

Passed by both Houses



New South Wales

Water Management Amendment (Easements for Inundation) Bill 2026

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2026

Clerk of the Parliaments



New South Wales

Water Management Amendment (Easements for Inundation) Bill 2026

Act No _____, 2026

An Act to amend the *Water Management Act 2000* to make provision for the creation and transfer of easements in gross relating to inundation for environmental purposes; to amend the *Water NSW Act 2014* to address Water NSW's liability in relation to the inundation of land; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Water Management Amendment (Easements for Inundation) Act 2026*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 1—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

Schedule 1 **Amendment of Water Management Act 2000 No 92**

[1] **Section 399C**

Insert after section 399B—

399C Easements for inundation for environmental purposes

- (1) An easement without a dominant tenement may be created in favour of, or assured to, a river operator if—
 - (a) the easement is for or incidental to the inundation of land, and
 - (b) the inundation is for or in connection with an environmental purpose.
- (2) Without limiting subsection (1), an easement under this section is to be created and dealt with under the *Conveyancing Act 1919*, section 88A as if the easement is an easement permitted to be created and dealt with under that section despite any limitations under that section.
- (3) This section does not limit the creation of, or dealing in, an easement under the *Conveyancing Act 1919*, section 88A.

Example— An easement in gross created under the *Conveyancing Act 1919*, section 88A may be created for the Crown or the Ministerial Corporation or, in certain circumstances, Water NSW.
- (4) In this section—

river operator means the following—

 - (a) Water NSW,
 - (b) a water authority prescribed by the regulations.

water authority means the following—

 - (a) the Crown in the right of the Commonwealth, including an officer or agent of the Commonwealth,
 - (b) a person prescribed by the regulations who has one or more similar functions to Water NSW, whether the functions are exercised in the State or another Australian jurisdiction.

[2] **Schedule 9 Savings, transitional and other provisions**

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Water Management Amendment (Easements for Inundation) Act 2026

Definitions

In this part—

Register means the Register kept under the *Real Property Act 1900*.

State tax—

- (a) means a duty or other tax, fee or charge imposed by or under a law of the State, and
- (b) does not include a fee or charge imposed by or under the *Conveyancing Act 1919* or *Real Property Act 1900*.

transfer order means an order made under this part.

Transfer of easements in gross from Ministerial Corporation to Water NSW

- (1) This clause applies to an easement created under the *Conveyancing Act 1919*, section 88A that is held in favour of, or assured to, the Ministerial Corporation if—
 - (a) the easement is for or incidental to the inundation of land, and
 - (b) the inundation is for or in connection with an environmental purpose.
- (2) The Ministerial Corporation may, by order published in the Gazette, transfer an easement to which this section applies to Water NSW.
- (3) The Ministerial Corporation must consult with Water NSW before publishing a transfer order.
- (4) A transfer order may specify the terms and conditions of the transfer.
- (5) The transfer of the easement takes effect on—
 - (a) the day specified in the transfer order, or
 - (b) if no day is specified—the day on which the transfer order is published in the Gazette.

Effect of transfer order

- (1) When an easement is transferred under a transfer order, the following provisions have effect in relation to the easement—
 - (a) the easement becomes a right held by Water NSW and vests in Water NSW without the need for further conveyance, transfer, assignment or assurance,
 - (b) all proceedings relating to the easement commenced before the transfer by or against the Ministerial Corporation or a predecessor of the Ministerial Corporation and pending immediately before the transfer are taken to be proceedings pending by or against Water NSW,
 - (c) Water NSW has all the entitlements and obligations of the Ministerial Corporation that the Ministerial Corporation would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time the transfer took effect,
 - (d) an act, matter or thing done or omitted to be done before the transfer by, to or in relation to the Ministerial Corporation or a predecessor of the Ministerial Corporation is, to the extent to which the act, matter or thing has any force or effect, taken to have been done or omitted to be done by, to or in relation to Water NSW,
 - (e) a reference in an Act, instrument made under an Act or document to the Ministerial Corporation or predecessor of the Ministerial Corporation, to the extent to which the reference relates to the easement, must be read as a reference to Water NSW.
- (2) Without limiting subclause (1)(c), Water NSW has all the necessary functions to hold and deal in an easement that is transferred under a transfer order.
- (3) State tax is not payable in relation to the transfer of an easement under a transfer order.
- (4) No compensation is payable to a person in connection with a transfer order except to the extent, if any, to which the order provides.
- (5) The Ministerial Corporation may inform the Registrar-General of the effect of a transfer order on an easement in a way approved by the Registrar-General.

- (6) The Registrar-General may—
- (a) amend the Register, including any folio of the Register, in accordance with the information given by the Ministerial Corporation under subclause (5), or
 - (b) amend or make any other recordings to the Register, including any folio of the Register, that, in the Registrar-General's opinion, the Registrar-General considers necessary in relation to a transfer order.

Operation of part and transfer order

The operation of this part and a transfer order must not be regarded as—

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of an easement, or
- (c) giving rise to a remedy by a party to an instrument, or causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an easement, or
- (d) an event of default under a contract or other instrument.

Schedule 2 Amendment of Water NSW Act 2014 No 74

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

inundate, in relation to land, includes—

- (a) inundate private land, and
- (b) move water to or across land, including private land.

[2] Section 7 Functions of Water NSW

Omit “community.” from section 7(1)(k).

Insert instead—

community,

- (l) to release or supply water, including environmental water, to inundate land for an environmental purpose,
- (m) to operate works to inundate land for an environmental purpose,
- (n) in the exercise of a function, to inundate land.

[3] Section 37 Compensation by Water NSW for damage

Insert after section 37(3)—

- (4) No compensation is payable under this section for damage resulting from the inundation of land as a consequence of anything done, or omitted to be done, by Water NSW.

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part numbering—

Part Provision consequent on enactment of Water Management Amendment (Easements for Inundation) Act 2026

1 Listed functions relating to inundation taken to be authorised by existing operating licence

- (1) An existing operating licence is, until its expiry, taken, for section 7(3)(a), to authorise Water NSW to exercise the listed functions under section 7(1)(l)–(n).
- (2) In this clause—
existing operating licence means an operating licence in force immediately before the commencement of this part.