legislative options were considered wherever possible. Ultimately, however, overcoming the issues identified by NRAR in its operations cannot be achieved by non-legislative means. This is because the issues relate to:

- sentencing considerations, penalties and court orders
- existing and new offences
- existing and new enforcement options (including new civil penalty proceedings)
- enforcement and compliance powers
- common law rights.

Maintaining the status quo will not address evolving issues of non-compliance, emerging water management issues nor identified gaps in the existing enforcement framework.

Analysis: What were the pros/cons and benefits/costs of each option considered?

If the amendments were not made, the issues identified by NRAR would remain unaddressed. Maintaining the status quo would leave NSW with outdated provisions that are no longer fit for purpose and lag behind other Australian jurisdictions as well as comparable environment protection legislation in NSW. Unlawful behaviour may go unpunished and potentially increase, creating incentives for businesses to factor penalties into the cost of doing business.

This Bill is considered the most effective and efficient way for the NSW Parliament to address these issues. Development of the Bill has been informed by the laws in other similar jurisdictions (including South Australia and Victoria) as well as comparable environment protection legislation in NSW.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Most of the amendments will commence on the date of assent. Amendments that require updates to court systems to implement will commence on 1 January 2026. The amendment to abrogate the privilege against self-incrimination for the future obligation on water access licence holders to report the volume of water taken under their licence will commence on a date to be proclaimed. This reflects that the Bill does not create any new obligations on licence holders and will align the commencement of the new provision with the commencement of the new obligation.

Policies, processes, procedures and systems across NRAR, WaterNSW and the Department of Climate Change, Energy, the Environment and Water have either been updated or developed to support commencement of the Bill. Most of the legislative provisions amended or enacted by the Bill will be administered and used by NRAR as part of its enforcement functions and NRAR will release updated policies when the Bill commences. Consultation with the Land and Environment Court and Local Court has been undertaken to ensure they are prepared to administer relevant Bill amendments.

NRAR and the department will ensure that water users and other stakeholders are informed of relevant changes and support them to respond to the changes. Stakeholders will also be supported with online and other information resources.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

As many of the proposals in the Bill only impact the non-compliant, it was not appropriate to consult broadly. Targeted engagement was undertaken before the Bill's introduction to ensure key stakeholders are aware of key elements of the reforms and to

identify any potential implementation issues. Stakeholders engaged include the NSW Irrigators' Council, NSW Farmers' Association and Environmental Defenders Office.

Comprehensive consultation with NSW Government agencies has occurred. This includes consultation with the Department of Communities and Justice on changes in the Bill with respect to increased penalties, the introduction of new offences and new civil penalty proceedings, the proposed abrogation of the privilege against self-incrimination for licence holders reporting the volume of water taken under their licence, and potential impacts on the Land and Environment Court and Local Court.

Commonwealth Government agencies – including the Murray-Darling Basin Authority and Inspector-General of Water Compliance – were also consulted on the proposals.