

Department of Planning and Environment

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# An overview – Modernising regulations for joint private works schemes

Consultation paper

October 2022





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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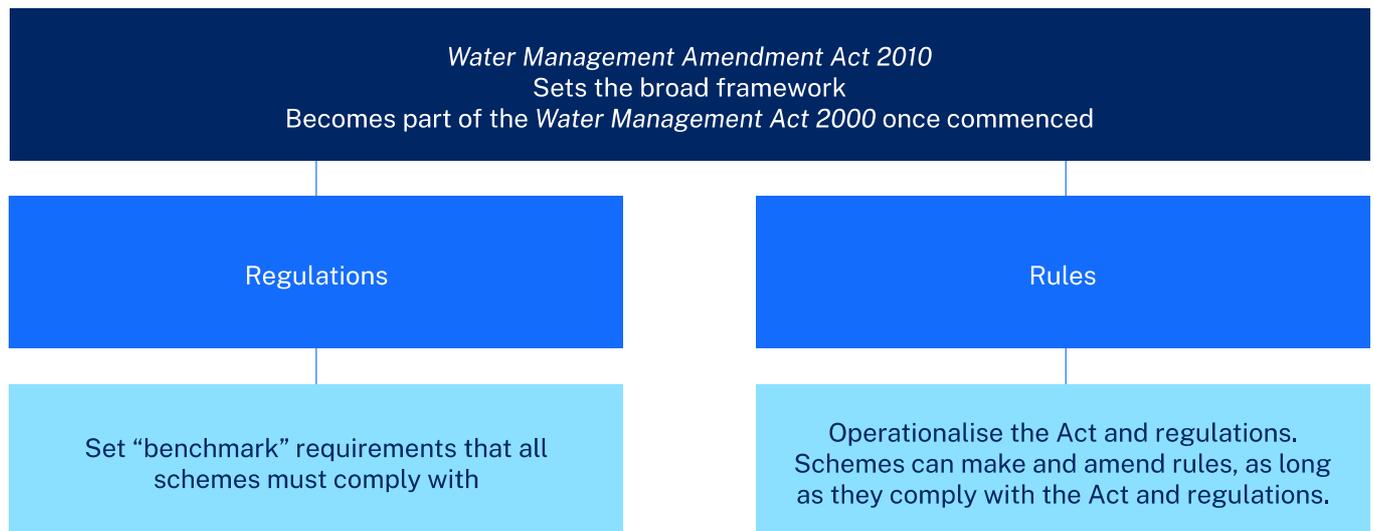
# Introduction

The NSW Government is simplifying the laws managing private irrigation boards, private drainage boards and private water trusts (joint private works schemes). By applying parts of the *Water Management Amendment Act 2010* (NSW) we will:

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

To implement the changes, we are working with joint private works schemes to make clear and simple regulations and rules. Figure 1 below illustrates our tiered approach to carrying this out. This approach gives schemes flexibility when managing their operations, while giving scheme members fundamental safeguards.

Figure 1. The new laws



This discussion paper is one of 3 we have prepared to guide consultation on the changes:

1. **Overview** (this paper)– background information about the changes and key areas for consideration.
2. **Proposed matters for regulations** paper– to address administrative and operational matters where we think regulations need to state the minimum standards expected of private water corporations and private water trusts.
3. **Draft model rules** paper (to be released before the third stakeholder advisory panel meeting) – an example of the internal governance rules private water corporations and private water trusts need to operate efficiently and fairly.



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## Purpose of this paper

The purpose of this paper is to give an overview of the:

- benefits of the new laws (including the *Water Management Amendment Act 2010*, regulations and rules) for joint private works schemes
- key changes we are seeking input on as we develop new regulations and rules in consultation with schemes.



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## Have your say

We are seeking input from stakeholders. We would like to know if the proposed changes will give private water corporations and private water trusts a robust framework in which to operate and enough flexibility to meet their individual business needs.

Specific questions about the development of new regulations and rules are included in separate documents, as outlined above.

In this paper, we are seeking feedback on the overall suite of changes. You can give feedback by:

- calling **1300 081 047**
- emailing [jpws@dpie.nsw.gov.au](mailto:jpws@dpie.nsw.gov.au).



### Questions

1. Do you support the proposed changes? Why/why not?
2. Have we given enough guidance about the proposed changes? Do you need more guidance materials? Why/why not?

# Joint private works schemes

Joint private works schemes are community-led organisations. They are established among landholders to manage shared infrastructure for providing water or draining land. Table 1 summarises the 3 types of schemes.

**Table 1. Types of joint private works schemes**

Category	Private irrigation board	Private drainage board	Private water trust
<b>Governing body</b>	Elected board of management	Elected directors of a drainage union	Members of the private water trust
<b>Area of operations</b>	Private irrigation district. This may be a: <ul style="list-style-type: none"> <li>• private water supply district</li> <li>• private water supply and irrigation district</li> </ul>	Drainage district	Water supply district
<b>Functions</b> Note: each board or trust is established with specific functions, which could include functions outlined here.	<ul style="list-style-type: none"> <li>• Construct, maintain and operate works supplying water for domestic and stock use, and for irrigation in certain circumstances</li> <li>• Supply water for domestic and stock purposes, and for irrigation in certain circumstances<sup>1</sup></li> </ul>	Construct and use works to drain land where: <ul style="list-style-type: none"> <li>• considerable quantities of water build up or flow because there are not enough works for drainage, flood prevention or to lessen the effect of tides</li> <li>• the accumulation or flow harms the land<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Maintain and administer works for water supply, water conservation, irrigation or drainage</li> <li>• Construct and maintain flood works</li> <li>• Supply water for stock purposes, domestic purposes or for irrigation<sup>3</sup></li> </ul>

<sup>1</sup> In keeping with the *Water Management Act 2000* and the *Private Irrigation Districts Act 1973*.

<sup>2</sup> In keeping with the *Drainage Act 1939*.

<sup>3</sup> In keeping with the *Water Management Act 2000* and the *Water Act 1912*.

# Why we are changing the laws

Joint private works schemes are currently managed under Chapter 4 of the *Water Management Act 2000* and the *Water Management (General) Regulation 2018*. However, the laws managing schemes have not substantially changed since they were first established in 1865. This means the current laws are complex to administer.

In 2010, the NSW Parliament passed new laws to manage joint private works schemes. When these laws start, schemes will benefit as described in Figure 2 below.

**Figure 2. Benefits of new regulations**

	<b>Reduce red tape</b>	<ul style="list-style-type: none"><li>• Reduce requirements for the governor or minister's approval for internal administrative changes</li><li>• Remove requirements for publication in the NSW Government Gazette for operational matters</li></ul>
	<b>More autonomy</b>	<ul style="list-style-type: none"><li>• Schemes can make and amend their rules of administration</li><li>• Schemes can tailor rules to their circumstances</li><li>• Private water trusts can apply to become private water corporations</li></ul>
	<b>More powers</b>	<ul style="list-style-type: none"><li>• New powers of entry to investigate potential breaches of agreements</li><li>• New powers to impose charges for breaches of agreements</li></ul>

# The changes

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## How scheme functions will change

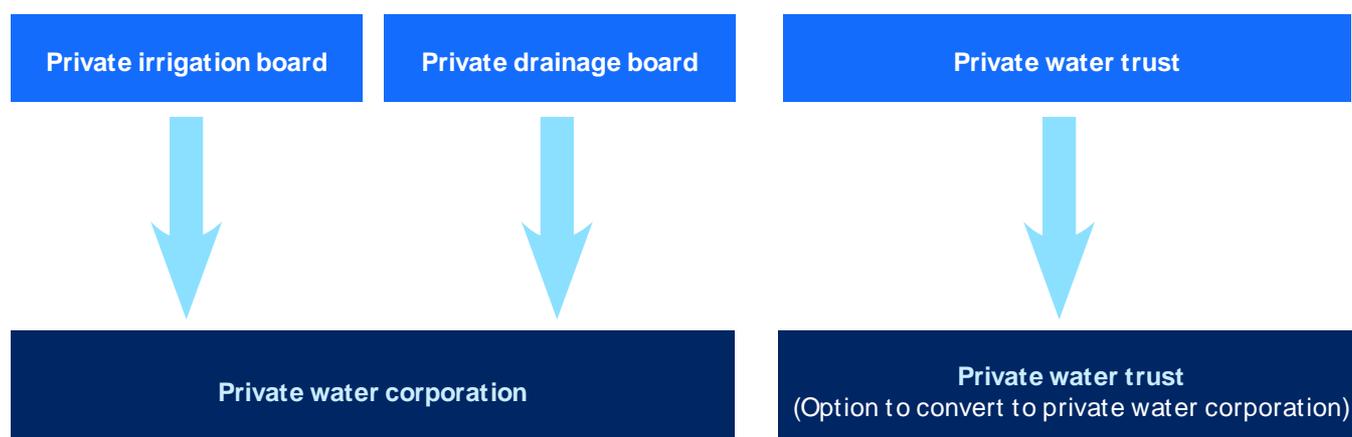
When the new laws start, the scheme functions will be consistent for private water corporations and private water trusts: to provide, maintain or operate a water supply system, water distribution system or drainage system.

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## How scheme types will change

The legal status of the current irrigation boards, drainage boards and private water trusts will remain the same. For example, a private water corporation will be taken to be a continuation of, and the same legal entity as, the private irrigation board or private drainage board it replaces. Figure 3 summarises how the 3 types of schemes will change.

**Figure 3. Changes to scheme types**



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## How scheme operations will change

The key modernising elements of the new laws are for schemes to have greater autonomy, and greater powers to perform their functions. The NSW Government would not need to be involved in the internal affairs of schemes if they are operating within the law and their internal governance rules.

As the government's role in how schemes operate will be reduced, schemes will need to ensure they have appropriate resources and processes in place to exercise their greater powers responsibly, in ways that:

- do not create increased legal and financial risks for the scheme
- are fair and equitable for members.

### Key benefits



**No governor approvals**



**No NSW Government Gazette requirements for operations**



**Option to amalgamate schemes**



**Know when relevant land is sold**



**Consistent approach across water supply and drainage works**



**Consistent and transparent financial management**



**Minister can direct schemes to comply with their rules**

### Key issues to consider

#### Scheme rules

##### What is new?

Schemes can make and amend their own rules for their administration. For example, the:

- election and terms of board members and trustees
- transfer of water entitlements between members.

##### What is the issue?

There is an opportunity for schemes to develop a set of rules that support transparency, due process, best-practice corporate governance and reduced financial and legal risks.

## Works plans

### What is new?

All schemes must have an up-to-date document that specifies:

- the assets within the scheme
- the location of the assets
- land within the scheme boundary.

### What is the issue?

There are challenges for schemes in preparing a works plan, for example, if historical records on assets and scheme boundaries are lost.

## Distribution works

### What is new?

All schemes may require their members or other landholders supplied by them to:

- provide water delivery systems and storage works
- maintain water delivery systems and storage works.

This requirement previously applied to private irrigation boards only and may not be applicable to private drainage boards.

### What is the issue?

There are challenges for landholders in providing or maintaining works.

There is an opportunity to provide due process that:

- protects the rights of individual landholders
- allows schemes to operate their water supply systems, water distribution systems or drainage systems for the benefit of all members.

## Powers of entry for investigations

### What is new?

For **private water corporations only**, authorised people will have the power to enter private land to investigate if there is a suspected breach of the agreement for water supply, distribution, or drainage.

### What is the issue?

There is an opportunity to provide due process that protects the rights of landholders and allows schemes to enforce agreements. This would consider best-practice processes, such as providing a notice period before entry. A grievance process would reduce legal risks for schemes.

## Enforcement

### **What is new?**

**Private water corporations only** will have the power to charge for water taken illegally or damage to works.

### **What is the issue?**

There is an opportunity to provide due process that protects the rights of landholders and allows schemes to enforce agreements. Private water corporations need to make clear when they will exercise enforcement powers. Including a grievance process would reduce legal risks for schemes.

## Winding up

### **What is new?**

Schemes can wind up voluntarily, and the minister can appoint an administrator under certain circumstances.

### **What is the issue?**

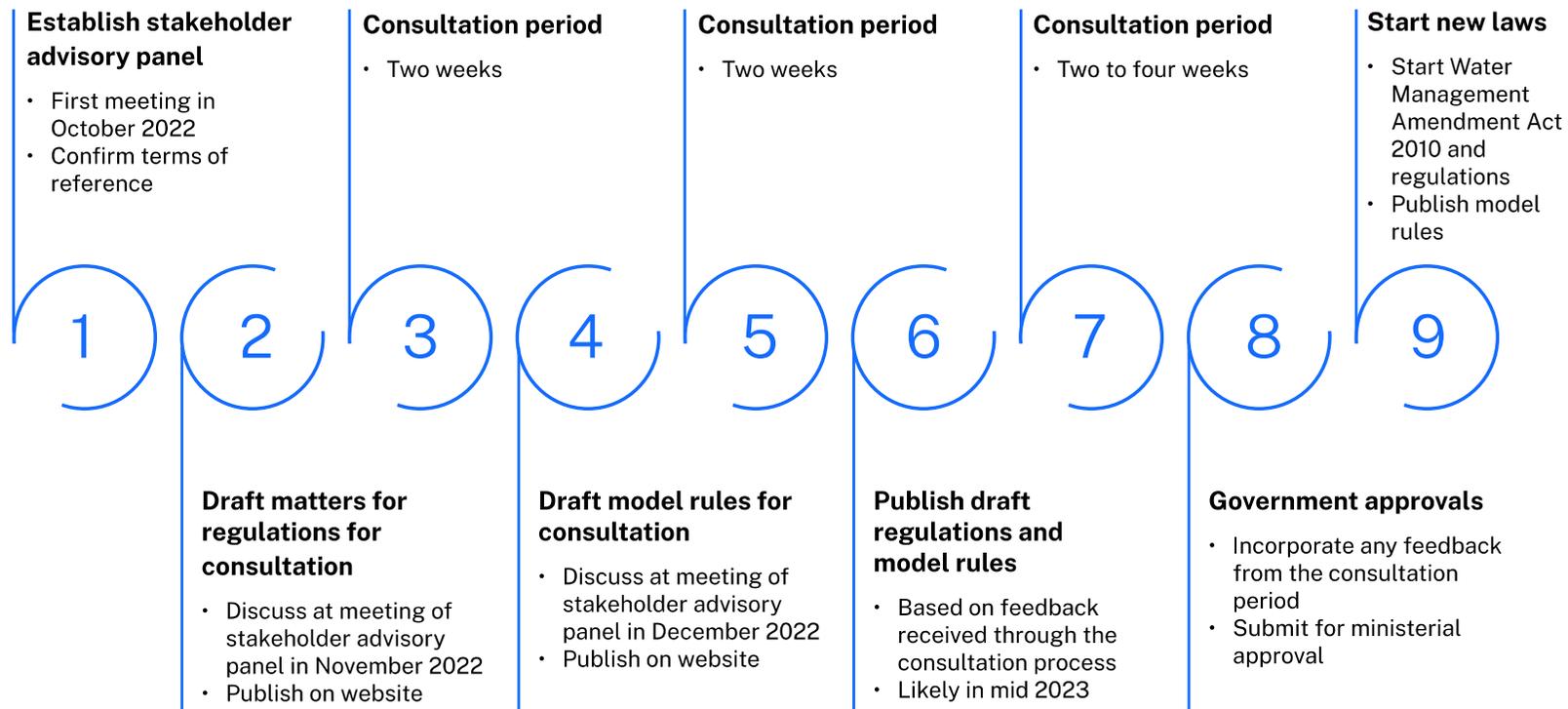
Where there are inactive schemes, there should be a transparent process where stakeholders have opportunities to make submissions, and scheme assets and liabilities are dealt with before dissolution.

# How we will we get there

## Key milestones

Consultations to develop new rules and regulations will take at least 12 months. The diagram below describes the process and estimated timeframes, subject to consultation.

**Figure 4. Process for implementation**



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## Transitional arrangements

When the new laws start, transitional arrangements will need to be in place. While existing schemes will retain their status as a legal entity, operate in the same areas, own the same assets, and have the same board members or trustees (until their next election), the consultation process will consider some key transitional decisions.

**Figure 5. Key transitional decisions for consideration during consultation**

	<b>Board members/trustees</b>	<ul style="list-style-type: none"><li>• When to have the first election?</li></ul>
	<b>Meetings</b>	<ul style="list-style-type: none"><li>• When to have the first general meeting to adopt new rules and works plan?</li></ul>
	<b>New rules</b>	<ul style="list-style-type: none"><li>• When to adopt new rules? and new charges?</li></ul>