



New South Wales

# Water Management Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Water Management Act 2000* (the *principal Act*):
  - (i) to define the term *overland flow water* and confirm that overland flow water is included in the State's water rights under the principal Act, and
  - (ii) to clarify the meanings of certain terms used in the principal Act and update certain terminology, and
  - (iii) to make further provision with respect to harvestable rights and the matters dealt with by harvestable rights orders, and
  - (iv) to enable a new general dealing with an access licence (called a *term water allocation transfer*) to be created, and
  - (v) to make further provision with respect to the proper operation of metering equipment and the keeping of metering records, and
  - (vi) to make it an offence for the holder of a bore driller's licence not to ensure that the terms and conditions of the licence are not contravened or for a trainee driller under the holder's supervision to contravene the terms and conditions of the licence, and
  - (vii) to make further provision with respect to the calculation of the balances in water allocation accounts for access licences, and
  - (viii) to re-enact, with certain modifications, uncommenced amendments in the *Water Management Amendment Act 2008* concerning nominated water supply works and water tagging zones, and

- (ix) to provide for the controlled allocation of access licences for a part of an area or water source and for the setting of the minimum price and participation fees for the acquisition of the right to apply for licences that are subject to controlled allocation, and
- (x) to enable the consolidation of management plans and approvals, and
- (xi) to enable the regulations to make provision for the conversion of actual or proposed flood water usage into floodplain access licences, and
- (xii) to make other amendments to streamline processes concerning licensing, approvals and the trading of water entitlements, and
- (xiii) to make provision for matters of a savings or transitional nature, and
- (b) to amend certain water sharing plans to standardise the use of the expression “worst period of low inflows” into a water source in those plans and clarify its meaning, and
- (c) to make consequential amendments to certain other legislation.

## 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 a day or days to be appointed by proclamation.

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

### **1.1 Amendments concerning overland flow water and terminology**

**Schedule 1.1** amends the principal Act:

- (a) to define the term *overland flow water* and confirm that such water is included in the State’s water rights under the principal Act, and
- (b) to make it clear that water sources under the principal Act include places with groundwater and alluvial water and places where overland flow water is flowing over or lying for the time being, and
- (c) to make it clear that a water supply work under the Act includes a work (such as a tank or dam) that is constructed or used for the purpose of capturing or storing overland flow water, and
- (d) to update terminology by replacing certain references to rainwater run-off with references to overland flow water.

### **1.2 Amendments concerning supplementary water access licences**

**Schedule 1.2** amends the principal Act:

- (a) to remove the requirement for the Minister to cancel a supplementary water access licence for a regulated river if the management plan for the river ceases to make provision for the extraction of water under the licence, and
- (b) to enable the holders of supplementary water access licences for regulated rivers to obtain compensation for certain water allocation reductions, and
- (c) to preclude the Minister from cancelling a supplementary water access licence so as to enable the use of water to which the licence relates as planned environmental water, and
- (d) to enable a management plan to make provision for or with respect to the circumstances in which the taking of water pursuant to supplementary water access licences is authorised.

### **1.3 Amendments concerning harvestable rights**

**Schedule 1.3** amends the principal Act:

- (a) to enable water supply works in addition to dams to be constructed and used to capture and store water in respect of which a harvestable right is exercisable and provide for the kinds of water that may be stored by means of such works, and
- (b) to make it clear that a harvestable right includes a right to take water from a water supply work that has been constructed for the purpose of capturing and storing water within the harvestable rights area concerned, and
- (c) to clarify the kinds of matters with respect to which a harvestable rights order may make provision (including the methodology for the calculation of the maximum capacity of water supply works that may be constructed by landholders to capture water to be used in exercise of harvestable rights), and
- (d) to enable arrangements to be made for the shared use of a water supply work where the work straddles landholdings, and
- (e) to clarify the meaning of a reference to a landholding for the purposes of calculations made under a harvestable rights order, and
- (f) to enable maps referred to in harvestable rights orders to be made available on the internet.

### **1.4 Amendments concerning the controlled allocation of access licences**

**Schedule 1.4** amends the principal Act to provide that a controlled allocation order with respect to the acquisition of access licences may set minimum prices and participation fees for their acquisition and be limited to part of a water source or water management area.

### **1.5 Amendments concerning term water allocation transfers**

**Schedule 1.5** amends the principal Act to create a new kind of general dealing with an access licence to be called a term water allocation transfer.

A term water allocation transfer will enable the holder of a certain kind of access licence to transfer, for a specified period, all or part of the entitlement for a water allocation to be credited to the water allocation account for the licence to another person holding such an access licence.

A term water allocation transfer does not operate to transfer the share component of an access licence to the transferee, but only operates to transfer all or part (as the case requires) of the entitlement to be credited with a water allocation.

### **1.6 Amendments concerning metering**

**Schedule 1.6** amends the principal Act to make amendments to the metering offences in sections 91H and 91J of the Act that are consistent with amendments made to other metering offences in section 91I by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2012*.

### **1.7 Amendment concerning bore drilling**

**Schedule 1.7** amends the principal Act to make it an offence for:

- (a) the holder of a bore driller's licence to fail to ensure that the terms and conditions of the licence are not contravened, or
- (b) a trainee driller under the holder's supervision to contravene the terms and conditions of the licence.

### **1.8 Amendments concerning water allocation accounts and the taking of water**

**Schedule 1.8** amends the principal Act:

- (a) to create offences by the holders of 2 or more access licences with respect to the taking of water in excess of the combined water allocations under the licences, and

- (b) to enable management plans to make provision for or with respect to the circumstances in which the holders of regulated river (high security) access licences or regulated river (general security) access licences for an uncontrolled flow may take water from a water source that has not been credited to the water allocation accounts of those licences, and
- (c) to make amendments in the nature of statute law revision.

### **1.9 Amendments concerning nominated water supply works and water tagging zones**

**Schedule 1.9** re-enacts, with certain modifications, uncommenced amendments in the *Water Management Amendment Act 2008* concerning nominated water supply works and water tagging zones. In particular, the modified amendments now create an offence for a failure by a relevant notifier to notify the Minister about the nomination (or withdrawal of a nomination) of a water supply work as a work from which water credited to the interstate equivalent of an access licence may be taken.

### **1.10 Amendments concerning the streamlining of licensing and trading processes**

**Schedule 1.10** amends the principal Act:

- (a) to enable the Minister to refuse to accept the surrender of an access licence or approval in certain circumstances and to enable the Minister to cancel or transfer a surrendered access licence or approval, and
- (b) to enable an applicant for an access licence or approval to amend or withdraw the application for the licence or approval at any time before it is determined, and
- (c) to make it clear that an access licence or approval may be granted subject to conditions that are required or permitted to be imposed by the Act, and
- (d) to provide for conditions imposed when an access licence or approval is granted to take effect on the day the licence or approval takes effect, and
- (e) to clarify the circumstances in which conditions of an access licence or approval may be imposed or varied after the licence or approval is granted, and
- (f) to enable the Minister to amend an approval on his or her own initiative in certain circumstances (including when a part of an approval is cancelled or suspended), and
- (g) to enable an application to the Minister for an approval for a dealing with respect to an access licence to include an application for the dealing to be recorded in the Access Register if the Minister consents to the dealing, and
- (h) to provide for an approval to take effect on the day on which notice of the decision to grant the approval has been given to the applicant rather than once appeal rights have been exhausted (as is currently the case), and
- (i) to enable appeals to be made to the Land and Environment Court against decisions of the Minister to amend approvals on his or her own initiative and to recognise that an appeal may be made against a decision to suspend or cancel part of an approval, and
- (j) to provide for the effect of a stay granted by the Land and Environment Court in an appeal against a decision under the principal Act, and
- (k) to clarify when the Minister is to register certain Ministerial action in the Access Register where that action is appealable, and
- (l) to make it clear that the Minister may include discretionary conditions on an access licence or approval that replaces an entitlement under former water legislation and to enable those conditions to be notified after notice of the replacement licence or approval is given to its holder.

### **1.11 Amendments concerning management plans**

**Schedule 1.11** amends the principal Act:

- (a) to enable the Minister to extend a management plan that is due to expire until the second anniversary of its expiry date (instead of the first anniversary, as is currently the case) unless a replacement plan is made earlier if the Minister decides not to extend the plan for a further 10 year period under section 43A of the principal Act, and
- (b) to enable the Minister to consolidate 2 or more management plans into a single plan, and
- (c) to clarify the operation of compensation provisions in the event of the replacement or consolidation of management plans.

### **1.12 Amendments concerning combined approvals**

**Schedule 1.12** amends the principal Act to enable the Minister to grant 2 or more approvals under the principal Act by means of a single approval document on application or on the Minister's own motion.

### **1.13 Amendments concerning floodplain harvesting access licences**

**Schedule 1.13** amends the principal Act:

- (a) to provide for 2 kinds of access licences for floodplain harvesting, namely, floodplain harvesting (regulated river) access licences and floodplain harvesting (unregulated river) access licences, and
- (b) to enable the regulations to make provision for or with respect to the conversion of actual or proposed floodplain water usage by landholders into such access licences.

### **1.14 Amendments concerning the conversion of former entitlements into access licences**

**Schedule 1.14** amends the principal Act:

- (a) to make it clear that Schedule 10 to the principal Act operates (and has always operated) to convert a former entitlement to take or use water for domestic or stock purposes into an access licence if that entitlement arises under Part 2 of the *Water Act 1912*, and
- (b) to make further provision for the calculation of the balance of a water allocation for an access licence that arises from the conversion of a former entitlement under Schedule 10 to the principal Act (including the validation of certain previous calculation of balances).

### **1.15 Amendments concerning savings and transitional matters**

**Schedule 1.15** amends the principal Act:

- (a) to provide that floodplain management plans under the *Water Act 1912* that are converted into Minister's plans under the principal Act on a transitional basis continue in force for 10 years following their conversion, and
- (b) to include savings and transitional provisions consequent on the enactment of the proposed Act, and
- (c) to enable the Governor to make regulations of a savings and transitional nature consequent on the enactment of any amending Act (including the proposed Act).

## **Schedule 2 Amendment of water sharing plans**

**Schedule 2** amends certain water sharing plans to standardise the use of the expression "worst period of low inflows" into a water source in those plans and clarify its meaning.

### **Schedule 3 Consequential amendment of other legislation**

**Schedule 3.1** makes amendments to the *Water Management Amendment Act 2008* that are consequential on amendments made by Schedule 1.9 (Amendments concerning nominated water supply works and water tagging zones).

**Schedule 3.2** makes amendments to the *Water Management (General) Regulation 2011* that are consequential on the amendments made by Schedule 1.13 (Amendments concerning floodplain harvesting access licences).