

What we heard

Modernising regulations for joint private works schemes

Public consultation | August 2023

The NSW Government is simplifying the laws for managing private irrigation boards, private drainage boards and private water trusts (joint private works schemes).

By commencing parts of the *Water Management Amendment Act 2010* (NSW) (the 2010 Act) we will:

- cut red tape by reducing the need for the NSW Governor’s or minister’s approval for administrative matters
- give schemes more flexibility to make and amend their own rules
- allow the creation of new corporations and the conversion of private water trusts to private water corporations.

During 2022 and 2023, we engaged with schemes and stakeholders through one-on-one meetings and a stakeholder advisory panel, to seek feedback on the development of new regulations and model rules.

Through the consultation process, stakeholders confirmed that there are benefits from the flexibility to make their own rules, provided through the 2010 Act. For example:

- paying board members or including sitting fees
- changing the boundaries of their area of operations
- choosing how they calculate rates and charges
- choosing when to suspend or restrict water supply where rates and charges are overdue
- whether trusts need to convert to private water corporations.

Key feedback themes

The range of insightful feedback we’ve received has allowed us to progress with the development of new regulations and model rules, and the key themes are summarised below.



Decision-making



What we heard

Need clarity about sharing decision-making between boards/trustees and members.

Need clarity about filling vacant board positions.

One-year terms for board members are too short.



How we’ve addressed the feedback

Draft model rules: clarify decisions that must be made by boards/trustees or members.

Draft model rules: board members to appoint members to fill casual board vacancies.

Draft model rules: schemes set their board members’ terms. Three years is suggested.



Membership



What we heard

Unsure how to manage different types of potential “members” other than landholders.

Uncertainty about impacts on shared infrastructure if members can leave schemes.

Need clarity on how to manage higher density urban developments.

Challenging to know when land is sold and membership changes.



How we’ve addressed the feedback

Draft model rules: two classes of members with different voting rights, and rules for managing subdivisions.

Draft model rules: a process for identifying and resolving works plan changes before making membership decisions.

Draft regulations: members to tell schemes when they sell their land, including the details of the purchaser.

Draft model rules: rules for managing subdivisions.

Started conversations with other government agencies and the Law Society of NSW about potential solutions that exist outside the water management framework in relation to land title changes.



Works plan



What we heard

Need assistance with the first works plan due to lack of historical records.



How we’ve addressed the feedback

The department can provide copies of historical records where available. We will also work with schemes through the transition period.



Rates and charges



What we heard

Need more information on appropriate methods for calculating rates and charges and interest on overdue rates and charges.

Expand options for recovering unpaid rates and charges using security over assets.



How we’ve addressed the feedback

Guide to draft model rules: examples of different calculation methods.

Draft model rules: interest payable on unpaid Supreme Court judgments.

Draft regulations: model rules to require a security over water access licences and deposits.



Financial records



What we heard

There's a high cost of requiring financial records to be audited by a qualified company auditor.



How we've addressed the feedback

Draft regulations: no requirement to use a company auditor. Regulations enable an accountant to be used.



Investigation and enforcement powers



What we heard

Need clarity about powers of entry for inspection versus powers of entry for authorised officers.

Need clarity about who can undertake investigations.

Unsure how claims for damage and loss caused by schemes can be made.



How we've addressed the feedback

Draft model rules: separate rules for entering land as part of standard operations and entering land for investigations.

Draft model rules: separate rules for entering land as part of standard operations and entering land for investigations.

Draft model rules: compensation for damage caused when exercising their powers of entry.



Winding up



What we heard

Need clarity about who is responsible for assets when schemes are wound up.



How we've addressed the feedback

Draft model rules: where schemes initiate winding up, pass a special resolution about the distribution of assets.

As part of the implementation phase, we'll prepare additional information to support schemes and the Minister through the winding up process.



Transition



What we heard

- Time delay to implement the 2010 Act.
- Uncertainty about bringing private irrigation boards and private drainage boards together as private water corporations given their different functions and scales of operation.
- Need more information on potential application forms and fees.
- Unsure whether change of name is required.
- Deeming existing works to be corporation/trust works.
- More clarity needed on whether trusts can choose to convert to corporations.
- Unsure whether there are potential linkages to requirements under, for example, the Australian Government's corporation legislation.



How we've addressed the feedback

We were able to answer questions relating to the transition to proposed new regulations during the consultation process. We will also ensure that fact sheets and other support are available during the transition period.

General feedback

While there was general support for implementing the 2010 Act and modernising scheme governance, schemes also highlighted some key challenges they face in other areas. For example:

- 1 schemes aren't always aware of developments within their scheme boundary and, particularly for private drainage boards, developments can impact their drainage systems
- 2 it can be impractical to stop water supply for unpaid rates and charges as doing so can affect other users and court costs discourage schemes from taking action to recover unpaid rates and charges
- 3 aging and disinterested members make filling board positions and establishing a quorum for meetings difficult
- 4 schemes overlap with areas and infrastructure managed by councils and, in some cases, multiple state government agencies and there are challenges negotiating through the different regulatory requirements
- 5 difficulties recovering unpaid rates and charges.

Engagement approach

Recognising the different needs and characteristics of private irrigation boards, private drainage boards and private water trusts, we used a variety of approaches to engage with stakeholders and seek feedback.

The different ways that we used to reach schemes and members of the public are summarised in Figures 1 and 2 below. Through the consultation process, there was active engagement from schemes and the types of questions and comments received have been summarised in Figures 3 to 5.

Figure 1—Engagement at a glance¹

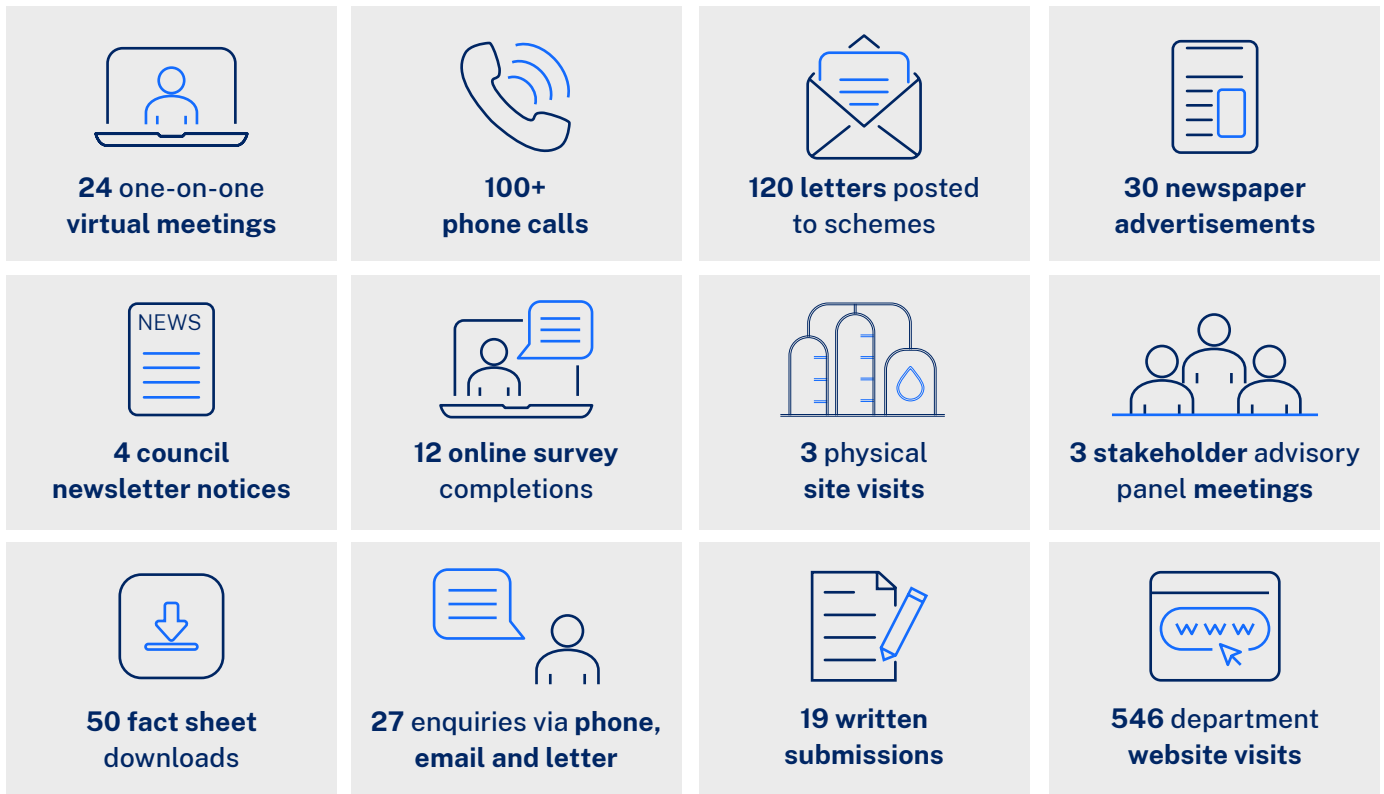
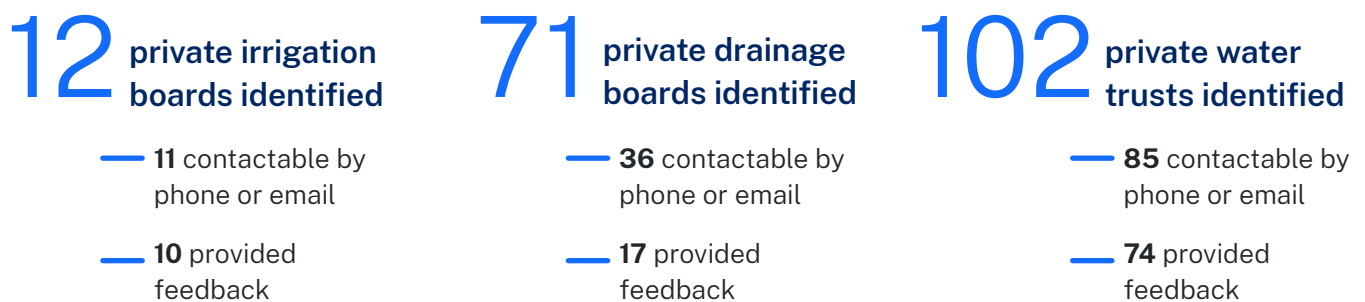


Figure 2—Who we consulted with



¹ Consultation with schemes is ongoing. Figures are accurate as of as of 21 July 2023 and may be updated.

Figure 3 – Feedback received from private irrigation boards by theme

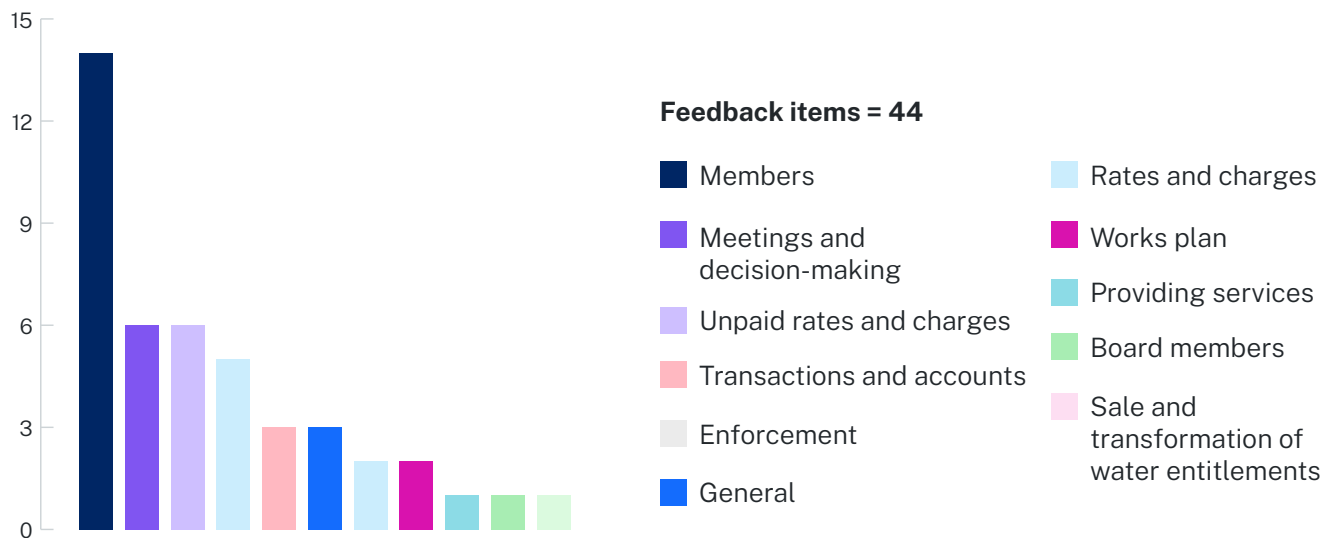


Figure 4 – Feedback received from private drainage boards by theme

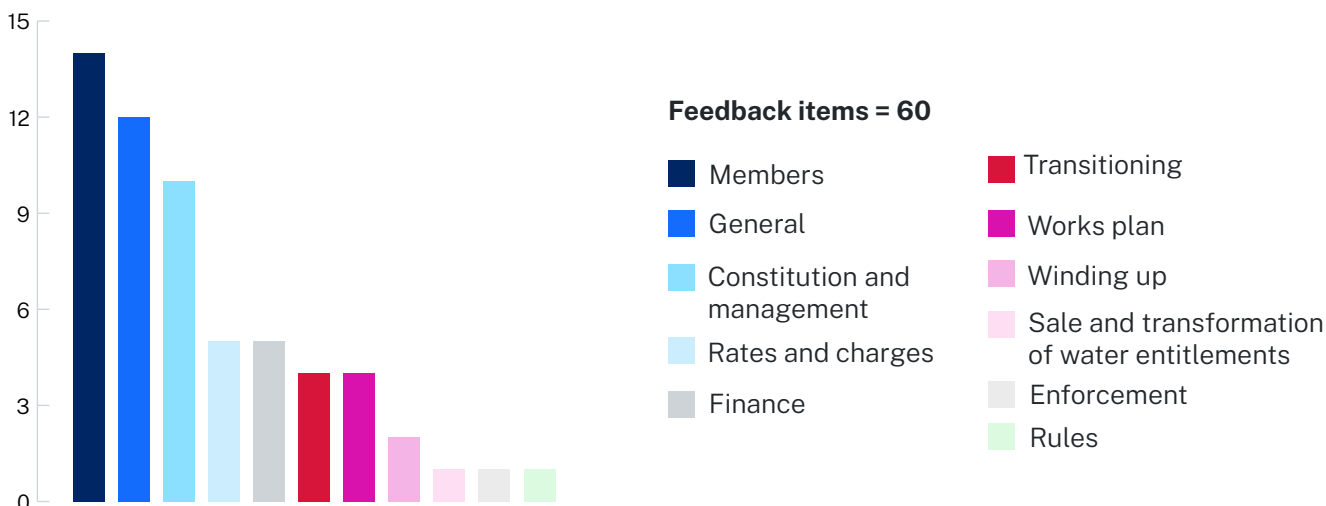
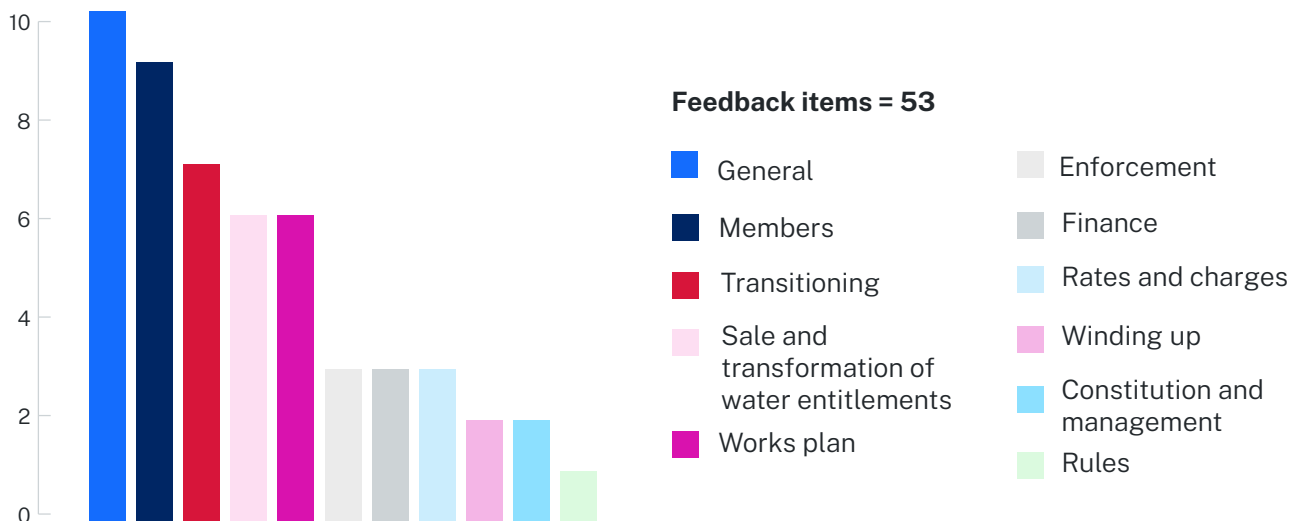


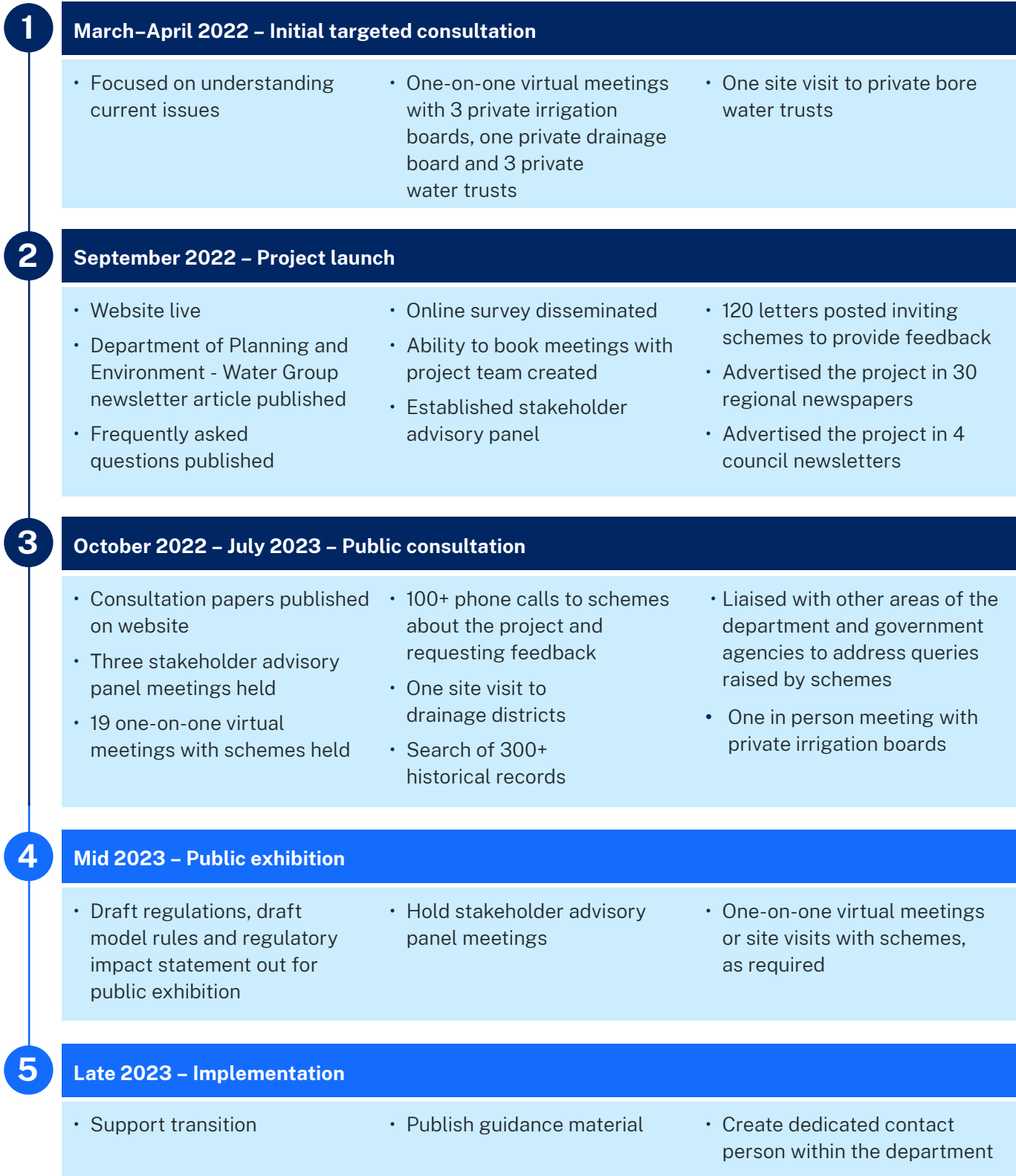
Figure 5 – Feedback received from private water trusts by theme



Engagement phases

As we publish the draft regulations and draft model rules, we will also transition from the more intensive consultation activities during September 2022 to July 2023, to planning for the implementation of the proposed regulations and model rules, including how we can best support schemes in that process.

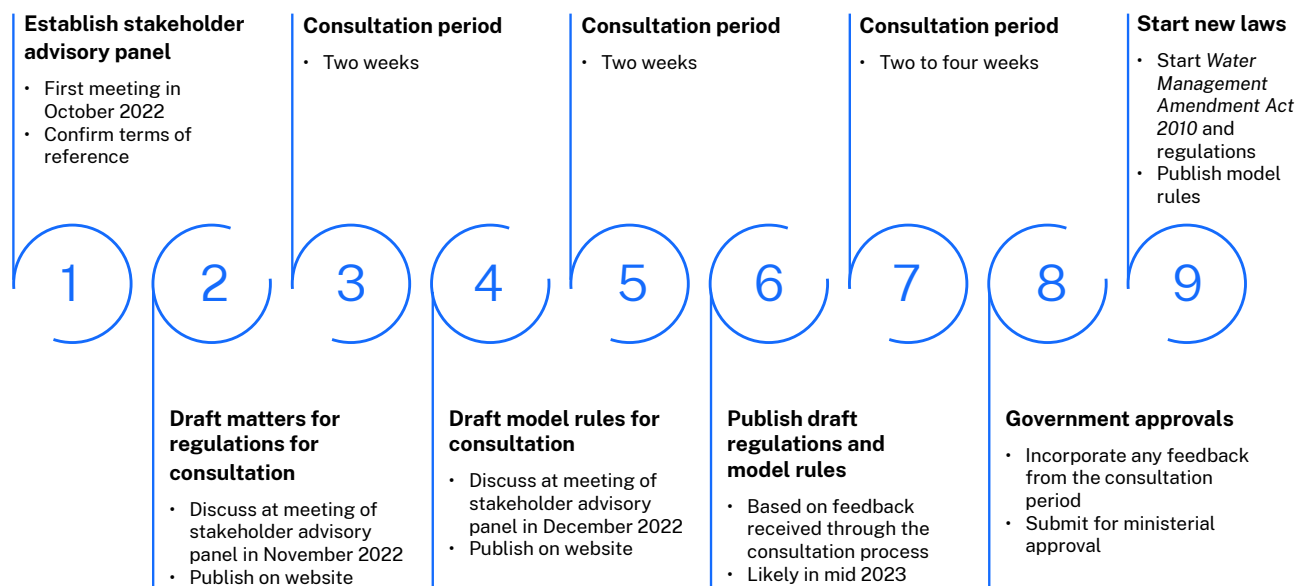
Figure 6 – Engagement undertaken during different phases of the project



Timeline

Consultation to develop new regulations and rules will take at least 12 months. The diagram below describes the process and estimated timeframes. We are currently at step 6 and 7. After the public exhibition period, we will incorporate the feedback received and seek ministerial approval. The new regulations are anticipated to commence in late 2023.

Figure 7—Process for implementation



Copyright and disclaimer

© State of New South Wales through Department of Planning and Environment 2023. Information contained in this publication is based on knowledge and understanding at the time of writing, August 2023, and is subject to change. For more information, please visit dpie.nsw.gov.au/copyright

Published by NSW Department of Planning and Environment dpie.nsw.gov.au

First published: August 2023 Department reference number: PUB23/856