

## **WATER LEGISLATION AMENDMENT BILL 2024**

### **STATEMENT OF PUBLIC INTEREST**

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

##### *Amendments to facilitate regulation remakes*

The amendments in the Bill are needed this year to ensure there are clear regulation-making powers for all existing provisions in the Water Management (General) Regulation 2018, Sydney Water Regulation 2017 and the Water NSW Regulation 2020 when they are remade next year. These provisions are relied on:

- by water supply authorities, Sydney Water and WaterNSW to carry out their functions and operations (for example, relating to the powers of WaterNSW to regulate special and controlled areas around drinking water reservoirs).
- to effectively deal with the way water allocation accounts are debited.
- to allow water management plans to require applications for approvals to be advertised.
- to clarify obligations in relation to compliance audits.
- for managing residual risks associated with licensing and approval exemptions.
- for ensuring specific types of licences can operate effectively under the *Water Management Act 2000* for the purpose for which they were created.
- for the maintenance or decommissioning of emergency drought water supply works constructed under exemption.

##### *Validating licences and approvals affected by conversion errors*

Historical administrative system errors resulted in some expired *Water Act 1912* entitlements being converted to licences and work approvals under the *Water Management Act 2000*. Legislative amendment to retrospectively validate licences and approvals affected by conversion errors will remove any doubt concerning their validity. Compared to other options considered, this amendment has the least impact on licence holders and third parties and negligible impacts on water resource sharing.

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

The Bill will ensure there is:

- a clear legislative basis for existing regulations relied on by the Government, State Owned Corporations, regulators and water users for the sustainable and integrated management and supply of water in NSW for the benefit of present and future generations.
- power for Sydney Water to exercise its functions relating to regulating access to and use of controlled areas, and to waive or reduce fees for entry into controlled areas.
- power for Sydney Water to grant, condition and suspend work for water supply, sewerage or stormwater drainage that connects to Sydney Water's works; and can enforce these matters through offence provisions.
- certainty for holders of licences and approvals affected by conversion errors, by an amendment which:

- minimises impacts to licence and approval holders and third parties who rely on these licences/ approvals, and
- causes negligible impacts to water sharing arrangements that are in place for the public benefit.

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

A number of alternative options were considered, including remaking regulations without the affected clauses, pursuing non-legislative workarounds and policy frameworks, and alternative Act amendments. The alternatives would not provide the legal certainty or the transparency the Bill provides for water users, regulators, and the water supply authorities and state-owned corporations responsible for supplying water services to industry, regional centres and the Sydney metropolitan area.

The Government considers that the amendments in the Bill are the most secure and efficient way to ensure water can continue to be managed effectively in line with legislation for the benefit of NSW communities, water users and the environment.

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

Remaking regulations without the affected clauses could avoid remake delays, but risks Sydney Water, WaterNSW and water supply authorities being unable to perform their necessary functions, including their ability to supply safe, quality drinking water. This option would also result in gaps in administering and implementing the *Water Management Act 2000*, and a lack of effective regulation of activities that pose a risk to water resources.

Pursuing non-legislative solutions might be administratively simpler but will ultimately result in gaps, a deficiency of powers, lengthy implementation processes and ongoing uncertainty relating to the exercise of certain powers and the validity of licences and approvals affected by conversion errors. This would result in a greater risk of negative impacts to water resources and users.

If legislative amendments were to remove or exempt the licences and approvals affected by conversion errors rather than retrospectively validate them, there would be significant consequences for former licence and approval holders, including possible enforcement action, loss of water entitlement, serious financial ramifications from the loss of licences and approvals and an inability for the affected water users to obtain a valid licence and/or approval in some circumstances.

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

- Bill assented to by the Governor – October 2024
- Publication of the Bill, notice in the Government Gazette – October 2024
- Act comes into force on the day of assent
- Notification of the changes on the Department of Climate Change, Energy, the Environment and Water (DCCEE) website – October 2024
- Update of the Water Licensing System and the NSW Water Register for converted licences by DCCEE and WaterNSW – October 2024 to December 2024
- Continuation of the Regulation remake processes – September 2024 to September 2025.

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

- The proposed amendments have been informed by reviews of the regulations and licensing conversion issues.
- External stakeholder consultation was not necessary as the effect of these amendments is to retain the status quo, avoiding potential impacts on stakeholders.
- As part of the regulation remake process, public consultation will occur on the draft regulations in 2025, accompanied by Regulatory Impact Statements.
- Sydney Water and WaterNSW were consulted and support the approach for the regulations they administer.
- WaterNSW has also been consulted on, and supports, the approach to validating licences affected by conversion errors.
- Essential Water was consulted on the provisions of the Water Management (General) Regulation 2018 that relate to their functions and operations to understand the likely impacts of changing or removing those provisions and were notified of the proposed Act amendments to enable them to retain all existing provisions.
- The following NSW Government agencies were consulted between May and August 2024: NSW Health, Department of Primary Industries, Department of Regional NSW, NSW Police, Local Court of NSW, Land and Environment Court of NSW and the Department of Communities and Justice.