



New South Wales

# Water Management Amendment Bill 2018

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend the *Water Management Act 2000* (the *principal Act*) and other Acts and instruments as follows:

- (a) to enable management plans for water management areas or water sources (*management plans*) to include measures that are necessary because of the *Water Act 2007* of the Commonwealth (the *Commonwealth Act*) and to provide for other matters relating to any such requirements, including enabling the amendment or repeal of plans and other consequential matters,
- (b) to update the matters to be considered in a report on whether to extend a management plan that deals with water sharing and to make other amendments relating to management plans,
- (c) to confer on the Natural Resources Commission the function of carrying out an audit of a management plan within the first 5 years of the plan,
- (d) to enable a management plan that applies to part of the Murray-Darling basin area covered by the Commonwealth Act to be suspended if there is an extreme event and to provide for the rules of water distribution while a suspension is in force,
- (e) to provide for a methodology for determining the quantity of water taken illegally,
- (f) to enable mandatory conditions to be imposed by regulations on access licences and approvals,
- (g) to enable specific purpose access licences to be amended where they no longer reflect the circumstances in which they operate,

- (h) to provide for the publication of authoritative information about rights to take water at particular times and for that information to be able to be relied on,
- (i) to allow holders of access licences to assign rights to daily extraction components and to provide for the keeping of records of those transactions,
- (j) to provide for matters relating to the use of and requirements for metering equipment, including a mandatory condition for holders of approvals for water management works to install, use and maintain metering equipment for use in connection with the works and additional offences relating to metering equipment,
- (k) to enable the Minister for Regional Water (the *Minister*) to make a direction prohibiting or restricting the taking of water from a specified water source if satisfied that it is necessary to do so for managing water for environmental purposes,
- (l) to provide for additional enforcement mechanisms, including compliance audits and enforceable undertakings,
- (m) to increase penalties for offences,
- (n) to enable the Minister to delegate functions conferred on the Minister under other legislation in the Minister's capacity as the Minister administering the principal Act,
- (o) to provide for one public register for all information required to be kept in a register under the principal Act,
- (p) to exclude the Crown from liability for things arising from the release in good faith of water for environmental purposes, the publication of information in the public register and the exercise of functions in relation to flood work approvals,
- (q) to provide for a mechanism to enable provisions of the Commonwealth Act to be displaced in New South Wales,
- (r) to amend management plans and regulated river orders in various respects,
- (s) to enable the Natural Resources Access Regulator to publish information about the exercise of its enforcement powers and to enable the exchange of other information,
- (t) to facilitate the regulation of bore drillers under the principal Act,
- (u) to enable a scheme for the transfer by Water NSW and the Water Administration Ministerial Corporation of the ownership of metering equipment to be prescribed by regulations,
- (v) to make other minor and consequential amendments and savings and transitional provisions.

## 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 partly on the date of assent to the proposed Act and partly on a day or days to be appointed by proclamation.

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

### **Murray-Darling Basin**

**Schedule 1 [3]** enables the Minister to include additional provisions in management plans if it is necessary to do so to meet requirements arising under the Commonwealth Act.

**Schedule 1 [9] and [10]** enable the Minister to repeal and amend management plans if it is necessary to do so to meet requirements arising under the Commonwealth Act.

**Schedule 1 [13]** enables the Minister to wholly or partly suspend the operation of a management plan that applies to a management area that is also a Basin management area or the whole or part of a water source that is also a Basin water resource under the Commonwealth Act, in the event

of an extreme event (such as an extreme dry period or an event that renders water acutely toxic or unusable for local uses). The suspension will be (unless sooner revoked) until the following 30 June or, if the suspension occurs after 1 April, 30 June in the following year. **Schedule 1 [11], [12], [16], [17] and [30]** make consequential amendments.

**Schedule 1 [18]** sets out the priorities for making available water determinations where a management plan is suspended due to an extreme event.

**Schedule 1 [69] and [70]** add consideration of whether an offence took place when an order was in force due to an extreme event to the matters that a court is to consider when determining the penalty for an offence under the principal Act.

### **Management plans and orders**

**Schedule 1 [5]** provides that the Minister is to consult with the Natural Resources Commission, as well as the Minister for the Environment, when reviewing a management plan.

**Schedule 1 [6]** requires the extent to which the water sharing provisions of a management plan have materially contributed to the achievement of, or failure to achieve, environmental, social and economic outcomes to be considered when a management plan is reviewed for consideration as to whether or not it should be extended beyond its original term.

**Schedule 1 [7]** requires management plans to be audited within their first 5 years, rather than at intervals of 5 years.

**Schedule 1 [8]** confers on the Natural Resource Commission the function of carrying out the audit of management plans that is required in the first 5 years of a plan.

**Schedule 1 [15]** makes it clear that the amendment or revocation of a management plan so as to remove or change the description of a water source does not affect the fact that the provisions applying to access licences can apply to the water source.

**Schedule 1 [34]** authorises a management plan to provide for the taking of water by certain licence holders who do not have any other entitlement to do so.

**Schedule 1 [35]** enables compensation to be paid as a result of a change in the bulk access regime applicable to a person if the management plan originally applicable was replaced by the Minister on the ground that it was necessary to do because of requirements arising under the Commonwealth Act, but only for the period for which compensation would have been payable if the original plan was still in force. **Schedule 1 [36]** makes a consequential amendment.

**Schedule 1 [90]** amends the *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*, including to omit provisions relating to extraction limits, which are subject to ongoing review before implementation.

**Schedule 1 [90]** also amends certain regulated river orders and management plans to specify the limits of certain rivers. Certain management plans are also amended to insert a provision to facilitate the active sharing of water flows. Regulations may also be made to amend orders and management plans in relation to river limits. The amendment also makes the *Regulated River Order for the Bega and Brogo Regulated Rivers 2018* and the *Regulated River Order for the Peel Valley Regulated Rivers 2018*, and validates actions taken since then that would have been valid if the orders had been in force. **Schedule 1 [89]** makes a consequential amendment.

### **Enforcement**

**Schedule 1 [19]** enables the Minister to determine the quantity of water that has been taken illegally (for sanction purposes) in accordance with a methodology prescribed by the regulations.

**Schedule 1 [64]** enables the Minister to direct the holder of an access licence or approval to undertake a compliance audit, that is, an evaluation of the taking of water and other activities regulated under the principal Act that are undertaken by the holder. The direction may require one audit or audits at specified intervals.

**Schedule 1 [65]** provides for enforceable undertakings by persons to be accepted by the Minister in connection with any matter in relation to which the Minister, the Ministerial Corporation, the Natural Resources Access Regulator or any other public authority has a function under the

principal Act. If an undertaking is breached, the Land and Environment Court may make orders directing compliance, payment of the amount of any financial benefit attributable to the breach, payment of compensation to a person who suffers damage because of the breach, prevention or mitigation of actual or likely damage caused by the breach or the making good of any such damage.

**Schedule 1 [66]** increases the maximum penalty for a Tier 1 offence committed by a corporation under the principal Act to 45,500 penalty units.

**Schedule 1 [67] and [68]** increase the maximum penalty for a Tier 2 offence committed by a corporation to 18,200 penalty units and for a Tier 2 offence committed by a person other than a corporation under the principal Act to 4,550 penalty units.

**Schedule 1 [71]** confers on the Minister, rather than the Ministerial Corporation, the power to withdraw a penalty notice.

**Schedule 1 [73]** provides for a rebuttable presumption in proceedings for offences that water taken by the holder of an access licence was not taken pursuant to a basic landholder right under the principal Act.

### **Access licences**

**Schedule 1 [21]** enables the regulations to prescribe mandatory conditions for access licences.

**Schedule 1 [2], [20] and [23]** make consequential amendments.

**Schedule 1 [22]** makes it clear that mandatory conditions prescribed by the regulations do not need to be shown in licences to have effect.

**Schedule 1 [24]** prohibits the Minister from revoking, suspending or amending mandatory conditions of licences that are prescribed by the regulations.

**Schedule 1 [25]** enables the Minister to amend the share component of a specific purpose access licence if the relevant part of the share component is no longer necessary for the purpose for which the licence was granted. The Minister may grant a new access licence relating to a share component removed from the licence. The Minister may also amend an access licence to remove a nominated water supply work if the approval for the work has expired, been cancelled or has been surrendered.

**Schedule 1 [27]** enables holders of access licences, with the consent of the Minister, to assign entitlements to take specified volumes of water on a specified day (*individual daily extraction components*), for a specified day or for a specified period, or in specified circumstances, or both.

**Schedule 1 [28]** applies conditions prescribed by the regulations for access licences to interstate transfers of access licences.

**Schedule 1 [29]** applies the water management principles, access licence dealing principles and access licence dealing rules in applicable management plans to the assignment of individual daily extraction components.

**Schedule 1 [31]** permits the Minister to cancel or suspend an access licence without giving notice if the Minister has, within 28 days before taking the action, taken all reasonable steps to give the notice.

**Schedule 1 [33]** requires individual daily extraction components imposed on access licences, and transactions relating to them, to be recorded in the water allocation account of licence holders.

**Schedule 1 [87]** provides for the adjustment of water allocation accounts to reflect the imposition of an individual daily extraction component when a licence holder is exiting from a co-held access licence.

**Schedule 1 [92]** includes the assignment of individual daily extraction components as assignment dealings for the purposes of the principal Act.

### **Metering equipment**

**Schedule 1 [39] and [40]** make it an offence to fail to use metering equipment in connection with a water management work if required to do so under an access licence or approval or if directed to do so by the Minister or under the regulations.

**Schedule 1 [41]** extends the offences relating to the use, installation and maintenance of metering equipment, and failure to keep metering records, to all water management works.

**Schedule 1 [42]** makes it an offence to fail to comply with regulations setting out standards or requirements for the installation or location of metering equipment, or setting out other standards or requirements relating to metering equipment used in connection with water management works. It will be a defence if the failure was caused by work done by a duly qualified person (as permitted by the regulations).

**Schedule 1 [43]** replaces the defence to the offence of taking water while metering equipment is not working with a defence of complying with requirements set out in the regulations.

**Schedule 1 [44]** makes it an offence for the holder of an approval for a work in connection with which metering equipment has been installed to fail to report that it is not working properly, or not working, within 24 hours of becoming aware of that fact.

**Schedule 1 [45]** extends the offences relating to failure to keep metering records and meter tampering, to all water management works.

**Schedule 1 [46]** makes it an offence for a person to knowingly make a false or misleading statement or to knowingly furnish any information that is false or misleading in connection with a metering record or a requirement of a regulation in connection with metering equipment.

**Schedule 1 [52]** makes it a mandatory condition of a water supply work approval that metering equipment is installed, used and properly maintained in connection with the work. Exceptions to this requirement may be prescribed by the regulations.

**Schedule 1 [56]** enables regulations to be made with respect to metering equipment in connection with water management works (whether or not they are the subject of approvals), including requirements to install, use and maintain metering equipment and standards and requirements for metering equipment.

**Schedule 1 [60]** confers on the Minister power to make an order containing a direction prohibiting the taking of water from a specified water source or to make the taking of water subject to restrictions, if satisfied that it is necessary to do so for the purpose of managing water for environmental purposes. **Schedule 1 [61]** enables such an order to be published by broadcasting it in urgent circumstances.

**Schedule 1 [62]** enables the Minister to make an order containing a direction that a landholder on whose land there is a water supply work or other person having control and management of a water supply work ensure that metering equipment is used in connection with the work.

## **Approvals**

**Schedule 1 [38]** makes it clear that the amendment or revocation of a management plan so as to remove or change the description of a water source does not affect the fact that the provisions applying to approvals can apply to the water source.

**Schedule 1 [49]** enables the regulations to prescribe mandatory conditions for approvals for works. **Schedule 1 [48] and [51]** make consequential amendments.

**Schedule 1 [50]** makes it clear that mandatory conditions prescribed by the regulations do not need to be shown in approvals to have effect.

**Schedule 1 [53]** prohibits the Minister from revoking, suspending or amending mandatory conditions of approvals that are prescribed by the regulations.

**Schedule 1 [54]** permits the Minister to cancel or suspend an approval without giving notice if the Minister has, within 28 days before taking the action, taken all reasonable steps to give notice.

## **Miscellaneous**

**Schedule 1 [1]** updates references to the title of a Minister.

**Schedule 1 [4], [14], [57], [81] and [91]** amend provisions that require notices and other documents to be published in newspapers to enable them to be published in a manner that is likely to bring them to the attention of the persons to whom they are directed. The amendments will

enable the publication of those documents online where appropriate, including in newspapers that are available in digital form.

**Schedule 1 [37]** enables the Minister to authorise the publication, on a publicly accessible website, of information about whether or not water can be taken from a particular water source on a particular day or at a particular time and the amount of water that may be taken. Other information about water flows and levels, as well as gauge readings and other measurements, may also be published. A person will be taken to be permitted to take water under the principal Act if the person takes water in accordance with the information published and is otherwise entitled to take water under a management plan or access licence.

**Schedule 1 [56]** enables regulations to be made to impose mandatory conditions on access licences and approvals, including conditions relating to metering equipment and prohibiting or limiting the taking of water from water supply works in specified circumstances.

**Schedule 1 [58], [94], [96] and [97]** amend definitions to omit unnecessary elements.

**Schedule 1 [59]** updates a heading.

**Schedule 1 [72]** provides for certificates to be used as evidence in court proceedings of matters relating to information published by the Minister and water taken.

**Schedule 1 [74]** enables an appeal to the Land and Environment Court to be made against a decision by the Minister to amend the share component of a specific purpose access licence or to require a compliance audit or audits.

**Schedule 1 [75]** enables the Minister to delegate any function conferred under any other Act on the Minister in the Minister's capacity as the Minister administering the principal Act.

**Schedule 1 [76] and [77]** make consequential amendments.

**Schedule 1 [78]** provides for the keeping of one public register for all information that is required to be kept in a register under the principal Act. The register is also to include information published by the Natural Resources Access Regulator about the exercise of enforcement powers under the principal Act. **Schedule 1 [26], [32] and [55]** make consequential amendments.

**Schedule 1 [79]** enables a document to be served under the principal Act by email if a person specifies an email address for service of a document of that kind. **Schedule 1 [80]** makes a consequential amendment.

**Schedule 1 [82]** excludes the Crown from liability for matters arising out of the release in good faith of water for environmental purposes.

**Schedule 1 [83]** excludes the Crown from liability (including liability for defamation) for matters arising out of the keeping of information in a register under the principal Act.

**Schedule 1 [84]** extends the protection from liability that the Crown enjoys in relation to certain matters to NSW government agencies.

**Schedule 1 [85]** enables regulations to be made to establish a scheme for the transfer of the ownership of metering equipment and to establish a scheme for negotiating with landholders in relation to environmental water releases.

**Schedule 1 [86]** enables regulations to be made declaring that matters dealt with by the principal Act or the regulations are excluded matters for the purposes of the whole or parts of the Commonwealth Act, with the effect that it will not apply in relation to the excluded matters. Regulations may also be made to declare provisions of the principal Act to be displacement provisions, with the effect that those provisions will displace the operation of provisions of the Commonwealth Act.

**Schedule 1 [88]** provides for savings and transitional provisions consequent on the enactment of the proposed Act.

**Schedule 1 [93]** inserts definitions of *Basin management area*, *Basin management plan*, *duly qualified person*, *extreme event* and *individual daily extraction component*. **Schedule 1 [47] and [63]** make consequential amendments.

**Schedule 1 [95]** recognises the amendment of the share component of a specific purpose access licence and the subsequent grant of an access licence, as well as the withdrawal of a redundant nominated work from an approval, as Ministerial actions for the purposes of the principal Act. The

effect of this is that the dealings must be recorded in the Access Register and that caveats cannot be registered against them.

## **Schedule 2      Amendment of other Acts**

### **Land and Environment Court Act 1979 No 204**

**Schedule 2.1** allocates the jurisdiction conferred on the Land and Environment Court to enforce undertakings to Class 4 proceedings in the Court.

### **Local Government Act 1993 No 30**

**Schedule 2.2** confers on Water NSW, and persons acting under its direction, protection against liability for flood-related matters arising out of the exercise of functions in connection with the granting of flood work approvals.

### **Natural Resources Access Regulator Act 2017 No 64**

**Schedule 2.3 [1]** enables the Natural Resources Access Regulator to publish information about certain enforcement actions relating to offences under the principal Act and enables regulations to be made with respect to that publication. The Crown or a person is also excluded from liability (including liability for defamation) for publishing information in good faith in accordance with any such regulation.

**Schedule 2.3 [2] and [3]** enable the regulations to prescribe additional persons or bodies, (including officers or agencies of the Commonwealth or another State or Territory) with whom the Natural Resources Access Regulator may exchange information and extends the exchange to matters for the purposes of the Commonwealth Act.

### **Water Act 1912 No 44**

**Schedule 2.4 [1] and [2]** omit provisions relating to the regulation of bore drillers, as these matters will now be regulated under the principal Act.

### **Water Management Amendment Act 2010 No 133**

**Schedule 2.5** omits an uncommenced amendment, as a result of the amendments made by **Schedule 1 [43]**.