

Department of Climate Change, Energy, the Environment and Water

# Regulatory Impact Statement

## Water Management (General) Regulation

February 2025





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## Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

### Regulatory Impact Statement

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# 1 Executive Summary

This Regulatory Impact Statement (RIS) outlines proposed changes to the Water Management (General) Regulation 2018 (the regulation) and assesses the costs and benefits of these proposed changes, consistent with the requirements of the NSW *Subordinate Legislation Act 1989* (the SL Act).

It also considers the alternative options of continuing with the existing regulation or allowing the regulation to lapse without it being replaced, as well as any potential alternatives to the proposed specific changes to the regulation.

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## 1.1 The Water Management (General) Regulation

Water is essential for communities across NSW. The *Water Management Act 2000* (the Act) establishes a framework for the sustainable management of water in New South Wales. The purpose of the Act is to provide for the sustainable and integrated management of the water sources of NSW for the benefit of both present and future generations and, in particular, to:

- apply the principles of ecologically sustainable development
- protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and water quality
- recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water
- recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources
- provide for the orderly, efficient and equitable sharing of water from water sources
- integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna
- encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users
- encourage best practice in the management and use of water.

The Act provides for the development of management plans that deal with how water is shared between the environment and water users, and the management of floodplains. It also establishes the basis for water trading and establishes and empowers a number of irrigation infrastructure providers and water supply authorities.

Section 400 of the Act enables the making of regulations to support the implementation of the Act. The current regulation is a key tool that implements the Act. It provides procedural and technical matters related to the administration of the Act and specifies exemptions from licence and approval requirements under the Act.

The regulation is due for automatic repeal on 1 September 2025. The NSW Department of Climate Change, Energy, the Environment and Water (the department) intends to remake the regulation by splitting it into two separate regulations and making some changes to regulatory provisions. This RIS assesses the costs and benefits of proposed changes to the regulation, as well as any viable alternatives to these changes, relative to the 'base case' of the existing regulation.



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## 1.2 Splitting into two separate regulations

In remaking the regulation, the department proposes to split the existing regulation into two separate regulations:

- the Water Management (General) Regulation 2025 (the General regulation), and
- the Water Management (Water Supply Authorities) Regulation 2025 (the WSA regulation).

The clauses of the current regulation that relate to water supply authorities will be put into the WSA regulation, with the rest of the clauses included in the General regulation.

This separation will enhance efficiency in reviewing, updating and remaking the regulations in the future, and make it easier for stakeholders to understand regulatory requirements.

In this RIS we present and discuss proposed changes to the current regulation (“the proposed change to the regulation”) and do not distinguish between whether these proposed changes will be included in the General regulation or the WSA regulation.

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## 1.3 The proposed changes to the regulation

The department is not proposing substantial amendment to regulatory requirements. This recognises that the regulation is primarily concerned with supporting the achievement of the Act’s objectives, and the means of achieving these objectives remain largely unchanged.

The proposed changes to the regulation aim to:

- remove unnecessary provisions or requirements from the regulation, thus seeking to streamline the regulation and allow the achievement of the Act’s objectives at lower cost
- enhance protection of water resources and their associated ecosystems
- provide greater clarity of requirements or the circumstances in which exemptions from the need to obtain approvals may apply
- reduce the cost of administering and/or complying with the regulation - e.g., by allowing for digitalisation (electronic signatures, lodgements and notifications, etc) and providing for flexibility in the forms of applications for licences and approvals.

The proposed changes to the regulation are summarised below, with Table 1 presenting an overview of their expected costs and benefits. Further explanation is provided throughout this RIS.

### 1.3.1 Changes to remove unnecessary regulatory provisions or requirements

This section provides a summary of the proposed changes to the regulation that are aimed at removing unnecessary provisions or requirements from the regulation.

#### 1.3.1.1 Removal of some Specific Purpose Access Licences (SPALs)

The proposal is to remove the following SPALs as they are no longer required:

- temporary critical conveyance access licences for the private irrigation districts (PIDs) of West Corungan, Moira, Eagle Creek and Mathoura
- an access licence for “Temporary dewatering for construction”, for the purpose of extracting water from the Tweed-Brunswick Coastal Sands groundwater source to facilitate the construction of a seawater intake pipeline for an aquaculture facility at Cudgen.

### **1.3.1.2 Exemptions from the need for approval to construct certain water supply, conveyance and reticulation works that don't traverse sensitive land**

The proposed change to the regulation is to only require those sections of water supply works currently specified in clause 37 (such as conveyance water pipes) that traverse sensitive land (as listed in clause 37(2) of the regulation) to have a water supply work approval. In other words, a part of a water pipe that meets the requirements of clause 37 would be exempt from a water supply work approval but a part that traverses sensitive land would require an approval.

### **1.3.1.3 Broaden exemptions for activities on waterfront land by removing reference to stream order**

The regulation (clause 31 in Part 2 of Schedule 4) currently permits controlled activities on waterfront land in relation to a minor stream or third order stream without a controlled activity approval (CAA) where the activity is separated from the bed of the stream by a public road, a hard stand space (such as a car park or building), or a levee bank (subject to certain conditions).

The proposed change to the regulation is to remove the reference to stream order, so that the exemption would apply to waterfront land in relation to all watercourses or streams.

### **1.3.1.4 Amend references to 'bed' of the stream in assessing whether there is a separating structure**

The proposed change is to amend the reference to the 'bed' of the stream in the above-mentioned clause of the regulation (current clause 31 in Part 2 of Schedule 4) to instead refer to bank, shore or mean high water mark (depending on the type of water source), to reflect what is practical and current operational practice in assessing whether there is a separating structure.

### **1.3.1.5 Exemptions to approvals for activities that do not directly apply water to land**

Section 91A(1) of the Act requires a water use approval for using water from a source covered by the Act. The approval process aims to identify key environmental impacts of the water use activity and establish key strategies and/or mechanisms to minimise these impacts.

Currently, water use approvals are still required even when the use of water does not directly apply water to land. For example, water use approvals are granted to local water utilities in their role as a supplier of water to end-use customers. In this instance, local water utilities are not applying water to land nor using it at a single point, which makes it difficult to determine the impact of their water 'use'.

Clause 35 of the regulation provides exemptions from section 91A(1) of the Act. The proposed change is to amend clause 35 of the regulation to provide the following exemptions from the need to obtain a water use approval:

- all uses of water for a purpose for which development consent is in force under the *Environmental Planning and Assessment Act 1979* (EP&A Act) – i.e., to no longer exclude the use of water for power generation by a major utility from the exemption
- local water utility access licences for domestic consumption and commercial activities
- unregulated river, regulated river and aquifer access licences (town water supply) for supply to communities for domestic consumption and commercial activities.

### **1.3.1.6 Other proposed changes to remove unnecessary regulatory provisions and requirements**

**Dealings on default: remove reference to the *Conveyancing Act 1919***

The proposed change to the regulation is to remove the reference to the *Conveyancing Act 1919* when specifying how a notice must be served when a security holder transfers/sells a water access licence, or holding in a water access licence, where the holder has defaulted on the payment of a

debt or performance of an obligation under a contract or other legally enforceable arrangement relating to a security interest held over the licence.

Instead, the regulation will rely on existing standard requirements for the service of water management-related documents under section 394 of the Act (the *Water Management Act 2000*).

#### **Remove reference to providing false and misleading information in relation to issuing a certificate of compliance to a water supply authority following the completion of plumbing work**

The current regulation (clause 159(3)) requires that, in issuing a certificate of compliance to a water supply authority following the completion of plumbing work, a person must not provide information that they know to be false or misleading.

The proposal is to remove this reference and instead rely on the *Crimes Act 1900* to regulate the provision of false and misleading information in the provision of a compliance certificate for plumbing work.

#### **Remove clause 5(2) from the regulation, which exempts supplementary water (Lowbidgee) access licences from the definition of specific purpose access licence (SPAL)**

The intent of this clause in the regulation was to ensure that these licences have ongoing tenure. If these licences were defined as SPALs, the Minister would be required to cancel them between announced high-flow events as the purpose for which they were granted technically ceases.

In November 2024, an amendment was made to the *Water Management Act 2000* (via the *Water Legislation Amendment Act 2024*) that has the same effect as clause 5(2) of the regulation. Therefore, this clause of the regulation is no longer required.

### **1.3.2 Changes to enhance the management and protection of water resources and ecosystems**

This section provides a summary of the proposed changes to the regulation that are aimed at enhancing the management and protection of water resources and their associated ecosystems.

#### **1.3.2.1 Require the maintenance or decommissioning of drought works**

Clause 39A of the current regulation allows public authorities (such as local water utilities) to apply to the Minister for an exemption to requiring a water supply work approval to construct and/or use a water supply work (e.g., a bore) during a drought. This allows for the prompt construction and use of water supply works by a public authority to supply water for critical needs in times of drought.

The proposed change to the regulation is to amend clause 39A to allow the Minister to require that after the exemption period:

- works that are intended to be used in future droughts are tested and maintained
- works that are not intended to be used again are decommissioned.

#### **1.3.2.2 Require a hard stand to be sealed for exemptions for activities on waterfront land to apply**

As outlined above, the regulation (clause 31 in Part 2 of Schedule 4) currently permits controlled activities on waterfront land in relation to a minor stream or third order stream without a CAA where the activity is separated from the bed of the stream by certain features, including “a hard stand space”.

The proposed change to the regulation is to specify that the hard stand space must be sealed for the exemption to apply.

### **1.3.2.3 Require approval for the removal of in-stream detritus material following a storm**

Currently, clause 34(b) of Schedule 4 of the regulation provides an exemption from the need to obtain a CAA for “the removal of detritus (including woody debris) deposited on waterfront land as a result of the storm.”

The proposed change to the regulation would exclude from the exemption the removal of in-stream (bed to bank/shore/mean high water mark) detritus material – i.e., the removal of such material would now require a CAA so that potential impacts on the environment and other water users can be managed. Specifically, the proposed change means that the exemption will not apply to removal of material from:

- the bed of any river, together with any land lying between the bed of the river and the highest bank of the river, or
- the bed of any lake, together with any land lying between the bed of the lake and the shore of the lake, or
- the bed of any estuary, together with any land lying between the bed of the estuary and the mean high-water mark of the estuary, or
- the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and the mean high-water mark of the coastal waters.

The proposal is also to change the regulation to specify that (for waterfront land still subject to the exemption) the removal of material deposited on waterfront land as a result of a storm event must occur within 6 months of the material being deposited. Removal of material after 6 months will require a CAA.

### **1.3.2.4 A public or roads authority to have no significant adverse impact on water sources and dependent ecosystems from its dust suppression and road activities**

The proposed new regulation requires that for a public or roads authority to be exempt from the need to obtain a water access licence and water supply works approval for its access to and use of water in carrying out dust suppression, road construction and road maintenance activities, it would need to be satisfied that its activities would have no significant adverse impact on water sources and dependent ecosystems.

### **1.3.2.5 Allow water allocation carryover to be maintained if a water management plan is suspended**

The current regulation (clause 17(4)) allows licence holders’ water allocation carryover to be protected from water management plan (i.e. water sharing plan) suspensions triggered by water shortages under section 49A(1) of the Act, but does not refer to such protection if a Murray Darling Basin management plan is suspended due to an extreme event (49B(1) of the Act).

The proposed change to the regulation would ensure that unused water allocation carried over by a licence holder for use in future water years is maintained (including in Murray Darling Basin management areas) if a water management plan is suspended due to water shortages or an extreme event. Licence holders would then have access to this carried over allocation in accordance with the rules of the relevant water management plan once the suspension is lifted.

## **1.3.3 Changes to provide greater clarity of requirements or exemptions**

This section provides a summary of the proposed changes to the regulation that are aimed at providing greater clarity of requirements or exemptions.

### **1.3.3.1 Changes to clarify the scope of excluded works (exemptions) to licences and approvals**

The regulation establishes exemptions from the need to hold a water access licence, a water use approval and a water supply work approval for excluded works specified in Schedule 1 of the regulation.

These excluded works include dams that are located on a minor stream and that are:

- solely for the control or prevention of soil erosion
- solely for flood detention and mitigation
- solely for the capture, containment and recirculation of drainage and/or effluent to prevent the contamination of a water source
- approved in writing by the Minister for specific environmental management purposes.

The proposed changes would amend wording in the regulation to clarify the scope of the excluded works (i.e., exemptions).

The proposed changes to the regulation do not seek to change the regulatory coverage (i.e., they do not expand or reduce the range and type of excluded works). Rather, the changes clarify the current regulatory coverage.

### **1.3.3.2 Other changes to provide greater clarity of requirements or exemptions**

Other proposed changes to the regulation(s) include clarifying that a water supply authority:

- must give a person who objects to a service charge reasons for its decision in response to the objection
- may conditionally or unconditionally:
  - suspend or cancel an authorisation (i.e., a plumbing permit or discharge approval)
  - grant exemptions to the requirements to hold a plumbing permit, complete a certificate of compliance with respect to plumbing work and/or use only authorised plumbing fittings for plumbing work
- must not vary a condition of a plumbing permit or discharge approval that is imposed by the regulation or in a way that is inconsistent with a condition imposed by the regulation
- must publish notice of water restrictions in the NSW Government Gazette.

## **1.3.4 Changes to reduce costs of administering and engaging with the regulation**

This section provides a summary of the proposed changes to the regulation that are aimed at reducing the costs of administering and engaging with the regulatory framework.

### **1.3.4.1 Changes to accommodate and reflect digitalisation**

The proposed changes to the regulation include changes to accommodate digitalisation, including allowing for electronic signatures, notifications and lodgements. The proposed changes include:

- enabling electronic signatures, and security steps to create and log into accounts as methods of authentication
- enabling electronic serving of documents
- ensuring publication of notifications are consistent and account for modern realities of local print media
- removing the requirement to maintain physical maps and registers for public inspection
- enabling lodgement of documents electronically

- enabling electronic notifications.

#### 1.3.4.2 Changes to allow the Minister to specify the form of application

Currently, clauses 9 and 25 of the regulation provide that applications for water access licences, water use approvals, water management approvals and activity approvals must be in a form approved by the Minister and specify a number of requirements that must be included with the form.

The proposed change is to remove lists of requirements for applications from the regulation and instead specify in the regulation that the applications should be in a form approved by the Minister. This will remove duplication, simplify the regulation and allow the Minister to change the required contents and form of applications, as required (e.g., in response to stakeholder concerns, changes in water management needs, technology change, etc).

#### 1.3.4.3 Other proposed changes to reduce administrative and/or compliance costs of the regulation

Other proposed changes include:

- allowing a water supply authority to keep records relating to each service charge in written or electronic form as opposed to “in a manner approved by the Minister”
- removing the requirement for signature or authentication in objecting to the inclusion or exclusion of land within an irrigation corporation’s area of operations.

## 1.4 Overview of the costs and benefits of the proposed changes to the regulation

The table below provides an overview of the expected costs and benefits of the proposed changes to the regulation. This shows that the benefits of the proposed changes are expected to exceed their costs, and the proposed changes will likely deliver net benefits to the community. This analysis is explained in subsequent chapters of this RIS.

In some cases, the net benefit of the proposed change to the regulation may not be substantial. However, in these instances there are often no or negligible costs (e.g., when the proposed change involves removing unnecessary regulatory provisions or clarifying requirements) and so there is still sound justification for the proposed change.

Table 1: Benefits and costs of the proposed changes to the regulation

Proposed change	Benefits	Costs	Net impact
Require drought works to be maintained or de-commissioned post exemption period	Avoided costs of future drought works (where works are maintained)  Avoided costs of contamination or adverse impacts on water sources	Costs of decommissioning or maintaining works	Significant net benefit
Remove temporary critical conveyance access licences	Promotes water security planning and efficient use of water (which can reduce costs over time)	None	Net benefit



Proposed change	Benefits	Costs	Net impact
Remove a sub-category for aquifer access licence	Streamline regulation and licensing framework (which can enhance clarity and reduce costs over time)	None	Minor net benefit
Only require those sections of water supply works under clause 37 (such as water pipes) traversing sensitive land to have a water supply work approval	Avoided approval application and assessment costs	None	Net benefit
Require a controlled activity approval (CAA) for the removal of in-stream detritus following a storm	Avoided environmental costs to water sources	Additional approval application, assessment and compliance costs	Significant net benefit
Limit exemption to a CAA for the removal of detritus from waterfront land (still subject to an exemption) to within 6 months of the material being deposited as a result of a storm	Enhanced enforceability of the regulation, which can reduce costs of enforcing compliance and avoid environmental costs	None	Net benefit
Where there is a separating feature, allow controlled activities on waterfront land without a CAA regardless of stream order	Avoided approval application and assessment costs	None	Net benefit
Require hard stands to be sealed (as a separating structure) for an exemption to a CAA to apply for controlled activities on waterfront land	Avoided environmental costs Avoided approval application/regulatory costs (from enhanced clarity)	Additional approval application and assessment costs	Net benefit

Proposed change	Benefits	Costs	Net impact
Allow for exemptions from water use approvals when the use activity does not directly apply water to land	Avoided approval application and assessment costs	None (assuming combined water supply work and water use approvals are updated when they are next due for renewal)	Minor net benefit
For an exemption to the need to obtain a works approval for a water tanker or pump for dust suppression; and an exemption to obtain a water access licence for road construction, road maintenance or dust suppression, the public authority or roads authority must be satisfied that its activity will not have a significant adverse impact on water sources and dependent ecosystems.	Protection of water sources and dependent ecosystems for the benefit of the community	<p>Costs of authorities satisfying themselves that their activities will not have a significant adverse impact on water sources and dependent ecosystems.</p> <p>In some circumstances (e.g., where there would otherwise be significant extraction of water relative to the water source, such as from an unregulated river during drought or times of low water availability), there may also be additional costs incurred in:</p> <ul style="list-style-type: none"> <li>• transporting water from an alternative source,</li> <li>• using alternative methods for dust suppression and road works, and/or</li> <li>• delaying or reducing the level of works until water flows increase (e.g., when drought or dry conditions pass).</li> </ul>	Net benefit

Proposed change	Benefits	Costs	Net impact
Enhance clarity about exemptions from the need to hold licences/approvals for certain dams	Avoided costs to dam owners, the department and NRAR  Enhanced water management and environmental outcomes	None	Net benefit
Water allocation carryover maintained (including in Murray Darling Basin management areas) if a water management plan is suspended	Promotes optimal use and consistent management of water allocations	None	Net benefit
Dealings on default: remove reference to the <i>Conveyancing Act 1919</i> when specifying how a notice must be served	Enhanced clarity (which can reduce costs)	None	Minor net benefit
Water supply authority to give a person who objects to a service charge reasons for its decision in response to the objection	Enhanced clarity of regulatory requirements and accountability of water supply authorities (which can contribute to improved outcomes over time)	None	Minor net benefit
Water supply authority to publish notice of water restrictions in the NSW Government Gazette	Greater transparency and consistency in recording (notifying the community of) restrictions – which can enhance water planning over time	Minor to negligible cost in including notices in the Gazette	Minor net benefit

Proposed change	Benefits	Costs	Net impact
Remove clause 159(3) of the current regulation that requires that, in issuing a certificate of compliance to a water supply authority following the completion of plumbing work, a person must not provide false or misleading information, and instead rely on the <i>Crimes Act 1900</i>	Streamlining the regulation (by removing unnecessary provisions), which can enhance clarity to stakeholders	None	Minor net benefit
Remove the requirement for signature or authentication in objecting to the inclusion or exclusion of land within an irrigation corporation's area of operations	Minor administrative cost saving	None	Minor net benefit
<p>A water supply authority may conditionally or unconditionally</p> <ul style="list-style-type: none"> <li>suspend or cancel an authorisation (i.e., a plumbing permit or discharge approval)</li> <li>grant exemptions to requirements to hold a plumbing permit, complete a certificate of compliance with respect to plumbing work and use only authorised plumbing fittings for plumbing work.</li> </ul>	<p>Enhanced certainty to all stakeholders (which can lower costs)</p> <p>More targeted regulation, which can lower costs and/or enhance outcomes</p>	None	Minor net benefit

Proposed change	Benefits	Costs	Net impact
Regulation to clearly state that a water supply authority (Essential Energy) must not vary a condition of a plumbing permit or discharge approval that is imposed by the regulation or in a way that is inconsistent with a condition imposed by the regulation	Ensures permit and approvals are consistent with the intent of the regulation	None	Minor net benefit
Allow a water supply authority to keep records relating to each service charge in written or electronic form as opposed to “in a manner approved by the Minister”	Avoided administrative costs (from enhanced clarity and flexibility)	None	Minor net benefit
Remove clause (5(2) from the regulation that exempts supplementary water (Lowbidgee) access licences from the definition of a specific purpose access licence (SPAL)	Greater clarity in regulatory requirements, which can reduce costs	None	Minor net benefit
Changes to accommodate and reflect digitalisation	Avoided costs	None	Net benefit

## 1.5 Copies of the new regulations and making submissions

The department welcomes submissions and comments on the regulation, the proposed changes to the regulation and this RIS. Copies of the proposed new regulations, the Draft Water Management (General) Regulation 2025 and Draft Water Management (Water Supply Authorities) Regulation 2025, which incorporate the proposed changes to the existing regulation, are available on the department’s website: [water.nsw.gov.au/water-management-regulation-remake](https://water.nsw.gov.au/water-management-regulation-remake).

To have your say, you can fill out the survey on the [department’s website](#).

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## 2 Introduction and context

This chapter provides further context for this RIS, including:

- the need for and objectives of water management regulation
- the objectives of the proposed changes to the regulation
- the requirements for and of a RIS
- our approach to the RIS, including:
  - how potential changes to the regulation were identified
  - the base case against which we assess the costs and benefits of the proposed changes to the regulation
  - our proportionate approach to the analysis
  - the structure of this RIS.

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### 2.1 The need for and objectives of regulation

There is a clear need for regulation of access to and use of the State's water resources, as well as of other activities that may adversely impact these resources. There are significant potential costs to the environment and community of water take, water use and other activities that may adversely impact water resources. This creates the need for regulation – particularly given how critical water resources are to the community and the natural environment. In the absence of regulation, the potential broader costs of water take to the community and environment and a lack of property rights would likely mean levels of water take that have unacceptable impacts on downstream users, the environment and the general community – both now and into the future.

The regulation is required to support and achieve the objectives of the Act, including to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations. For example, the regulation includes provisions to regulate access to water, use of water and other activities that have the potential to impact on the State's water resources. Allowing the regulation to lapse is not a viable option, as the objectives of the Act could not be achieved without the regulation.

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### 2.2 The objectives of the proposed changes to the regulation

The objectives of the proposed changes to the regulation are to reduce regulatory costs (i.e., the costs of complying with, administering and/or assessing compliance with regulatory requirements), while supporting the achievement of the Act's objectives, including "to protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality."<sup>1</sup>

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### 2.3 Requirements for a Regulatory Impact Statement

As outlined in Chapter 1, the regulation is due for repeal on 1 September 2025. The department is proposing to remake the regulation (as two separate new regulations) with amendments.

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<sup>1</sup> Section 3 of the *Water Management Act 2000*.



Clause 5(1) of the SL Act requires that, before a principal statutory rule (regulation) is made, a RIS complying with Schedule 2 of the SL Act is to be prepared in connection with the substantive matters to be dealt with by the statutory rule.

Clause 6(1) of the SL Act states that it is not necessary to prepare a RIS to the extent that the responsible Minister certifies in writing that, on the advice of the Attorney General or the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3 of the SL Act, including:

- matters of a machinery nature
- direct amendments or repeals
- matters of a savings or transitional nature.
- matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Notably, some of the proposed changes to the regulation considered in this RIS are “not likely to impose an appreciable burden, cost or disadvantage on any sector of the public”. However, for simplicity and transparency, we have included our assessment of these changes in this RIS.

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## 2.4 Requirements of a Regulatory Impact Statement

Under Schedule 2 of the SL Act, a RIS must include the following matters:

- A statement of the objectives sought to be achieved and the reasons for them.
- An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
- An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- A statement of the consultation program to be undertaken.

Costs and benefits should be quantified, wherever possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.

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## 2.5 The approach to the analysis

Below we outline key elements of our approach to the analysis for this RIS.

### 2.5.1 Identifying potential changes to the regulation

Proposed changes to the regulation are based on the operational experience of the department, WaterNSW and the Natural Resources Access Regulator (NRAR). These agencies identified the issues that arise during their administration and enforcement of the regulation and the Act either through their own direct experiences or feedback received from members of the public and other stakeholders.

The department identified approximately 50 issues. It reviewed these issues, in consultation with an interagency Working Group, and recommended that each issue be addressed via regulatory amendment, non-regulatory actions or no further action (e.g., if they were already being addressed

as part of an existing policy or reform project or if there were other reasons for determining that no further action was appropriate).

All non-regulatory recommendations were provided to the department, NRAR and WaterNSW for consideration. Before proposing a change to regulation, the department considered the NSW Government's Better Regulation Principles and Customer Commitments. Factors considered before proposing a regulatory change included:

- whether a change to the regulation would be the best way to achieve the objective
- the likely costs and benefits of changes to the regulation compared to non-regulatory options
- whether the outcome will be effective and proportionate to the identified issue.
- the view of subject matter experts
- whether the proposed change would:
  - simplify and modernise the regulation
  - reduce red tape
  - provide clarity and transparency, and
  - help achieve water management objectives and the objectives of the NSW Water Strategy
- how the change would interact with and or complement other related regulatory instruments (e.g., the Environmental Planning and Assessment Act 1979, the Fisheries Management Act 1994, etc).

This RIS effectively tests and builds on the above preliminary assessment of the proposed changes to the regulation.

### **2.5.2 The base case**

In this RIS we have assessed the potential costs and benefits of the proposed changes to the regulation, and viable alternatives to the proposed changes, relative to the 'base case' of the existing regulation.

This approach recognises that the most realistic 'business as usual' course of action is that the existing regulation is remade in its current form rather than being allowed to lapse and not be replaced. As outlined above, allowing the regulation to lapse is not a viable option, given the need to regulate water take, water use and other potential activities that may impact on the State's water resources and to achieve the objectives of the Act.

The analysis in this RIS indicates the proposed changes to the regulation are expected to generate a net benefit relative to the existing regulation. Consequentially, they are preferable to the existing regulation.

### **2.5.3 Proportionate analysis**

In assessing potential costs and benefits of the proposed changes to the regulation and alternative options, we have applied analysis that is proportionate to the potential size of the costs and benefits.

This means we have sought to conduct more analysis for those changes that are likely to have greater impacts (relative to the base case of the existing regulation). For example, where potential impacts are likely to be relatively minor and/or where there are not likely to be costs, our analysis is largely qualitative and our consideration of potential alternative options is not extensive.

Given some of the proposed changes to the regulation are specific and relatively minor, the only viable alternative option is often to maintain the relevant clauses in the existing regulation. This is the above-mentioned base case against which we assess the costs and benefits of each proposed change to the regulation.

The proportionate approach to the analysis is consistent with the provisions of the SL Act, which provides that it is not necessary to prepare a RIS for those matters “that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.” While not necessarily required to be subject to a RIS, we have included such matters in this RIS for transparency and ease of stakeholder understanding, along with matters that may have a more substantial impact.

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## 2.6 This report

The rest of this report considers each area of proposed change to the regulation, and outlines:

- the relevant current provisions of the regulation
- the proposed change (or changes) to the regulation
- the rationale for or objective of the proposed change to the regulation
- the costs and benefits of the proposed change to the regulation
- an assessment of potential viable alternatives (if any) to the proposed change.

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## 3 Drought works exemptions

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### 3.1 Current provisions of the regulation

Currently, clause 39A of the regulation allows relevant public authorities (e.g., State Owned Corporations or council-owned local water utilities<sup>2</sup>) to apply to the Minister for an exemption to requiring a water supply work approval (under clause 91B of the Act) to construct and/or use a water supply work during a drought. These drought works are often groundwater bores, which are required as surface water dries up.<sup>3</sup>

The intent of the exemption is to allow prompt construction and use of water supply works by a public authority to supply water for critical needs in times of drought. The exemption can only be granted if drought conditions are in place and the exemption is in the public interest.

An exemption is subject to a public authority notifying the Minister of the following within the relevant period:

- the plans of the public authority in relation to the water supply work, in particular, whether it proposes to continue to use the work after the exemption expires
- if the public authority intends to cease to use the water supply work on or before the expiry of the exemption, the date on which it will cease to use the work and its plans for the work once that occurs (e.g., whether the work is to be capped, decommissioned or removed)
- if the public authority intends to continue using the water supply work after the exemption expires – whether it intends to apply for an extension of the period of the exemption; rely on another exemption pursuant to the Act or the regulations; or apply for a water supply work approval in relation to the work.

The Minister may grant an exemption subject to conditions relating to:

- the location of the water supply work
- the water source from which water is proposed to be taken by the water supply work
- the construction standards with which the water supply work must comply
- the maximum size of the water supply work, and/or
- reporting requirements on completion of the construction of the water supply work.

Once the exemption expires, public authorities are required to obtain a water supply work approval if they wish to continue using the work. Such applications for water supply work approvals are subject to the usual approval requirements, including any applicable rules in water sharing plans.

Water sharing plan rules often require bores to be located a minimum distance from a property boundary, unless the neighbour has provided consent in writing or the Minister is satisfied that locating a bore at a lesser distance would result in no more than minimal impact on existing extractions within the water sources. There have been instances of councils constructing drought works under the clause 39A exemption, applying for water supply works approvals for ongoing use

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<sup>2</sup> Under the *Water Management Act 2000*, public authority means: a Minister of the Crown; or a Government Department or Administrative Office; a statutory body representing the Crown; a State-Owned Corporation; or a county or county council within the meaning of the *Local Government Act 1993*.

<sup>3</sup> For example, during the 2019-20 drought, 51 applications for clause 39A exemptions were submitted to the Minister, with 31 of these involving the construction of groundwater works (bores), 1 for a block bank and the rest involving the use of temporary water extraction works (with no installation of significant infrastructure).

of bores after a drought and then being refused as the location of the works did not meet water sharing plan rules. This highlights the importance of considering water sharing plan rules when clause 39A exemptions are applied for and granted.

Currently, there are no requirements relating to maintaining or decommissioning works once the exemption period has ended in the regulation, and the absence of a water supply work approval can prevent a public authority undertaking regular maintenance of the works after the exemption period, which may mean that it is unusable the next time it is required (i.e., for the next drought). Lack of maintenance or not properly decommissioning a water supply work may also pose risks to water sources and surrounding areas. For example, bores that are not decommissioned can contaminate groundwater as they can be a conduit for surface water runoff, and if groundwater is contaminated it could also potentially contaminate the soil.

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## 3.2 Proposed change

The proposed change to the regulation is to amend clause 39A to allow the Minister to require that after the exemption period:

- works that are intended to be used in future droughts are tested and maintained
- works that are not intended to be used again are decommissioned.

This is consistent with new provisions in the *Water Legislation Amendment Act 2024* (section 113B), which allow conditions to be imposed on the exemption from a water supply work approval in relation to the maintenance and decommissioning of drought works and for these conditions to have effect after the expiry of the term of the exemption.

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## 3.3 The rationale for or objectives of the proposed change

The proposed change is aimed at ensuring that drought works are properly maintained or decommissioned by public authorities, to:

- allow the works to be used in future droughts – if this is the intention, and/or
- avoid adverse impacts on water sources from not properly maintaining or decommissioning works.

Currently, the regulation requires public authorities to advise the Minister of their plans for the works after the exemption expires. This allows the public authorities to decide whether it is best to maintain or decommission the works post drought. The proposed change to the regulation will allow the Minister to require a public authority to:

- test and maintain the works – if it intends to use the works in a future drought
- decommission the works – if it does not intend to use the works in a future drought, or if it is not possible to maintain the work due to water sharing plan rules.

If works are not adequately maintained or decommissioned after a drought this can mean they are not able to be used for future droughts, despite the public authority's initial plans, and/or that water sources and the surrounding environment are adversely affected. The proposed change can eliminate this risk.

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## 3.4 The costs and benefits of the proposed change

Below we assess the costs and benefits of the proposed changes to the regulation. This assumes the proposed change to the regulation does not compel a public authority to decommission when it would otherwise maintain a work; or to maintain when it would otherwise decommission a work. Rather, the analysis assumes the proposed change to the regulation ensures the public authority

follows through on its initial intention (as advised to the Minister) to decommission or maintain the work.

In turn, this means that when the proposed change to the regulation ensures that a public authority follows through on its initial intention to:

- decommission a work –this does not avoid maintenance costs nor create the need to incur future drought works costs, relative to the base case of the existing regulation
- test and maintain a work – this does not avoid decommissioning costs (although it does avoid future drought works costs), relative to the base case of the existing regulation.

In other words, our analysis assumes that, in the absence of the proposed change to the regulation, a work would be left idle despite the public authority's original intention of it being either maintained or decommissioned, and that the proposed change to the regulation would now compel the public authority to fulfil its original intention.

### **3.4.1 Costs**

The proposed change to the regulation will result in some public authorities incurring costs in decommissioning or maintaining works, relative to the base case of the existing regulation. These are the portion of public authorities that, in the absence of the proposed change to the regulation, would not proceed with properly maintaining or decommissioning the drought work after the exemption period and instead leave it largely idle. It is expected that this would be a relatively small number of public authorities.

We estimate the costs of decommissioning a bore is between \$15,000 to \$50,000 per bore, and the costs of testing and maintaining a bore is in the order of \$5,000 to \$10,000 per year.

### **3.4.2 Benefits**

The proposed change to the regulation will avoid:

Future drought works costs, where the change to regulation ensures a public authority maintains the works (i.e., the need to construct new drought works may be avoided if current works are properly maintained). The present value of such avoided costs (benefits) depends on the costs of the works and when the next drought(s) occurs (the sooner the drought, the greater the value of the avoided costs). The costs to construct and install a deep bore have been estimated to range from about \$150,000 to \$550,000.

The costs of contamination or other adverse impacts on water sources that would arise if works were not properly decommissioned or maintained. As the majority of drought works subject to the exemption have been bores accessing groundwater, this could be estimated as the economic value of groundwater), multiplied by the volumes affected and the increase in probability of contamination in the absence of the proposed change to the regulation.

#### **The economic value of groundwater**

Groundwater can have extractive value (reflecting its value as drinking water or water for agriculture, mining, manufacturing and other uses), non-extractive value (reflecting its value in supporting ecosystems and the environment) and option value (reflecting its value in mitigating the impacts of drought).

The extractive value of groundwater will vary over time and location, depending on factors such as the attributes of the groundwater resource (such as scarcity, quality and reliability), the circumstances where it is used (its value will be higher if there is no other readily available water substitute or where other water sources are scarce) and its type of use (such as for domestic, irrigation, manufacturing or mining use).

Deloitte Access Economics (DAE) found that the highest extractive use value of groundwater generally comes from households where there is no alternative supply available. Where



groundwater supports business use, the highest value uses (on a per ML basis) were found to be generally in manufacturing and mining.

DAE found that the direct extractive use value of groundwater in Australia generally ranged from \$40 to \$650 per ML for agriculture, \$650 to \$6,500 for mining, \$1,300 to \$3,900 for urban water supply, \$1,800 to \$8,300 for households and \$1,300 to \$3,900 for manufacturing and other industries (\$FY23).<sup>4</sup>

Notably, these values do not reflect the full economic value of groundwater, as they only reflect the consumptive use values and do not include non-extractive and option values.

### 3.4.3 Comparison of costs and benefits

It is difficult to accurately quantify the costs and benefits of the proposed change to the regulation, as this will depend on the number and location of drought works, the frequency of drought and the extent to which the proposed changes to the regulation will reduce the risk of contamination of water sources.

Nevertheless, given the potential impacts on water sources and the environment, the benefits of the proposed change to the regulation to compel a public authority to properly decommission or maintain a drought work (as originally intended) rather than leave it idle are likely to significantly exceed its costs.

For example, Table 2 presents the results of an indicative scenario, which suggests that the benefits of avoiding contamination of groundwater would be multiple times the costs of decommissioning or testing and maintaining the drought works. This scenario assumes:

- the cost of decommissioning a groundwater bore is between \$15,000 and \$50,000, and the costs of testing and maintaining a bore is between \$5,000 and \$10,000 per annum
- the value of groundwater is between \$1,300/ML to \$3,900/ML (consistent with DEA's estimate for urban water supply, as outlined above)
- the likelihood of a post drought year triggering the need to decommission or to commence testing and maintaining the works is 5% to 15% a year
- the quantity of groundwater potentially affected is 1,000ML per annum<sup>5</sup>, and 25% of this groundwater volume is contaminated if/when the bore is not properly decommissioned or maintained.

Notably, Table 2 presents conservative (i.e., low) estimates of the benefits of the proposed change to the regulation. This is because it does not include the avoided costs of future drought works under the test and maintain scenario, and the value of avoided groundwater contamination costs relates to urban water use only (e.g., it does not include the avoided costs related to the environment).

Table 2: Indicative costs and benefits of changes to drought works exemptions

Impact		Present value
Benefits	Avoided costs from contaminated groundwater	\$130,000 to \$1,185,500

<sup>4</sup> Deloitte Access Economics, National Centre for Groundwater Research and Training, Economic Value of Groundwater in Australia, October 2013.

<sup>5</sup> This approximates the annual groundwater consumption of "medium" sized regional local water utilities over recent years, such as Narromine and Forbes (see: <https://water.dpie.nsw.gov.au/local-water-utilities/local-water-utility-performance> ).

<b>Costs</b>	Decommissioning or testing & maintenance costs	\$6,000 to \$70,000
<b>Net benefits</b>		\$60,000 to \$1,179,500

## 3.5 Potential alternatives to the proposed change

Potential alternatives to the proposed change to the regulation include:

- removing the current exemption, or
- replacing the exemption with a 'lighter touch' water supply works approvals process.

However, as outlined below, we consider the proposed change to the regulation is preferable to these alternative options.

### 3.5.1 Remove the current exemption

Removing the ability to provide an exemption from the regulation would eliminate the risk that drought works are not properly decommissioned or maintained, as they would instead require a water supply works approval, which would include appropriate conditions on construction and maintenance.

However, this option would delay the delivery of critical drought works by an estimated 3 to 6 months (as the public authority would have to go through the water supply works approval process).

#### 3.5.1.1 Costs

As with the proposed change to the regulation, this option would result in some public authorities incurring costs in decommissioning or maintaining works (when they would otherwise leave these works idle after the exemption period), relative to the base case of the existing regulation.

However, it would also create additional costs in delaying the delivering of critical water supply works in times of drought (with this delay estimated to be between 3 and 6 months). In some cases, this might mean that a local water utility has to impose severe water restrictions and/or cart water – which would each impose a significant cost on the community. For example, Marsden Jacob Associates (MJA) estimates that the economic costs of water restrictions can range from \$1,100 to \$1,800 per ML for the first 6 months of restrictions and from \$3,500 to \$4,100 per ML for the next 6 months of restrictions. It also estimates the economic costs of carting at \$203/ML/km.<sup>6</sup>

#### 3.5.1.2 Benefits

The benefits of this option would be the same as the proposed change to the regulation. That is, it would avoid:

- future drought works costs, as it would require a public authority to maintain the works (i.e., the need to construct new drought works may be avoided if current works are properly maintained)
- the costs of contamination or other adverse impacts on water sources that would arise if drought works were not properly decommissioned or maintained.

<sup>6</sup> Marsden Jacob Associates, Regional water value functions – Values for inclusion in the cost benefit analysis to support NSW Regional Water Strategies, Prepared for the NSW Department of Planning, Industry & Environment, May 2022, p 6-8.

### **3.5.1.3 Comparison of costs and benefits**

This option would impose additional costs on all drought works to target (and generate benefits from) only that portion of works that would not be properly decommissioned or maintained under the current regulation.

Further, the benefits of this alternative option can be realised under the proposed change to the regulation at significantly lower risk/cost to the community. Under the proposed change to the regulation, the exemption would still be available to allow the prompt construction and operation of water supply works at times of drought, but the Minister would be able to impose conditions ensuring that works are properly decommissioned or maintained after the exemption period.

## **3.5.2 Replace the exemption with a ‘lighter touch’ approval process**

Another potential option is to replace the current exemption with a ‘lighter touch’ or ‘fast tracked’ water supply work approval process for drought works. This would entail modifying the current approval process to ensure it is fit for drought works, which in turn could involve:

- establishing a mechanism to switch off or modify the application of some water sharing plan rules and advertisement requirements, if necessary
- subjecting the application to the minimal harm test, as per section 97 of the Act
- developing a framework of the requirements of a light touch approval process – i.e., what applications would qualify, in what circumstances and what assessment criteria would apply.

### **3.5.2.1 Costs**

The costs of this option would be the same as the proposed change to regulation, but with additional administration costs in establishing and implementing the ‘fast tracked’ approval process.

Further, there would be a risk of additional costs if the lighter touch process adversely impacted water management outcomes over time (i.e., if the application/assessment process was too compromised).

#### **3.5.2.1.1 Benefits**

The benefits of this option would be the same as the proposed change to the regulation.

### **3.5.2.2 Comparison of costs and benefits**

Given the additional administration costs and risks of this option, the net benefit of this option is likely to be lower than the proposed change to the regulation.

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## 4 Specific Purpose Access Licences

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### 4.1 Current provision of the regulation

Specific purpose access licences (SPALs) refer to a group of access licences made up of categories and subcategories, including, but not limited to, major utility access licence, local water utility access licence or an access licence of a type that is declared by the regulation to be a specific purpose access licence. Clauses 4, 5, 6 and 10 and Schedule 3 of the regulation lists categories and sub-categories of SPALs.

Section 77A (2) of the Act requires the Minister to cancel a SPAL if the Minister is of the opinion that the purpose of which the SPAL was granted no longer exists.

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### 4.2 Proposed changes

The proposed change to the regulation is to remove references to SPALs that are no longer required, including temporary critical conveyance access licences and a sub-category of aquifer access licence, as outlined below.

#### 4.2.1 Temporary critical conveyance licences

The proposal is to remove all references to the West Corugan, Moira, Eagle Creek and Mathoura temporary critical conveyance access licences (SPALs). That is, to remove the following clauses from the regulation:

- 10 (1) (k) (l) (m) (n)
- 4 (1) (r) (s) (t) (u)
- 5 (1) (g) (h) (i) (j),
- 6 (1) (a) (iv) (v) (vi), (vii).

#### 4.2.2 Cudgen aquifer access licence

The proposal is to remove clause 10(1)(r)(i) of the regulation:

An aquifer access licence of subcategory “Temporary dewatering for construction”, for the purpose of extracting water from the Tweed-Brunswick Coastal Sands groundwater source to facilitate the construction of a seawater intake pipeline for an aquaculture facility at Cudgen.

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### 4.3 The rationale for or objective of the proposed changes

The SPALs are no longer required or justified. As discussed below, the circumstances prevailing at the time the SPALs were established are no longer present. Should similar circumstances arise in the future, then the ability to apply for these licences could be reinstated after taking into consideration other options for obtaining necessary licence shares or water allocations.

#### 4.3.1 Temporary critical conveyance licences

These SPALs were granted to four Private Irrigation Districts (PIDs) in 2019-20 for the purpose of allowing temporary critical conveyance of water, due to ongoing and prolonged drought conditions.

At the time, there was insufficient water to allow available water determinations (AWDs) for general security licences. The granting of the SPALs provided the PIDs with sufficient water allocations to

allow operation of their channel networks and deliver water in their districts until such time as general security allocations improved.

The SPALs were cancelled in 2021, once AWDs reached levels allowing sufficient access to general security entitlements to allow operation of channel networks. Removing the ability to apply for these SPALs in the future will encourage the PIDs to consider alternative options to reduce their reliance on temporary licences. Such options include reducing their water consumption, for example through improving network efficiency, and/or purchasing additional water allocations or entitlements from the market when required, consistent with what other water users would have to do and the efficient functioning of the water market (where water users face market prices, which helps ensure the benefits of water consumption exceeds its opportunity cost). Alternatively, PIDs could work with the Government to explore the possibility of exchanging general security licence entitlement for conveyance licence entitlement.

### **4.3.2 Cudgen aquifer access licence**

This SPAL was created for an activity limited to a single use – to allow for dewatering during the construction of a lobster farm. The SPAL for this facility has now been issued, and therefore there is no ongoing need to apply for the SPAL.

In the absence of this SPAL, a proponent would have sought to obtain the necessary licence entitlement through a controlled allocation order or on the open market, if available. This SPAL was established because those options were not viable in light of the timing required for construction of the facility.

The proposed change would remove the ability for another party to apply for this SPAL. If another proponent of the same activity was to emerge, rather than apply for this SPAL, they could apply for a zero-share water access licence and then purchase a water allocation from the market or purchase an entitlement from another water access licence holder or via a controlled allocation, if available.

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## **4.4 The costs and benefits of the proposed changes**

### **4.4.1 Temporary critical conveyance licences**

#### **4.4.1.1 Costs**

There are no costs to the community of the proposed change. The SPALs did not increase the total amount of water available under respective extraction limits, therefore removing them will not reduce the total amount of water available to the community. Rather, the SPALs resulted in a transfer of water from one segment of the community to another. Had the SPALs not existed, then the water the PIDs were allocated would have been allocated to other users through the resource assessment and available water determination process.

#### **4.4.1.2 Benefits**

Removing the ability to apply for the SPALs should provide enhanced incentives for the PIDs to engage in effective long-term water security planning and promote efficient water use by potentially increasing the exposure of PIDs to water market prices.

##### **4.4.1.2.1 Other impacts**

The proposed change to the regulation could increase costs to the affected PIDs. This is because when drought conditions like those in 2019-20 return, unless the above-mentioned SPALs are re-included in the regulations or unless there is an exchange of general security entitlement for

conveyance entitlement, they will likely have to purchase water allocations or entitlements from the market or bear the impacts of foregone water.<sup>7</sup>

#### **4.4.1.3 Comparison of costs and benefits**

The costs to the PIDs of purchasing water from the market would not represent net costs to the community, but rather a transfer from one segment of the community (the PIDs) to another (the parties selling the water allocations or entitlements to the PIDs).

Exposing all water users to market prices promotes the efficient use and allocation of water, which can reduce costs and enhance outcomes to the community over time. Market prices for water, reflecting the demand for and supply of water, can ensure the benefits of water consumption exceed its costs, there are efficient levels of water conservation, and that water is allocated to its highest value uses.

#### **4.4.2 Cudgen aquifer access licence: comparison of costs and benefits**

The proposal to remove this SPAL from the regulation should impose no costs, as there is no ongoing need to apply for the SPAL.

The proposed change will remove unnecessary provisions from the regulation and assist in streamlining the licensing system.

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<sup>7</sup> The PIDs incurred the application fees for the SPALs and applicable WAMC water management charges, but they were not required to purchase the water covered by the SPALs on the water market.



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## 5 Exemptions for constructing certain water supply, conveyance and reticulation works that do not traverse sensitive land

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### 5.1 Current provisions of the regulation

Clause 37(1) of the regulation currently exempts a person from requiring a water supply work approval to construct a water supply work used only for prospecting or fossicking under the mining legislation, water pipe used solely for conveying water from one place to another, and a water reticulation work on land subject to a water use approval (clause 37 works).

However, under current clause 37(2) of the regulation, the above exemption does not apply if any part of the work is constructed on sensitive land. This means that if any section of a clause 37 work, such as a conveyance pipe, transverses sensitive land (identified in clause 37(2)), then the entire pipe needs to be assessed and approved under a water supply work approvals process (including parts of the pipe that would otherwise not need an approval).

The requirement for a water supply works approval for works on sensitive land is intended to assist in achieving the objectives of the Act, including to:

- protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality, and
- integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna.

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### 5.2 Proposed change

The proposed change to the regulation is to only require those sections of clause 37 works (e.g., pipes) that traverse sensitive land (as defined in clause 37(2) of the regulation) to have a water supply works approval. This would mean those sections of a clause 37 work (e.g., pipe) that meet the criteria in clause 37(1) and are not on sensitive land are exempt from the requirement to have a water supply work approval.

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### 5.3 The rationale for or objective of the proposed change

Currently, if a small section of pipe transverses sensitive land, the entire length of the pipe needs a water supply work approval – even though only a small section warrants the need to be subject to such an approval process. This can unnecessarily lengthen and complicate the approvals process and increase costs to applicants and the Government agencies (WaterNSW and the department) assessing applications.

Under the proposed change to the regulation, sections of clause 37 works (e.g., pipe) that transverse sensitive land will still require an approval, but sections of the same work that would not require approval if it was standalone will no longer require approval. The proposed change is seeking to reduce unnecessary regulation, reflect a risk-based approach to regulation and ensure that regulation is suitably targeted. Only those sections of clause 37 works potentially posing a risk to the environment and community will be subject to the approvals process.

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## 5.4 The costs and benefits of the proposed change

The proposed change to the regulation is not expected to create costs and will generate benefits in the form of reduced costs to those applying for water supply works approvals and those assessing these applications.

### 5.4.1 Costs

The proposed change is not expected to create costs, relative to the base case of the existing regulation. Sections of clause 37 works (e.g., pipe) on sensitive land will still be required to obtain a water supply works approvals, which should ensure there are no negative impacts on water sources, the environment or community from the proposed change.

### 5.4.2 Benefits

As applications for water supply works approvals will only have to address those sections of works (e.g., pipe) that are on sensitive land, the proposed changes will have the benefit of reducing costs to:

- proponents applying for water supply works approvals
- WaterNSW and the department in assessing applications for water supply works approvals.

We estimate the present value of these cost savings over the next 10 years is about \$7,000. This assumes:

- the proposed change to the regulation will save, on average, one FTE 45 minutes in completing a water supply works approval application
- the proposed change to the regulation will save, on average, one FTE 2 hours in assessing a water supply works approval application
- there would be 5 approval applications per annum subject to clause 37(2) of the regulation
- a 5% discount rate, to calculate the present value of costs.

### 5.4.3 Comparison of costs and benefits

The proposed change will generate a net benefit to the community, as it will remove unnecessary regulation at no cost and reduce costs of submitting and assessing some water supply works approval applications.

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## 6 Approval for removal of in-stream detritus material after storms

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### 6.1 Current provisions of the regulation

Activities that are carried out on waterfront land usually require a controlled activity approval (CAA). However, current clause 34(b) of Schedule 4 of the regulation provides an exemption from a CAA for “the removal of detritus (including woody debris) deposited on waterfront land as a result of a storm event.”

The purpose of the requirement for a CAA is to ensure a controlled activity avoids or minimises adverse impacts on water sources and related ecosystems, land and other water users, consistent with the water management principles of section 5 of the Act. This is achieved through the granting of a CAA subject to conditions or refusal to grant the approval due to risk or impacts that cannot be sufficiently mitigated.

Exemptions from requirements for a CAA may be appropriate where:

- the risk of impacts arising from a controlled activity are managed via other processes, such as development consent or authorisation requirements under other legislation
- the type of controlled activity at a certain kind of location has only limited and/or short-term impacts.

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### 6.2 Proposed changes

The current exemption from requirements for a CAA in clause 34 of Schedule 4 of the regulation was developed to allow for the:

- repair and restoration of storm damage to access tracks, watercourse crossings, water supply works or essential services infrastructure
- removal of detritus deposited on waterfront land as a result of a storm event.

The proposed change to this area of the regulation is comprised of two parts:

- to exclude from the exemption the removal of instream detritus material
- to limit any exemption to within 6 months of the material being deposited after a storm event.

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### 6.3 The proposal to exclude from the exemption the removal of instream detritus material

The proposed change to the regulation would exclude from the exemption the removal of in-stream (bed to bank/shore/high water mark) detritus material – i.e., the removal of such material would now require a CAA. Specifically, the proposed change requires that a CAA be obtained in relation to removal of material from:

- the bed of any river, together with any land lying between the bed of the river and the highest bank of the river, or
- the bed of any lake, together with any land lying between the bed of the lake and the shore of the lake, or
- the bed of any estuary, together with any land lying between the bed of the estuary and the mean high water mark of the estuary, or

- the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and the mean high water mark of the coastal waters.

### **6.3.1 The rationale or objective of the proposal to exclude from the exemption the removal of instream detritus material**

The exemption allowing for removal of detritus currently applies to all waterfront land, including bed and banks. However, the removal of detritus from bed and banks can pose significant risks to water courses, the surrounding environment and other water users.

The in-channel removal of detritus poses significant risks to the geomorphological stability of waterways. The moving of instream sediments, bedload and deposited materials can result in significant bed and bank erosion near the site of the works and cause detrimental effects within broader catchments. The effects of unmanaged instream works can be ongoing and result in dynamic degradation processes, including bed lowering, large scale bank erosion and changes to erosion and sediment loads. The geomorphic degradation of waterways from uncontrolled removal of instream detritus can result in adverse impacts to the community and environment, including loss of land, reduced access to surface water, poor water quality and loss of in river and riparian habitat.

The removal of large woody debris on the banks and in the bed of waterways is classified as a key threatening process under the *Fisheries Management Act 1994*. Historic systematic removal of large woody debris has resulted in the degradation and bed lowering of many streams across NSW. Large woody debris provides protection for riverbanks and beds during high flow storm and flood events, through the reduction of stream velocities and accumulation of bed load materials. Large woody debris also provides key fish habitat and breeding areas. The protection and restoration of large woody debris is essential to ensuring the health of NSW river systems.

Therefore, there is concern that the current exemption process is not sufficient to avoid adverse environmental consequences, and that a site-specific assessment is required through the CAA process.

The proposed change to the regulation to exclude from the exemption the removal of in-stream (bed to bank/shore/high water mark) detritus material is intended to protect the ecological health of waterways. Subjecting the removal of in-stream detritus material to the CAA process recognises that fluvial geomorphology is highly complex and dynamic, and that the impacts of in stream works and activities can be unpredictable and vary with stream characteristics, location and condition.

The assessment of individual sites via the CAA process can ensure that the removal of in-stream detritus material does not have unacceptable impacts on the environment, landholders and water users. Site-specific characteristics, community needs and broader catchment objectives can be considered in determining whether and how material is removed from the riverbed to bank/shore/mean high water mark.

### **6.3.2 The costs of excluding from the exemption the removal of instream detritus material**

The proposal to exclude from the exemption the removal of instream detritus material would generate additional costs in:

- applicants applying for CAAs
- the department reviewing applications for CAAs and issuing CAAs
- the department or NRAR checking compliance with the conditions of a CAA.

These costs are estimated to range from about \$196,446 to \$508,976 (present value over 10 years, using a 5% discount rate). This assumes:

- there are 20 additional CAA applications generated each year as a result of the proposed regulation, with a growth rate of 1-3% per annum

- it takes one FTE between 8 and 24 hours to complete and submit a CAA application, at a cost of \$46.66 per hour (as per ABS average weekly earnings for persons in the private sector)
- it takes one FTE between 6 and 14 hours to assess a CAA application, including time for the department and time for DPI Fisheries in providing input/concurrence to the department's assessment, at a cost of \$67.13 per hour (based on the weighted average rates of relevant personnel)
- it takes one FTE between 6 and 12 hours to check compliance with each CAA (with the number of CAA issued the same as the number of CAA applications received), at a cost of \$67.13 per hour.

This proposed change to the regulation should not impede or increase the cost of emergency responses to storms and floods. This is because the regulation includes an exemption from the requirement to obtain a CAA for public authorities (current clause 41) - such as councils and government agencies and for emergency safety measures (current clause 30 of Schedule 4) - being any activity carried out for the purposes only of complying with a direction given under the *State Emergency Service Act 1989* or the *State Emergency and Rescue Management Act 1989* in an emergency.

### 6.3.3 The benefits of excluding from the exemption the removal of instream detritus material

The proposed change to the regulation to exclude from the exemption the removal of instream detritus material would avoid environmental and ecological degradation. It is difficult to accurately quantify these benefits, as the avoided environmental/ecological costs will likely vary by location and circumstance. Nevertheless, the studies listed below on 'the benefits of healthier waterways' provide an indication of the size of the potential benefits of avoiding environmental and ecological damage to waterways through the proposed changes to the regulation. For example:

- If the willingness to pay figure from the 2022 study is applied (\$0.99 per household annually) to 25% to 50% of households in NSW, this would equate to a benefit of between \$4.6 million and \$12.8 million (present value over 10 years) for every 1km of waterway that experiences improved health from the proposed change to the regulation.
- If the average willingness to pay figure (\$4.01, \$FY23) from the 2001 study is applied to 25% to 50% of households in NSW, this would equate to a benefit of between \$3.4 million and \$6.8 million (present value over 10 years) for every 1% increase in length of river with healthy native vegetation and wetlands as a result of the proposed change to the regulation.

#### The benefits of healthier waterways

Robert Gillespie and Jeff Bennett (2022) used choice modelling to assess the willingness to pay of households in the catchments of the Georges, Cooks and Parramatta rivers for improved stormwater management.<sup>8</sup> This study found that households within these catchments were willing to pay \$0.99 (\$FY23) annually for 10 years for each kilometre of improved waterway health in 30 years' time.

An earlier study by Jeff Bennett and Mark Morrison (2001) assessed the community's willingness to pay for a 1% increase in length of river with healthy native vegetation and wetlands across different rivers in NSW.<sup>9</sup> This study found that respondents were willing to pay between \$2.22 and \$4.64 (\$FY23), depending on whether the river was northern or southern, inland and coastal, or they were inside or outside the catchment. The average willingness to pay for those outside a river catchment was \$4.01 (\$FY23, one-off payment).

<sup>8</sup> Robert Gillespie & Jeff Bennett (2022) Willingness to pay for the outcomes of improved stormwater management, Urban Water Journal.

<sup>9</sup> Jeff Bennet & Mark Morrison (2001) Valuing the Environmental Attributes of NSW Rivers, Draft Report Prepared for the NSW Environment Protection Authority.

Notably, the above-mentioned willingness to pay estimates from these studies are likely to be conservative estimates of the value of enhanced riparian and river health. This is because they are focused on just one aspect of riparian and river health.

The 2022 study derived separate estimates of willingness to pay for:

- native vegetation planting including wetlands, and
- removal of rubbish and litter from waterways.

The 2001 study derived separate estimates of willingness to pay for increases in:

- the number of native fish species present
- the number of waterbird and other fauna species present, and
- water quality (from boatable to fishable, and from fishable to swimmable).

### **6.3.4 Comparison of the costs and benefits of excluding from the exemption the removal of instream detritus material**

While it is difficult to accurately quantify the benefits of the proposed change to the regulation, our analysis indicates that the benefits (in the form of avoided in-stream environmental and ecological degradation) will likely significantly exceed the costs arising from the need to submit and assess more CAA applications.

In estimating the costs of the proposed change to the regulation, we have assumed that it will generate an additional 20 CAA applications per annum, with this number increasing over time at a rate of between 1% and 3% per year (for a cost of between \$196,446 and \$508,976, present value over 10 years). Given this volume, it is reasonable to assume the proposed regulation would improve the ecological health of at least 1km of waterway – which would generate a benefit of \$4.6 million to \$12.8 million (present value over 10 years) if the above-mentioned 2022 study's willingness to pay results are applied to 25% to 50% of households in NSW. In turn, this would equate to a net benefit of \$4.1 million to \$12.6 million (present value over 10 years).

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## **6.4 The proposal to limit any exemption to within 6 months of the material being deposited after a storm event**

The proposed change to the regulation would specify that (for waterfront land still subject to the exemption) the removal of material deposited on waterfront land as a result of a storm event must occur within 6 months of it being deposited in order for the exemption to apply.

### **6.4.1 The rationale for or objective of the proposal to limit any exemption to within 6 months of the material being deposited after a storm event**

The proposed change to limit the period of exemption (for waterfront land still subject to the exemption) after a storm event is to enhance the enforceability of the regulation. In the absence of this proposed change, the exemption could potentially apply for an indefinite or undefined period after a storm event – which would make enforcement of the regulation (including of those activities that should be subject to a CAA) very difficult.

### **6.4.2 The costs of limiting any exemption to within 6 months of material being deposited after a storm event**

The proposed change to the regulation that (for waterfront land still subject to the exemption) the removal of material deposited on waterfront land must occur within 6 months of the material being deposited as a result of the storm event for the exemption to apply should not impose costs. This is



because 6 months should be sufficient time for the ‘business as usual’ removal of detritus material deposited on waterfront land as a result of a storm.

### **6.4.3 The benefits of limiting any exemption to within 6 months of the material being deposited after a storm event**

The proposed change to the regulation that (for waterfront land still subject to the exemption) the removal of material deposited on waterfront land must occur within 6 months of the material being deposited as a result of the storm event for the exemption to apply would enhance enforceability of the regulation. In turn, this should reduce costs of enforcing compliance with the regulation and assist in avoiding environmental and ecological degradation.

### **6.4.4 Comparison of costs and benefits of limiting any exemption to within 6 months of the material being deposited after a storm event**

This proposal would result in a net benefit to the community, as it would not impose costs but would enhance the enforceability of the regulation – which should reduce the costs of enforcing compliance with the regulation and assist in avoiding environmental and ecological degradation to waterfront land and nearby water courses.

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## **6.5 Potential alternative to the proposed changes**

A potential alternative to the proposed changes to the regulation would be to rely on the provisions of the *Fisheries Management Act 1994* (FM Act) and the *Fisheries Management (General) Regulation* (FM regulation) to protect the health of water courses.

Under the FM Act (section 198A) and the FM regulation (clause 226), the removal, disturbance or harm of woody debris and snags from/of third-order streams and above is a ‘dredging’ activity; and work that involves dredging may require a permit or consultation with the Minister for dredging (under sections 199-201 of the FM Act).

However, the FM Act does not cover activities on first and second-order streams and does not focus on protection of stream banks or surrounding vegetation. The Fisheries framework focuses on protection of native fish habitat and is thus narrower both in scope and in application than the CAA framework and the objectives of the WM Act. Therefore, the fisheries management framework does not adequately address the risks of removal of material from bed and banks of water courses after storms.

This option is effectively the ‘base case’ of maintaining the existing regulation. Therefore, it would avoid the costs of the proposed changes to the regulation. However, it would also not realise the benefits or achieve the objective of the proposed changes to the regulation. We therefore consider that the proposed changes to the regulation are preferable to this alternative option.

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## 7 Controlled activities where a separating structure is present

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### 7.1 Current provisions of the regulation

The regulation (clause 31 in Part 2 of Schedule 4) currently permits controlled activities on waterfront land in relation to a minor stream or third order stream without a controlled activity approval (CAA) where the activity is separated from the bed of the stream by:

- a public road
- a hard stand space (such as a car park or building)
- a levee bank, but only if the levee bank is in an urban area, was the subject of a development consent under the *Environmental Planning and Assessment Act 1979* and is located within a designated high risk flood area (within the meaning of clause 45 of the regulation).

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### 7.2 Proposed changes

The proposed change is to:

- remove reference to a stream order in Clause 31
- specify a “hard stand” is to be sealed
- amend the reference to the “bed” of the stream to instead refer to:
  - highest bank of the river, or
  - shore of the lake, or
  - mean high water mark of the estuary, or
  - mean high water mark of the coastal waters (if applicable).

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### 7.3 The rationale for or objective of the proposed changes

The rationale for each element of the proposed change to the regulation is outlined below. The objective of the proposed change to the regulation is to remove unnecessary regulatory requirements while ensuring appropriate water management outcomes.

#### 7.3.1 Removing reference to stream order

The proposal is to remove the reference to stream order, so that the exemption would apply to waterfront land in relation to all watercourses or streams. This is because the presence of a separating feature determines the potential impact of the controlled activity on the watercourse not the size of the watercourse. The key reason for the exemption is the presence of the separating feature and, in this context, the stream order is irrelevant to water management outcomes.

The separating feature, acting like a barrier, means that some level of protection (e.g., against sediment run-off) of the watercourse is already present and that a riparian corridor cannot be established. In these circumstances, issuing a CAA serves little to no purpose and imposes unnecessary regulatory and administration cost on applicants and the department.

### **7.3.2 Specifying that a hard space must be sealed for the exemption to apply**

The proposal is that, for the exemption to apply, the hard stand space must be sealed. This is because unsealed hard stand spaces are not fixed and require ongoing maintenance and site disturbances, which can present ongoing risks to watercourses. Unsealed spaces still provide opportunities to impose requirements on approvals to establish riparian buffers and achieve riparian objectives.

Specifying that the hard stand space must be sealed for the exemption to apply would clarify the exemption and improve watercourse protection outcomes.

### **7.3.3 Amending the reference to 'bed' of the stream**

The proposal to amend the reference to the 'bed' of the stream to instead refer to bank, shore or mean high water mark reflects what is practical and current operational practice in assessing whether there is a separating structure.

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## **7.4 The costs and benefits of the proposed changes**

### **7.4.1 Removing reference to stream order**

#### **7.4.1.1 Costs**

The proposal to remove references to stream order in the regulation is expected to expand the range of exemptions and reduce the number of CAA applications. This is not expected to increase environmental costs because, as outlined above, the presence of the separating structure, not the stream order, determines environmental impact.

#### **7.4.1.2 Benefits**

The proposed change to the regulation to remove the reference to stream order will expand the range of exemptions, which will reduce costs in applying for and assessing CAAs.

The cost savings are expected to total between \$18,000 and \$70,000 (present value over 10 years, using a 5% discount rate). This assumes:

- there will be 5 to 9 less CAA applications each year
- for each application, this will save:
  - between 4 to 8 hours for an FTE to complete and submit an application
  - between 4 to 8 hours for an FTE to assess an application.

There may also be reduced or avoided holding costs to applicants, if not having to obtain a CAA reduces delays in a development proceeding.

Affected CAAs are generally considered low risk and therefore savings to NRAR from reduced costs of checking compliance with CAAs would be minimal.

### **7.4.2 Specifying that a hard stand space must be sealed for the exemption to apply**

#### **7.4.2.1 Costs**

The proposed change to the regulation to specify that, for an exemption to apply, hard stands must be sealed is expected to reduce the number of exemptions and therefore increase the number of CAA applications (as unsealed hardstands will not be exempt).

In turn, this will increase costs to applicants in applying for CAA applications and the department in assessing these applications. The additional costs to applicants and the department are expected to total between \$4,000 and \$22,000 (present value over 10 years, using a 5% discount rate). This assumes:

- there will be 1 to 3 additional CAA applications each year
- for each application it will take:
  - between 4 to 8 hours for an FTE to complete and submit an application
  - between 4 to 8 hours for an FTE to assess an application.

#### **7.4.2.2 Benefits**

The proposed change to the regulation to specify that a hard stand space must be sealed for an exemption to apply will enhance clarity to potential applicants and the department, which may reduce or avoid costs (e.g., for potential applicants and/or the department in clarifying how the exemption applies to hard stand spaces). However, such avoided costs are likely to be small and are difficult to accurately quantify.

This proposed change will also likely reduce or avoid costs to the environment (the nearby riparian zone and watercourse). As outlined in the previous chapter, given the willingness to pay of the community for enhanced environmental and ecological outcomes for watercourses, the value of such benefits can be significant. While difficult to accurately quantify, any improvement in environmental outcomes from the proposed change will likely significantly exceed the above-mentioned costs.

### **7.4.3 Amending the reference to ‘bed’ of the stream**

#### **7.4.3.1 Costs**

The proposal to amend the reference to bed of the stream will have no costs, as it reflects current practice.

#### **7.4.3.2 Benefits**

The proposal to amend the reference to bed of the stream will clarify how the exemption is assessed/determined, which will likely avoid or reduce some costs. However, this benefit is expected to be relatively minor and difficult to quantify as the proposed change generally reflects current practice.

### **7.4.4 Comparison of costs and benefits**

Removing the reference to stream order in the exemption will reduce costs to applicants and the department (i.e., generate a benefit), with no expected costs.

Requiring hard stands to be sealed for an exemption to apply would impose costs on applicants and the department, but (although difficult to quantify) this relatively small increase in costs is likely to be exceeded by the benefits of enhanced clarity and environmental outcomes.

Amending the reference to stream bed will bring the wording of the regulation into line with operational practice/necessity. It will impose no costs relative to the base case, while generating some benefit from enhanced clarity.

The proposed changes to the regulation are therefore expected to result in a net benefit to the community.

Table 3: Costs and benefits of controlled activities on waterfront land

Impact	Present value of benefits (\$)	Present value of costs (\$)
<b>Stream order</b>		
Avoided costs for applicants and the department	Between \$18,000 and \$70,000	
<b>Hard stand</b>		
Increased costs for applicants and the department		Between \$4,000 and \$22,000
Avoided environmental costs	Unquantified	
Avoided costs for clarity	Unquantified	
<b>Amending reference to stream bed</b>		
Avoided costs from clarity	Unquantified	

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## 8 Dust suppression, road construction and maintenance by a public or roads authority

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### 8.1 Current provisions of the regulation

#### 8.1.1 Exemptions relating to the use of water supply works

Clause 38 of the current regulation provides that a person is exempt from the requirement to obtain a water supply work approval when using specific water supply works in a range of circumstances, including (under clause 38(e)) for:

- a water tanker (being a motor vehicle including a tank for the purpose of conveying water) and any water pump comprising part of the water tanker, but only if –
  - (i) the water tanker or pump is used to take or convey water for the purpose of dust suppression activities by a public authority, and
  - (ii) the public authority is satisfied that taking the water will not have a significant adverse impact on basic landholder rights or land referred to in clause 37(2)(a)–(j).

Land referred to in clause 37(2)(a)–(j) of the regulation includes:

- land within an area declared to be an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,
- land within an area declared to be critical habitat under Division 3 of Part 7A of the *Fisheries Management Act 1994*,
- land that is a heritage conservation area within the meaning of an environmental planning instrument that applies to the land under the *Environmental Planning and Assessment Act 1979*,
- land that is an Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974*,
- land that is reserved for any purpose under the *National Parks and Wildlife Act 1974*,
- land the subject of a conservation agreement in force under section 69B of the *National Parks and Wildlife Act 1974*,
- land the subject of a property vegetation plan under Part 4 of the *Native Vegetation Act 2003* (as continued in force under the *Biodiversity Conservation Act 2016*),
- land within a State forest within the meaning of the *Forestry Act 2012* (other than land in any part of a State forest that is a plantation within the meaning of that Act),
- land within a coastal wetlands and littoral rainforests area (within the meaning of the *Coastal Management Act 2016*),
- waterfront land (other than waterfront land relating to a minor stream).

#### 8.1.2 Access licence exemptions

Schedule 4, Part 1 of the current regulation lists exemptions from the requirement to obtain a water access licence. This includes, amongst other exemptions:

- a roads authority (within the meaning of the *Roads Act 1993*) – in relation to water required for road construction and road maintenance (Schedule 4, Part 1, clause 2)

- any public authority lawfully engaged in the use of water for dust suppression – in relation to water required for that purpose (Schedule 4, Part 1, clause 5).
- 

## 8.2 Proposed changes to the regulation

The proposed changes to the regulation are to amend:

- Current clause 38(e) of the regulation so that the exemption from the requirement to obtain a water supply work approval for a water tanker and pump(s) (comprising part of the water tanker) used to take or convey water for the purpose of dust suppression activities by a public authority only applies where the public authority is satisfied that:
  - taking the water will not have a significant adverse impact on basic landholder rights or land referred to in clause 37(2)(a)–(j), and
  - **the use of the water tanker will not have a significant adverse impact on water sources and their dependent ecosystems.**
- Schedule 4, Part 1, clause 2 of the current regulation so that the exemption from the requirement to obtain a water access licence for a roads authority (within the meaning of the *Roads Act 1993*) in relation to water required for road construction and road maintenance **is subject to the requirement for the roads authority to be satisfied that there is no significant adverse impact on water sources and dependent ecosystems** from the use of the water for the construction and maintenance activity.
- Schedule 4, Part 1, clause 5 of the current regulation so that the exemption from the requirement to obtain a water access licence for any public authority lawfully engaged in the use of water for dust suppression **is subject to the requirement for the public authority to be satisfied that there is no significant adverse impact on water sources and dependent ecosystems** from the use of the water for the dust suppression.

That is, the proposed changes to the regulation would mean that the above-mentioned exemptions to the requirements to obtain water supply work approvals and water access licences would be subject to the requirement that the relevant authority is satisfied that there is no significant adverse impact on water sources and dependent ecosystems from its dust suppression or road works activities.

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## 8.3 The rationale for or objective of the proposed changes

The objective of the proposed changes to the regulation is to further protect water sources and dependent ecosystems from the extraction and/or use of water for dust suppression and road construction and road maintenance by public authorities or roads authorities.

The proposed change to the regulation is to address concerns relating to tankers extracting and using water from unregulated water sources in particular circumstances, such as:

- periods of low flows
- periods of no flow
- when pumping from remanent pools
- when pumping from water sources that are critical for town water supply (small villages and communities) in times of drought
- when pumping large volumes of water for extensive road construction works.

In those cases, the environment and town water supply need to be protected further in dry conditions to reflect the Act's principles and be consistent with water sharing plan (WSP) provisions.



There is generally less concern relating to regulated river sources, as the quantity of water used for dust suppression and road construction and road maintenance by public authorities or road authorities is small relative to the total flow/volumes of the water source.

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## 8.4 The costs and benefits of the proposed changes

Under the proposed change, the public or roads authority carrying out the works would have to be satisfied that its activity will not significantly adversely impact water sources and dependent ecosystems. If it cannot satisfy itself that this is the case, it would have to apply for a water access licence and water supply work approvals to access and use water for the above-mentioned activities. The conditions of such licences and approvals are likely to seek to ensure that the public or roads authority's activities have no significant adverse impact on water sources and dependent ecosystems. This means that, under the proposed new regulation, regardless of whether a public or roads authority is exempt from the requirement to obtain a water access licence and/or water supply work approval when carrying out the above-mentioned activities, it will need to ensure that its activities have **no significant adverse impact on water sources and dependent ecosystems**.

### 8.4.1 Costs

A public or roads authority may incur costs in undertaking investigations or studies to be satisfied that its activities would not adversely impact on water sources or dependent ecosystems. The cost to do this would generally be commensurate with the size of the potential impacts of the works on water sources. In turn, this would likely depend on the extent of works being undertaken and the water source. For example:

- If a large volume of water would be extracted from an environmentally sensitive area, a relatively small water source, or during times of drought or low flows, this may require more detailed investigation to assess whether there would be a significant adverse impact on water sources and dependent ecosystems.
- On the other hand, if a low volume of water would be extracted relative to the water source, then little if any investigation may be required for the authority to be satisfied that the works would have no significant adverse impact on water sources and dependent ecosystems.

In some cases, particularly if the works are part of larger project or development that requires some form of environmental assessment under the *Environmental Planning and Assessment Act 1979*, these authorities may need to undertake these or similar investigations as part of their 'business as usual' activity regardless of the proposed changes to the regulation. This is most likely to be the case for larger projects, with potentially larger environmental impacts, which suggests that the incremental costs of conducting investigations as a result of the proposed change to the regulation are not likely to be significant.

In some circumstances, there may also be costs incurred if, following investigation of the potential impacts of its activities on water sources and dependent ecosystems, a public or roads authority has to change its planned activities to ensure there is no significant adverse impact on water sources and dependent ecosystems. For example, this could involve:

- using water from an alternative source (potentially involving higher sourcing or transportation costs), or
- using alternative methods for dust suppression and road construction and maintenance activity (potentially increasing the costs of works), or
- delaying or reducing the level of works until water flows increase (e.g., when drought or dry conditions pass).

As outlined above, this is most likely to occur if the works would otherwise involve the extraction and use of significant volumes of water relative to volumes in the water source – e.g., extraction of water from unregulated rivers during periods of low flow or for extensive road works.

## 8.4.2 Benefits

The proposed change would protect water sources and dependent ecosystems. The benefits of this are likely to be significant given the value the community places on healthy water sources and related ecosystems. In Chapter 6, we refer to studies that provide an indication of the magnitude of the benefit to the community of protecting water sources and dependent ecosystems. These show that the benefit to the NSW community of healthy water sources and dependent ecosystems is significant. For example:

- If the willingness to pay figure from the 2022 study<sup>10</sup> is applied (\$0.99 per household annually) to 25% to 50% of households in NSW, this would equate to a benefit of between \$4.6 million and \$12.8 million (present value over 10 years) for every **1km of waterway that experiences improved health**.
- If the average willingness to pay figure (\$4.01, \$FY23) from the 2001 study<sup>11</sup> is applied to 25% to 50% of households in NSW, this would equate to a benefit of between \$3.4 million and \$6.8 million (present value over 10 years) for every **1% increase in length of river with healthy native vegetation and wetlands**.

Notably, the above-mentioned willingness to pay estimates from these studies are likely to be conservative (i.e., low) estimates of the value of water sources and dependent ecosystems to the community. This is because they are focused on just one aspect of river health, and do not include the use or extractive value of water from these sources. For example:

- the 2022 study derived separate estimates of willingness to pay for:
  - native vegetation planting including wetlands, and
  - removal of rubbish and litter from waterways.
- the 2001 study derived separate estimates of willingness to pay for increases in:
  - the number of native fish species present
  - the number of waterbird and other fauna species present, and
  - water quality (from boatable to fishable, and from fishable to swimmable).

## 8.4.3 Comparison of costs and benefits

It is difficult to quantify the costs and benefits of the proposed change to the regulation, given the range of dust suppression and roads works activities and the varying water sources that these activities draw on across NSW.

Costs will be incurred in investigating the potential impacts of these activities on water sources and dependent ecosystems and, when there is potential for significant adverse impacts on water sources and dependent ecosystems, altering the way works are undertaken (e.g., drawing on alternative water sources) or delaying works.

Benefits will be avoided significant adverse impacts on water sources and dependent ecosystems.

Given the value to the community of avoiding significant adverse impacts on water sources and dependent ecosystems, the benefits of the proposed change to the regulation are likely to exceed costs.

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<sup>10</sup> Robert Gillespie & Jeff Bennett (2022) Willingness to pay for the outcomes of improved stormwater management, Urban Water Journal.

<sup>11</sup> Jeff Bennet & Mark Morrison (2001) Valuing the Environmental Attributes of NSW Rivers, Draft Report Prepared for the NSW Environment Protection Authority.

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## 9 Water use approval exemptions for activities that do not directly apply water to land

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### 9.1 Current provisions of the regulation

Section 91A(1) of the Act requires a water use approval for using water from a source covered by the Act. The approval process aims to identify key environmental impacts of the water use and establish key strategies and/or mechanisms to minimise these impacts.

Currently, water use approvals are still required even when the activity does not directly apply water to land. For example, water use approvals are granted to local water utilities in their role as a supplier of water to end-use customers. In this instance, local water utilities are not applying water to land nor using it at a single point, which makes it difficult to determine the impact of their water 'use'.

Clause 35 of the current regulation provides exemptions from section 91A(1) of the Act.

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### 9.2 Proposed change

The proposed change is to amend current clause 35 of the regulation to provide the following exemptions from section 91A(1) of the Act:

- all uses of water for a purpose for which development consent is in force under the *Environmental Planning and Assessment Act* (EP&A Act) – i.e., to no longer exclude the use of water for power generation by a major utility from the exemption
  - local water utility access licences for domestic consumption and commercial activities
  - unregulated river, regulated river and aquifer access licences (town water supply) for supply to communities for domestic consumption and commercial activities.
- 

### 9.3 The rationale for or objective of the proposed change

The proposed change to the regulation:

- recognises that water use activities that do not directly apply water to land pose minimal risk of direct harm to the natural environment and are assessed and managed through water access licences, water supply work approvals and/or EP&A Act development consents
  - aims to reduce unnecessary regulatory costs to applicants, the department and other relevant agencies, by eliminating the need for water use approvals that do not assess or manage the impact of water use on land.
- 

### 9.4 The costs and benefits of the proposed change

#### 9.4.1 Costs

The proposed change to the regulation is not expected to impose costs on the community. It would expand the list of activities that are exempt from the requirement to obtain a water use approval. However, this is not expected to increase risk or costs to the environment or water sources as the affected activities do not directly apply water to land and would still be regulated through EP&A Act

development consents, water access licences, water supply work approvals, and possibly state significant development processes.

With the proposed change to the regulation, newly exempt activities will be subject to redundant water use approvals. For example, there are more than 400 combined water supply work and water use approvals for which the water use approval (town water supply and power generation) component would no longer be required. To avoid costs (or keep them to negligible levels), these approvals could be updated (to remove the water use component) when they are next due for renewal and, if necessary, the department could communicate the change in compliance requirements to approval holders in the meantime.

### **9.4.2 Benefits**

The proposed change is expected to avoid regulatory and administration costs to applicants, approval holders, the department and NRAR, by reducing the number of activities that require a water use approval.

The benefit for combined approvals (water supply works and water use approvals) is likely to be marginal, as the water use component of the application for the affected activities does not generally result in additional assessment and processing. Larger benefits are expected to come from 97 Town Water Supply standalone water use approvals that will now not need to be maintained (i.e., extended every 10 years) and monitored for compliance.

### **9.4.3 Comparison of costs and benefits**

The proposed change will remove unnecessary regulation. This should reduce costs to applicants, approval holders and the department/NRAR, without imposing costs. Therefore, it will result in a net benefit to the community.

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## **9.5 Potential alternatives to the proposed change**

Potential alternatives to the proposed change to the regulation include:

- updating the water use approval application forms to seek to lower the applicant's cost – e.g., not requiring applicants to answer sections of the application form that are irrelevant to their activity
- reviewing the department's internal licensing and approvals processes for "low risk" water use activities.

The department would incur some costs in implementing these alternatives. These alternatives would have the benefit of reducing costs to applicants and approvals holders – although not necessarily to the same extent as the proposed change to the regulation (e.g., under these alternative options, the applicant and department would still have to engage to some extent with the 'water use' component of the approval process). Further, there are benefits of enhanced clarity to all stakeholders of removing unnecessary requirements in the regulation. Therefore, the net benefit of the proposed change to the regulation is likely to be greater than the alternative options.

# 10 Changes to accommodate digitalisation

## 10.1 Current provisions of the regulation

There are a range of provisions in the regulation that relate to the provision of signatures and authentication, the lodgement of documents, the issuing of notifications and the provision of information that require updating to reflect contemporary forms of communication.

## 10.2 Proposed changes

The proposed changes are outlined in the table below. They can be summarised as:

- enabling electronic signatures and security steps to create and log into accounts as methods of authentication
- enabling electronic service of documents
- ensuring publication of notifications are consistent and account for modern realities of local print media (e.g., given there are no print publications available in some local government areas)
- enabling electronic lodgement of documents
- enabling electronic notifications
- removing requirements to maintain physical maps and registers for public inspection.

Table 4: Proposed changes to accommodate digitalisation

Theme	Clause in current regulation	Proposed change
<b>Signatures and authentication</b>	Clause 18: Requirements for consent by coholders of access licences, and other provisions	To enable the following methods of authentication: <ul style="list-style-type: none"><li>• electronic signatures</li><li>• security steps to create and log into accounts.</li></ul>
<b>Newspapers</b>	Clause 51: Applications to include land within an irrigation corporation's area of operations Clause 53: Applications to exclude land from an irrigation corporation's area of operations Clause 73: Notice of election for joint private works schemes Clause 79: Notice of ballot for joint private works schemes Clause 141: Restrictions on use of water during periods of shortage by water supply authorities Clause 210: Service of notices by water supply authorities	The intention is that notifications reach the persons affected – i.e., persons within the affected geographical area or members of the affected group.  While this may usually be via a local newspaper, there are a number of local areas where no local newspaper is available in print.  The proposed change is to amend the regulation to require notification in a local newspaper published in the relevant area or, where a local paper is not available, in a newspaper circulating in that area.

Theme	Clause in current regulation	Proposed change
<b>Lodgement</b>	Clause 18(c): Requirements for consent by co-holders of access licenses Clause 149: Application for renewal Clause 152: Renewal of discharge approvals Clause 162: Application for plumbing permit Clause 189: Notice by public agencies Clause 207: Objections generally	To clearly provide for the ability to lodge documents electronically.
<b>Service</b>	Clause 208(3) & Clause 208(4)(c): Notice of Drainage area	To clarify that service of notice/decision can be achieved via email, in line with s394(b1) of the Act.
<b>Notification</b>	Clause 200: Payment of service charges and other charges Clause 201: Payment by instalments	To clarify that notification can be in writing and that notification can occur via email in line with s394(b1) of the Act.
<b>Physical registers for inspection</b>	Clause 16: Register of available water determinations Clause 31: Register of approvals Clauses 116, 118 and 119: Area of operations maps for Essential Energy, Cobar Water Board and the WaterNSW Fish River water supply scheme	To maintain digital maps and registers and remove the need for physical copies of maps and registers to be held in Department offices.

## 10.3 The rationale for or objectives of the proposed changes

The rationale for the proposed changes to the regulation is to reflect the modern realities of communication and correspondence, to minimise transaction costs to applicants, licensees, regulators and service providers (such as the department, NRAR, WaterNSW and local water utilities).

The intention of the proposed changes is generally not to eliminate communication options, but to provide additional (digital) options and to facilitate ongoing process improvements.

## 10.4 The costs and benefits of the proposed changes

### 10.4.1 Costs

The proposed changes to the regulation should not impose costs on applicants, licensees and other stakeholders (e.g., in terms of having to obtain a computer or internet access because of the proposed changes), as the intention is not to eliminate forms of signature, lodgement and



notification but rather to ensure there are options consistent with contemporary forms of communication.

The department and other regulators and service providers should also not have to incur costs above 'business as usual' (i.e., those costs they would incur regardless of the proposed changes to the regulation) to implement and allow for the proposed changes. This is consistent with the view that the proposed changes are to ensure the regulation reflects contemporary, 'business as usual', communication and business practices.

## 10.4.2 Benefits

The proposed changes to the regulation will:

- provide enhanced clarity to stakeholders about what forms of signature, lodgement, notification and provision of information are permissible
- allow electronic forms of signature, lodgement, notification and provision of information.

This will have the direct benefit of saving applicants, licensees, regulators and service providers time and other costs associated with older forms of signature, lodgement, notification and provision of information (e.g., printing and postage costs).

The proposed changes can also facilitate other flow-on improvements in the licensing/approval/charging system (e.g., enhanced automation and electronic provision/processing of information), which can further reduce costs and enhance the effectiveness and efficiency of the process for all parties.

For example, the department is working with WaterNSW and NRAR to implement improvements to the water licensing and approval system through the Water Licensing Improvement Program. This includes improvements for customers to modernise and improve water licensing and approvals through investment in policy, process and system enhancements. Enhancements include the digitisation of water supply work and water use approvals and amendments to processes and systems.

## 10.4.3 Comparison of costs and benefits

While difficult to quantify, clearly the benefits of the proposed changes to the regulation will exceed costs, resulting in a net benefit to the community (see Table 5).

Table 5: Costs and benefits of proposed changes to accommodate digitalisation

Proposed change	Costs	Benefits
<b>Signatures and authentication:</b> Enable the following methods of authentication: <ul style="list-style-type: none"> <li>• ,</li> <li>• electronic signatures</li> <li>• security steps to create and log into accounts.</li> </ul>	<ul style="list-style-type: none"> <li>• None (providing signature/authentication options consistent with contemporary practices)</li> </ul>	<ul style="list-style-type: none"> <li>• Saved time</li> <li>• Avoided printing and postage costs</li> <li>• Cost savings in relevant processes (e.g., licensing, approval and/or charging processes) over time</li> </ul>
<b>Newspapers:</b> require notification in a local newspaper published in the relevant area or, where a local paper is not available, in a newspaper circulating in that area.	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Saved time/cost, from enhanced clarity and practicality of requirements</li> </ul>



Proposed change	Costs	Benefits
<b>Lodgement:</b> clearly provide for the ability to lodge documents electronically	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Saved time</li> <li>• Avoided printing and postage costs</li> <li>• Cost savings in relevant processes over time</li> </ul>
<b>Service of notice/decision:</b> clarify this can be achieved via email	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Saved time</li> <li>• Avoided printing and postage costs</li> </ul>
<b>Notification:</b> clarify that notification can be in writing and can occur via email	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Saved time</li> <li>• Avoided printing and postage costs</li> <li>• Cost savings in relevant processes over time</li> </ul>
<b>Physical maps and registers for inspection:</b> maintain digital maps and registers and remove the need for physical copies of maps and registers to be held in Department offices.	<ul style="list-style-type: none"> <li>• None (physical maps and registers were rarely, if ever, inspected).</li> </ul>	<ul style="list-style-type: none"> <li>• Avoided costs of maintaining physical maps and registers</li> </ul>

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# 11 Applications in an approved form

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## 11.1 Current provisions of the regulation

Currently, clauses 9 and 25 of the regulation specify what must be included in applications under Parts 2 and 3, respectively, of Chapter 3 of the Act. This covers applications for:

- water access licences – which entitles its holder to specified shares in the available water within a specified water management area or from a specified water source (the share component), and to take water (s 56 of the Act)
- water use approvals, which authorise the use of water for a particular purpose at a particular location (s 89 of the Act)
- water management work approvals, which authorise the construction and use of a water supply work, drainage work or flood work (s 90 of the Act).
- activity approvals, including controlled activity approvals, which confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.

Clauses 9 and 25 of the regulation require that applications “must be in an approved form”, but they also specify other requirements. For example, clauses 9 and 25 require that an application “must be signed or otherwise authenticated by each applicant” (in addition to other requirements).

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## 11.2 Proposed change

The proposed change to the regulation is to remove prescriptive requirements for applications from clauses 9 and 25 of the regulation and instead just specify that the applications should be in an approved form.

This will allow the Minister to specify and communicate the requirements of applications for relevant licences and approvals.

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## 11.3 The rationale for or objective of the proposed change

The objective of the proposed change to the regulation is to provide more flexibility and allow for lower cost ways of submitting, assessing and processing licence and approval applications, without compromising water management outcomes.

Such flexibility can be achieved by removing lists of requirements for applications from the regulation and instead specifying in the regulation that the applications should be in a form approved by the Minister. This will allow the Minister to change the contents and form of applications, as required (e.g., in response to stakeholder concerns, changes in water management needs, technology change, etc).

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## 11.4 The costs and benefits of the proposed change

### 11.4.1 Costs

The department and WaterNSW may incur some costs over time in updating their systems for reviewing and processing applications. However, these are unlikely to be caused by the proposed changes to the regulation. Rather, the proposed changes to the regulation can allow approval forms to change to reflect improvements in licensing/approval systems, which can reduce costs and enhance the effectiveness of these systems (see below).

### **11.4.2 Benefits**

Providing more flexibility in application form and content will allow for lower cost ways of submitting, assessing and processing licence and approval applications, without compromising water management outcomes. This will allow the Minister to change the contents and form of applications to ensure they are suitably targeted (e.g., in response to stakeholder concerns, changes in water management needs, technology change, etc), and save time and cost for applicants, the department and WaterNSW.

At the same time as changes to the regulation are being developed, the department is implementing improvements to the water licensing and approval system through the Water Licensing Improvement Program. The department is working in partnership with WaterNSW and NRAR to deliver much-needed improvements for customers to modernise and improve water licensing and approvals through investment in policy, process and system enhancements. Enhancements include the digitisation of water supply work and water use approvals and amendments to processes and systems.

### **11.4.3 Comparison of costs and benefits**

The benefits of the proposed changes to the regulation will exceed costs, as they provide for a range of opportunities to enhance application forms and processes.

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# 12 Exemptions for excluded works

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## 12.1 Current provisions of the regulation

The regulation establishes exemptions from the need to hold a water access licence, a water use approval and a water supply work approval for excluded works specified in Schedule 1 of the regulation.

These excluded works include dams:

- **(1) solely for the control or prevention of soil erosion –**
  - from which no water is reticulated (unless, if the dam is fenced off for erosion control purposes, to a stock drinking trough in an adjoining paddock) or pumped, and
  - the structural size of which is the minimum necessary to fulfil the erosion control function, and
  - that are located on a minor stream.
- **(2) solely for flood detention and mitigation –**
  - from which no water is reticulated or pumped, and
  - that are located on a minor stream.
- **(3) solely for the capture, containment and recirculation of drainage and/or effluent, consistent with best management practice or required by a public authority (other than Landcom or the Superannuation Administration Corporation or any of their subsidiaries) to prevent the contamination of a water source, that are located on a minor stream**
- **(4) approved in writing by the Minister for specific environmental management purposes –**
  - that are located on a minor stream, and
  - from which water is used solely for those environmental management purposes.

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## 12.2 Proposed changes

The proposed changes would seek to clarify the scope of excluded works (i.e., exemptions) and clarify ambiguities in line with the policy intent..

Notably, the proposed changes to the regulation would not seek to change the regulatory coverage (i.e., they would not seek to expand or reduce the range and type of excluded works), rather they would seek to clarify the current regulatory coverage.

Changes made to each exemption in the regulation to align with the policy intent are outlined below:

- **(1) dams for the control or prevention of soil erosion –**
  - Updated to specify that the dam must be ‘constructed and used’ for the control or prevention of soil erosion
  - Reference to ‘solely’ has also been removed.
  - These changes make it clear that the dam qualifies for the exemption provided the dam is constructed and used for the purpose of the control and prevention of soil erosion.
- **(2) dams for flood detention and mitigation –**

- Updated to specify that the dam must be ‘constructed and used’ for the purpose of flood detention and mitigation, and more detail added to specify that water can only be reticulated and pumped from the dam for the purpose of releasing water between flood events.
- Reference to ‘solely’ has also been removed.
- These changes make it clear that to qualify for the exemption the dam must be constructed and used only for the purpose of flood detention and to mitigate the risk of flooding downstream.
- **(3) dams for the capture, containment and recirculation of drainage and/or effluent**
  - Updated to specify that the dam must be ‘constructed and used’ for the purpose of the capture and recirculation of drainage and/or effluent.
  - Reference to ‘solely’ has been removed.
  - Reference to ‘best management practice’ has been removed as the term cannot be clearly and concisely defined in the regulation to remove ambiguity around what it actually means. As ‘best management practice’ has been removed, this exemption in the regulation now states the dam must be constructed and used as required by a public authority (e.g. government agency, the Minister, state-owned corporations such as WaterNSW or Sydney Water, local council, etc).
  - These changes make it clear that to qualify for the exemption the dam must be ‘constructed and used’ only for the purpose of the capture and reticulation of drainage and/or effluent. It also requires the landholder to construct and use the dam according to any requirements given by the relevant public authority to ensure it is fit for purpose.
- **(4) dams approved in writing by the Minister for specific environmental management purposes –**
  - Updated to specify that the dam must be ‘constructed’ only for an environmental management purpose that is specified by the Minister and ‘used’ for an environmental management purpose specified by the Minister.
  - Reference to ‘solely’ has been removed.
  - These changes make it clear that the Minister must approve the environmental management purposes that dams are constructed and used for but these purposes may be different (i.e. to qualify for the exemption the dam must be constructed for a particular environment management purpose but this does not necessarily limit what the water captured in the dam can be used for). The Minister can approve environmental management purposes (other than those for which the dam was constructed) for which the water can be used once it has been captured.

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## 12.3 The rationale for or objective of the proposed changes

The current drafting of the above-mentioned ‘excluded works’ exemptions in Schedule 1 of the regulation has caused some uncertainty for stakeholders. This can make compliance difficult for dam owners and increase the costs and difficulty of compliance action by NRAR.

The objective of the proposed changes to the regulation is to provide further clarity to stakeholders about which works are exempt from the need to hold a licence and approval.

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## 12.4 The costs and benefits of the proposed changes

### **12.4.1 Costs**

Relative to the current regulation, the proposed changes are not intended to change the coverage of exemptions, rather they are seeking to clarify this coverage. Therefore, the proposed changes should not impose costs on dam owners, regulators, government agencies or any other segment of the community.

### **12.4.2 Benefits**

The proposed changes to the regulation are expected to enhance clarity to all stakeholders about the coverage of exemptions – including that, to qualify for an exemption, dams must be constructed and used for a particular purpose, but don't have to be used solely for that purpose. In turn, enhanced clarity can:

- reduce costs to dam owners – e.g., in understanding when and how exemptions apply
- reduce costs to the department in administering the regulation and its requirements and exemptions
- reduce costs to NRAR in assessing and enforcing compliance
- improve water management and environmental outcomes, from enhanced compliance.

### **12.4.3 Comparison of costs and benefits**

Although difficult to accurately quantify, the proposed changes to the regulation to enhance clarity about exemptions from the need to hold a water access licence, a water use approval and a water supply work approval for excluded works should generate a net benefit to the community.

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# 13 Carryover of water allocations

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## 13.1 Current provisions of the regulation

Clause 17(3) of the current regulation states that:

- Water allocations remaining in a water allocation account at the end of a water year may be carried over to the next water year, but only to the extent that the relevant water management plan permits.

Clause 17(4) of the current regulation states that:

- Subclause (3) is not limited or otherwise affected by any order in force under section 49A(1) of the Act.

Section 49A(1) of the Act allows the Minister to suspend the operation of water management plans during severe water shortages.

Therefore, clause 17(4) of the current regulation means that licence holders' water allocation carryover is protected from water sharing plan suspensions triggered by water shortages under section 49A(1) of the Act.

Notably, however, clause 17(4) of the current regulation does refer to 49B(1) of the Act, which allows the Minister to suspend the operation of any Basin management plan if there is an extreme event.

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## 13.2 Proposed change

The proposal is to change clause 17(4) of the regulation so that it refers to sections 49A(1) and 49B(1) of the Act, rather than merely section 49A(1) as is currently the case.

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## 13.3 The rationale for or objective of the proposed change

The intent of the proposed change is to ensure that licence holders' carryover is protected from any water sharing plan suspensions triggered by water shortages or extreme events across the state, including in Murray Darling Basin management areas. This promotes consistency in the treatment of carryover across NSW.

If licence holders' carryover is protected, they can use the water in the next year if conditions have improved. Allowing them to keep their carryover would not adversely impact other water users, critical needs or the environment during dry times/extreme events because access to the carryover would be restricted – it just delays them being able to access their water allocations. Licence holders would be able to use their carryover when the suspension of a water management plan or Basin management plan is lifted and any applicable water sharing plan rules and licence conditions allow them to take their carryover water.

Further, if carryover was lost, this would be a disincentive for licence holders to carryover water. This may encourage a "use it or lose it" mentality, which is not consistent with the efficient and sustainable use of water. There is value in enabling licence holders to have the flexibility to operate with certainty that they can carryover unused water.

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## 13.4 The costs and benefits of the proposed change

There is no cost of this proposal, and it has the benefit of enhancing certainty and consistency across the State in the treatment of carryover water allocation – which, in turn, can assist in promoting the sustainable and efficient use of water.



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## 14 Other proposed changes

This chapter outlines other proposed changes to the regulation. Many of these have a negligible to minor impact, as they are focused on removing unnecessary requirements or enhancing clarity around regulatory requirements rather than significantly changing the scope or extent of regulation.

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### 14.1 Dealings on Default – serving notices

Section 71X of the Act sets out the rules that apply when a security holder transfers/sells a water access licence, or holding in a water access licence, where the holder has defaulted on the payment of a debt or performance of an obligation under a contract or other legally enforceable arrangement relating to a security interest held over the licence.

This section of the Act states that “A security holder (or a receiver referred to in section 115A of the *Conveyancing Act 1919*) may transfer the access licence or holding in an access licence over which the security interest is held”. However, this transfer is subject to a range of conditions, as listed in Section 71X of the Act, including that:

*“notice is served, in accordance with the regulations, on the holder or co-holder of the licence who is in default (the defaulter), on any other person having a registered security interest (whether or not having less priority), or who has registered a caveat, over the licence or holding and on the Minister”.*

Clause 13(a) of the current regulation specifies what the above-mentioned notice must indicate, and clause 13(b) of the current regulation specifies that the notice must be served on a person in a manner in which a document may be served on a person under section 170 of the *Conveyancing Act 1919*.

#### 14.1.1 Proposed changes to the regulation

The proposal is to remove clause 13(b) from the current regulation – which specifies that the above-mentioned notice must be served in a manner consistent with section 170 of the *Conveyancing Act 1919*. Instead, the regulation will rely on existing standard requirements for service of water management-related documents under section 394 of the Act (the *Water Management Act 2000*).

Details of what the notice must indicate (what the notice must contain), which are currently listed under clause 13(a) of the regulation, would remain.

#### 14.1.2 Rationale for the proposed changes to the regulation

Requirements for the service of documents in Section 394 of the Act are not inconsistent with those in section 170 of the *Conveyancing Act 1919*. However, the requirements in Section 394 of the Act are more straightforward, drafted specifically for purposes under the Act and ensure greater consistency in the serving of documents under the Act – which means they are likely simpler for stakeholders and regulators to understand.

#### 14.1.3 Costs and benefits of the proposed changes to the regulation

The proposed change to the regulation would not be expected to change the way a notice is served under section 71X of the Act. Under both section 170 of the *Conveyancing Act 1919* and section 394 of the Act (which will now be relied upon), there are the options of servicing notices:

- in person
- by leaving it at, or sending it by post to, the relevant residential or business address
- by email.

However, this proposed change to the regulation is still likely to result in a net benefit – as it will enhance clarity to stakeholders, which will likely result in a marginal reduction in costs.

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## 14.2 Water Supply Authority to give reasons

Under clauses 204 to 206 of the current regulation, a person liable to pay a service charge levied by a water supply authority (WSA) may object to the levying of a service charge (clause 204), an increase to the service charge (clause 205), or a WSA's refusal to adjust a service charge.

Under clause 207(2)(b), a WSA must give the objector written notice of its decision on the objection.

### 14.2.1 Proposed change to the regulation

The proposal is to add a requirement that the WSA must give the objector written reasons for its decision.

### 14.2.2 Rationale for the proposed change to the regulation

The proposed addition to the regulation is to clarify expectations of WSAs.

### 14.2.3 Costs and benefits of the proposed change to the regulation

Most, if not all, WSAs would already be providing reasons for their decisions when they advise objectors of their decisions – as this is consistent with natural justice and reasonable customer service expectations. The proposed change to the regulation would just confirm expectations.

Therefore, we expect no to negligible costs of this proposed requirement, while it would have the benefit of clarifying expectations of WSAs and ensuring they consistently explain their reasons for their decisions when notifying objectors of these decisions.

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## 14.3 Advertising water restrictions in the NSW Gazette

Clause 141 of the current regulation allows a water supply authority to implement water restrictions in times of drought or other emergencies by publishing a notice of restrictions in a newspaper circulating in its area of operations.

### 14.3.1 Proposed change to the regulation

The proposed change to the regulation is to add a requirement to publish a notice of restrictions in the NSW Government Gazette (the Gazette).

### 14.3.2 Rationale for the proposed change to the regulation

The rationale for the proposed change is to increase transparency and consistency, by ensuring that all notices of restrictions are recorded in the Gazette.

### 14.3.3 Costs and benefits of the proposed change to the regulation

The proposed change would create a negligible administrative cost for each instance of water restrictions – reflecting the time it takes for a water supply authority to email a notification to the Gazette and for this document to be added to the Gazette.

The benefits of the change would be enhanced transparency and consistency in the recording and notification of water restrictions across NSW. This can assist in:

- enhancing water security and reliability planning over the long-term – by ensuring clear records of when restrictions were applied, where and for how long
- checking compliance with restrictions and, where necessary, taking enforcement action – which, in turn, can reduce compliance and enforcement costs and enhance the effectiveness of restrictions in achieving their objectives.

The benefits of this change are likely to exceed its costs.

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## 14.4 Statement of compliance for completed plumbing work

Clause 159(3) of the current regulation requires that, in issuing a certificate of compliance to a water supply authority following the completion of plumbing work, a person must not provide information that they know to be false or misleading.

### 14.4.1 Proposed change to the regulation

The proposed change to the regulation is to remove clause 159(3), and to instead rely on the relevant section of the *Crimes Act 1900*. The new regulation would note that the *Crimes Act 1900*, Part 5A contains offences relating to the making of false or misleading applications or providing false or misleading information or documents.

### 14.4.2 Rationale for the proposed change to the regulation

The proposed change would remove duplication, as the relevant offence is already covered by the *Crimes Act 1900*. A water supply authority (and any other relevant authority) can bring proceedings/prosecution if a person provides false or misleading information, under section 14 of the *Criminal Procedures Act 1986*.

### 14.4.3 Costs and benefits of the proposed change to the regulation

The proposed change would have the benefit of removing duplicative regulation and streamlining the regulation, at no cost.

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## 14.5 Objections to inclusion and exclusion of land within an irrigation corporation's area of operations

The current regulation requires that an objection to the inclusion (clause 52(b)) or exclusion (clause 54(b)) of land from an irrigation corporation's area of operations must be signed or otherwise authenticated by the objector.

### 14.5.1 Proposed changes to the regulation

The proposed change to the regulation would remove the requirement for signature or authentication in objecting to the inclusion or exclusion of land within an irrigation corporation's area of operations – i.e., the requirements in clauses 52(b) and 54(b) of the current regulation would be removed.

### 14.5.2 Rationale for the proposed changes to the regulation

The requirement for a signature is unnecessary for a notification of this nature and potentially stifles modern (electronic) forms of communication.

### 14.5.3 Costs and benefits of the proposed changes to the regulation

The proposed changes to the regulation would result in minor administrative cost savings at no cost – i.e. a net benefit.

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## 14.6 Suspension or cancellation of discharge approval and plumbing permits

The current regulation lists the circumstances when a water supply authority may suspend or cancel a discharge approval (clause 153) and a plumbing permit (clause 166).

### **14.6.1 Proposed change to the regulation**

The current regulation does not explicitly state that cancellation or suspension of plumbing permits and discharge approvals can be subject to conditions.

The proposed change to the regulation would clearly state that Essential Energy (the only water supply authority that issues discharge approvals and plumbing permits) may suspend or cancel an authorisation (i.e., a plumbing permit or discharge approval) unconditionally or subject to conditions. The conditions may include, but are not limited to, conditions to which the approval was subject immediately before it was suspended or cancelled.

Conditions of cancellation or suspension of these permits and approvals could include, for example:

- the suspension may be conditioned to apply for a set period of time or until certain information or evidence is provided that work can be carried out safely or in accordance with set standards (or the conditions of the original authorisation)
- a cancellation may be conditioned to take effect on a certain day to allow time for the permit or approval holder to prepare for the impending cancellation.

In relation to a voluntary suspension or cancellation of an authorisation (as requested by the holder), the suspension or cancellation may be subject to conditions that require the holder to, for example:

- complete certain work or take measures to ensure unfinished works do not pose risks to other water users, the public and/or the environment, or
- supply certain evidence or information to Essential Energy.

### **14.6.2 Rationale for the proposed change to the regulation**

The rationale for the proposed change to the regulation is to clarify that conditions may be placed on suspensions and cancellations of plumbing permits and discharge approvals. This can enhance certainty to all stakeholders and allow regulation to be more targeted and effective.

### **14.6.3 Costs and benefits of the proposed change to the regulation**

The proposed change to the regulation would enhance certainty to all stakeholders and allow for more targeted regulation (which can lower costs and/or enhance outcomes under the regulation), without creating costs.

Therefore, the proposed change would result in a net benefit.

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## **14.7 Some exemptions relating to plumbing work may be granted unconditionally or conditionally**

Under clause 161 of the current regulation, a water supply authority may grant exemptions to the requirements to hold a plumbing permit, complete a certificate of compliance with respect to plumbing work and use only authorised plumbing fittings for plumbing work.

### **14.7.1 Proposed change to the regulation**

The proposed new regulation would clearly state that the water supply authority (Essential Energy) can place conditions on the above-mentioned exemptions – i.e., that the above-mentioned exemptions can be granted conditionally or unconditionally. For example, conditions applied to exemptions could include that the exemption only applies for a certain period of time, or that the exemption from only using authorised plumbing fittings applies to particular aspects or sections of the plumbing work.

## **14.7.2 Rationale for the proposed change to the regulation**

The proposed change to the regulation would clarify that the water supply authority (Essential Energy) can place conditions on the above-mentioned exemptions. This can enhance certainty to all stakeholders and allow regulation to be more targeted and effective.

## **14.7.3 Costs and benefits of the proposed change to the regulation**

The proposed change to the regulation would enhance certainty to all stakeholders and allow for more targeted regulation (which can lower costs and/or enhance outcomes under the regulation), without creating costs.

Therefore, the proposed change would result in a net benefit.

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# **14.8 Variation of conditions of authorisation**

The current regulation provides that a water supply authority may grant a discharge approval (clause 150) and a plumbing permit (clause 164) subject to conditions.

## **14.8.1 Proposed change to the regulation**

The proposed change to the regulation would clearly state that Essential Energy (the only water supply authority that issues discharge approvals and plumbing permits) must not vary a condition of the authorisation (i.e., a plumbing permit or discharge approval) that is imposed by the regulation or in a way that is inconsistent with a condition imposed by the regulation.

## **14.8.2 Rationale for the proposed change to the regulation**

The proposed change to the regulation would ensure that any authorisations granted by Essential Energy are consistent with the intent of the regulation.

## **14.8.3 Costs and benefits of the proposed change to the regulation**

The proposed change is expected to impose no cost. It would have the benefit of clarifying the scope of authorisations that may be granted by Essential Energy and ensuring consistency between the regulation and those authorisations.

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# **14.9 Record of service charges**

The current regulation states that a water supply authority must keep records relating to each service charge as required by the Minister and must keep the records in a manner approved by the Minister (clause 211).

## **14.9.1 Proposed change to the regulation**

Under the proposed change to the regulation, a water supply authority could keep records relating to each service charge in written or electronic form as opposed to “in a manner approved by the Minister”.

The new regulation would also specify the information that a water supply authority must record in relation to each service charge levied. This includes:

- the name of each person liable to pay the service charge
- the amount of the service charge, including adjustments, if any, made to the amount of the service charge,
- the date on which the service charge is payable

- a description of the land in relation to which the service charge is levied.

### 14.9.2 Rationale for the proposed change to the regulation

The rationale for the proposed change is to enhance clarity of requirements, and to simply and clearly outline these in the regulation rather than have them specified outside the regulation.

### 14.9.3 Costs and benefits of the proposed change to the regulation

The proposal would not likely change the practice of water supply authorities, who should currently keep records relating to each service charge in written or electronic form consistent with the provisions of the proposed new regulation. Therefore, the proposed change would not impose costs on water supply authorities.

However, it would enhance clarity of requirements, which may result in some minor reduction in administrative costs to water supply authorities. It would also result in some minor administrative cost savings to the department, as there would be no need for the Minister to specify or approve how records of service charges must be kept.

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## 14.10 Supplementary water (Lowbidgee) access licences

Under the Water Sharing Plan for the Murrumbidgee Regulated River Water Source, supplementary water (Lowbidgee) access licences and supplementary water access licences can only take water during periods of uncontrolled flows (otherwise known as supplementary water events) subject to certain access rules being met. The Lowbidgee licence subcategory was created under the Act so that specific rules could be imposed in relation to flood irrigation on the Lowbidgee floodplains during announced high-flow events. A Lowbidgee licence effectively allows its holder to divert water through works for flood irrigation on the Lowbidgee floodplains, including the Nimmie-Caira, Redbank North and Redbank South areas of the Lowbidgee Flood Control and Irrigation District, during periods of high flow.

Whilst a Lowbidgee licence is a form of supplementary water access licence it is also a specific purpose access licence (SPAL). This is because subcategories of a licence are considered to be a SPAL (see Dictionary in the Act).

Being both a supplementary licence and a SPAL creates an issue in relation to maintaining the tenure of these licences. The intent is for these licences to have ongoing tenure – the same as for other regulated river supplementary access licences. Supplementary water access licences can only be cancelled when the respective water sharing plan ceases to make provision for the extraction of water under that licence, (i.e. under section 77A(1) of the Act).

However, SPALs must be cancelled if the Minister forms the opinion that the purpose for which it was granted no longer exists, i.e. under section 77A(2) of the Act. If Lowbidgee licences were managed like other SPALs, the Minister would be required to cancel them between announced high-flow events as the purpose for which they were granted technically ceases. To prevent this from happening, the current regulation (Part 2, Division 1, clause 5(2)) exempts Lowbidgee licences from the definition of a SPAL under the Act.

### 14.10.1 Proposed change to the regulation

In November 2024 an amendment was made to the Act (via the *Water Legislation Amendment Act 2024*) that has the same legal effect as Part 2, Division 1, clause 5(2) of the current regulation. As a result, this section of the current regulation has been removed as part of the remake of the regulation.



### **14.10.2 Rationale for the proposed change to the regulation**

The removal of clause 5(2) from the regulation will not adversely impact supplementary (Lowbidgee) access licences and how they are managed. Amending the Act to have the same legal effect is simply a more legally robust way of ensuring that these licences can be managed the way they were intended.

### **14.10.3 Costs and benefits of the proposed changes to the regulation**

There are no costs associated with the change to the regulation. A clause of the regulation is simply being removed as it is no longer required.

There is a benefit to both regulators and licence holders, as the way in which the Act amendment deals with this issue is more robust and easier to understand than the convoluted exemption that applied to Lowbidgee licences in the regulation.