



New South Wales

# Water Management Amendment (Transparency of Water Rights) Bill 2020

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Water Management Act 2000* (*the Act*), the *Water Management (General) Regulation 2018* (the *Water Regulation*), the *Constitution Act 1902* and the *Constitution (Disclosures by Members) Regulation 1983* as follows—

- (a) to facilitate public access to information relating to water access licences (within the meaning of the Act) and recorded in the Water Access Licence Register established by the Act (the *Access Register*),
- (b) to impose requirements relating to maintaining and updating the Access Register,
- (c) to provide for the independent audit of the Access Register,
- (d) to impose requirements relating to the information to be provided in applications for water access licences,
- (e) to require the public disclosure of interests in water access licences held by Members of Parliament and the spouses of Members of Parliament,
- (f) to make other consequential amendments,
- (g) to insert provisions of a transitional nature consequent on the enactment of the proposed Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

**Schedule 1[1]** amends section 71 to provide that the Minister for Water, Property and Housing (the *Minister*) may determine the form and manner of the Access Register subject to requirements imposed by substituted section 71J and proposed section 71JA. The proposed amendment also clarifies that the purposes of the Access Register include creating, maintaining and updating records relating to water access licences and licence holders and facilitating public access to those records.

**Schedule 1[2]** inserts proposed section 71CA, which provides for the independent audit of the Access Register by the Natural Resources Commission by 31 December 2020 and at subsequent intervals of 2 years.

**Schedule 1[5]** requires the Minister to ensure that the Access Register is kept up to date and, in particular, that the Access Register is amended to record changes of details of water access licences.

**Schedule 1[6]** regulates access to information recorded in the Access Register. Substituted section 71J provides for the information to be made publicly available through an electronic search facility and prohibits restrictions being placed on access to the information (other than a requirement for payment of an approved fee). The substituted section also creates a regulation-making power for or with respect to the authentication of searches and certification of search results. Proposed section 71JA requires the Access Register to be searchable by means of the entry of certain details relating to water access licences. **Schedule 1[3], [4] and [7]** make consequential amendments.

**Schedule 1[8]** inserts additional categories of information relating to water access licences that are to be recorded in the Access Register by the Minister when registering those licences.

**Schedule 1[9]** inserts a transitional provision requiring the holder or co-holder of a water access licence that is in force on the day on which the proposed Act commences, or for which an application was made but not determined by that day, to provide the Minister with additional information relating to that licence. The information corresponds with information that the proposed Act requires to be included in the approved form for a water access licence application. A failure to comply may result in the cancellation of the relevant water access licence and will make the holder or co-holder ineligible to apply for further water access licences for the duration of the non-compliance. The Minister is to ensure that the additional information is recorded in the Access Register.

## **Schedule 2      Amendment of other legislation**

**Schedule 2.1[1]** inserts proposed section 14A(1A) in the *Constitution Act 1902*. The proposed subsection clarifies that a regulation made under section 14A(1) of that Act may require the disclosure of pecuniary interests or other matters held by or relating to spouses of Members of either House of Parliament. **Schedule 2.1[2]** makes a consequential amendment.

**Schedule 2.2[3]** inserts proposed clause 8A in the *Constitution (Disclosures by Members) Regulation 1983*. The proposed clause requires a Member of Parliament to disclose, with limited exceptions, the water access licence number of each water access licence in which the Member or the Member's spouse (if any) has an interest (or had an interest at any time during the period of 5 years ending on the date on which the Member takes the pledge of loyalty) and the nature of that interest. **Schedule 2.2[1], [2] and [4]–[11]** make consequential amendments.

**Schedule 2.3[2]** amends the Water Regulation to require an application for a water access licence under Part 2 of Chapter 3 of the Act to be verified by statutory declaration.

**Schedule 2.3[3]** inserts proposed clause 9(1A) in the Water Regulation. The proposed subclause specifies information that is to be required by the approved form for an application for a water access licence under Part 2 of Chapter 3 of the Act. **Schedule 2.3[1]** makes a consequential amendment.

**Schedule 2.3[4]** amends the Water Regulation to require the holder or co-holder of a water access licence to notify the Minister of any change of details of the licence recorded in the Access Register within 28 days of becoming aware of the change.



New South Wales

# Water Management Amendment (Transparency of Water Rights) Bill 2020

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New South Wales

# Water Management Amendment (Transparency of Water Rights) Bill 2020

No. , 2020

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## **A Bill for**

An Act to amend the *Water Management Act 2000* with respect to the provision, maintenance and accessibility of information relating to water access licences; and for other purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Water Management Amendment (Transparency of Water Rights) Act 2020*.

3

4

**2 Commencement**

5

This Act commences on the date of assent to this Act.

6

<b>Schedule 1</b>	<b>Amendment of Water Management Act 2000</b>	1
	<b>No 92</b>	2
<b>[1]</b>	<b>Section 71 Water Access Licence Register</b>	3
	Omit section 71(3) and (4). Insert instead—	4
	(3) Subject to sections 71J and 71JA, the Access Register is to be kept in the form and manner determined by the Minister.	5 6
	(4) The purposes of the Access Register include the following—	7
	(a) to create, maintain and update records of the rights, interests and entitlements held in and claimed over access licences and the persons holding or claiming those rights, interests and entitlements,	8 9 10
	(b) to facilitate public access to those records.	11
	<b>Note.</b> Public registers are subject to Part 6 of the <i>Privacy and Personal Information Protection Act 1998</i> .	12 13
<b>[2]</b>	<b>Section 71CA</b>	14
	Insert after section 71C—	15
	<b>71CA Audit of Access Register</b>	16
	(1) The Minister is to ensure that the Access Register is audited in accordance with this section.	17 18
	(2) An audit of the Access Register is to be carried out for the purpose of ascertaining whether the provisions of this Division are being given effect to.	19 20
	(3) An audit under this section is to be carried out by the Natural Resources Commission.	21 22
	(4) An audit is to be completed—	23
	(a) by 31 December 2020, and	24
	(b) at intervals of 2 years after 31 December 2020.	25
	(5) The Natural Resources Commission is to provide the Minister with a report on each audit under this section as soon as reasonably practicable after the audit is completed.	26 27 28
	(6) The Minister is to table a response to each audit under this section in each House of Parliament within 6 months after receiving the Natural Resources Commission's report on the audit.	29 30 31
<b>[3]</b>	<b>Section 71FA</b>	32
	Insert before section 71G—	33
	<b>71FA Definition</b>	34
	In this Subdivision, <i>details</i> of an access licence means the following information recorded in the Access Register—	35 36
	(a) matters recorded under section 71A in relation to the licence,	37
	(b) matters recorded under Part 1 of Schedule 1A in relation to the licence.	38
<b>[4]</b>	<b>Section 71H Searches of the Access Register</b>	39
	Omit the section.	40

<b>[5] Section 71I Correction and amendment of Access Register</b>	1
Insert at the end of the section—	2
(2) The Minister is to ensure that the Access Register is kept up to date and, in particular, that the Access Register is updated to record changes of details of access licences that are notified by holders or co-holders of those licences or of which the Minister becomes aware.	3 4 5 6
<b>[6] Sections 71J and 71JA</b>	7
Omit section 71J. Insert instead—	8
<b>71J Public access to information in Access Register</b>	9
(1) The Minister is to make the information recorded in the Access Register available to members of the public in accordance with this section.	10 11
(2) The information is to be made available through an electronic search facility on a publicly accessible website.	12 13
(3) The information is to be made available on payment of the fee (if any) approved by the Minister.	14 15
(4) A fee approved under subsection (3)—	16
(a) may be charged in relation to searches carried out within a specified period of time, in relation to individual searches or on another basis, and	17 18
(b) if charged in relation to individual searches—is not to exceed \$10 per search.	19 20
(5) Except as provided by subsections (3) and (4), access to the information is not to be restricted in any way.	21 22
(6) The regulations may make provision for or with respect to—	23
(a) the authentication of searches of the Access Register, and	24
(b) the certification of the results of those searches.	25
<b>71JA Standards for Access Register search facility</b>	26
The electronic search facility referred to in section 71J(2) is to enable details of access licences to be obtained by means of the entry of any of the following—	27 28 29
(a) the name of an individual or corporation,	30
(b) an ABN,	31
(c) the name of a government department,	32
(d) the name of an irrigation scheme,	33
(e) the number of an access licence,	34
(f) the number of a water supply work approval,	35
(g) any other matter prescribed by the regulations for the purposes of this section.	36 37
<b>[7] Schedule 1A Access Register</b>	38
Omit “in such form as the Minister considers appropriate” from clause 1(1).	39
<b>[8] Schedule 1A, clause 1(1)(f)–(j)</b>	40
Insert after clause 1(1)(e)—	41



(f)	the category or subcategory of the licence,	1
(g)	the date on which the licence was granted and (if applicable) on which the licence is cancelled,	2 3
(h)	the purchase price (if any) of the licence,	4
(i)	the water access licence number of the licence,	5
(j)	any other information required by the approved form for the licence application.	6 7
<b>[9]</b>	<b>Schedule 9 Savings, transitional and other provisions</b>	8
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	9
<b>Part</b>	<b>Provisions consequent on enactment of Water Management Amendment (Transparency of Water Rights) Act 2020</b>	10 11 12
	<b>Definition</b>	13
	In this Part, <i>amending Act</i> means the <i>Water Management Amendment (Transparency of Water Rights) Act 2020</i> .	14 15
	<b>Provision of additional details for Access Register</b>	16
(1)	This clause applies to access licences—	17
(a)	that were in force on the day on which the amending Act commenced, or	18
(b)	for which an application was made before the day on which the amending Act commenced but was not determined on or before that day.	19 20 21
(2)	A holder or co-holder of an access licence to which this clause applies must, within 12 months of the commencement of the amending Act, provide the Minister with information that would have been required by the approved form if the licence had been applied for on or after the day on which the amending Act commenced.	22 23 24 25 26
(3)	If a holder or co-holder of an access licence to which this clause applies fails to comply with subclause (2)—	27 28
(a)	the Minister may cancel the licence, and	29
(b)	the holder or co-holder is not eligible to apply for further access licences until the required information is provided.	30 31
(4)	The Minister is to ensure that information provided under this clause is recorded in the Access Register.	32 33

<b>Schedule 2</b>	<b>Amendment of other legislation</b>	1
<b>2.1</b>	<b>Constitution Act 1902 No 32</b>	2
<b>[1]</b>	<b>Section 14A Disclosure of pecuniary interests and other matters by Members</b>	3
	Insert after section 14A(1)—	4
	(1A) To avoid doubt, and without limiting subsection (1), a regulation made under subsection (1) may require the disclosure of pecuniary interests or other matters held by or relating to spouses of Members of either House of Parliament.	5 6 7 8
<b>[2]</b>	<b>Section 14A(8)</b>	9
	Insert after section 14A(7)—	10
	(8) In this section—	11
	<i>spouse</i> , of a person, means the following but, if more than one person would qualify as the person’s spouse, means only the latest person to qualify—	12 13
	(a) a person to whom the person is legally married (including a husband or wife of the person),	14 15
	(b) the person’s de facto partner.	16
<b>2.2</b>	<b>Constitution (Disclosures by Members) Regulation 1983</b>	17
<b>[1]</b>	<b>Clause 6A Supplementary ordinary returns</b>	18
	Insert “, 8A” after “8” in clause 6A(4)(a).	19
<b>[2]</b>	<b>Clause 7 Interpretation—Part 3</b>	20
	Insert in alphabetical order in clause 7(1)—	21
	<i>spouse</i> , of a person, has the same meaning as in section 14A of the Act.	22
	<i>water access licence</i> means an access licence within the meaning of the <i>Water Management Act 2000</i> .	23 24
<b>[3]</b>	<b>Clause 8A</b>	25
	Insert after clause 8—	26
	<b>8A Water access licences</b>	27
	(1) A Member must disclose in a primary return and an ordinary return—	28
	(a) the water access licence number of each water access licence in which the Member or the Member’s spouse (if any) had an interest—	29 30
	(i) in the case of a primary return—on the primary return date or at any time during the period of 5 years ending on the primary return date, or	31 32 33
	(ii) in the case of an ordinary return—at any time during the ordinary return period, and	34 35
	(b) the nature of the interest in each water access licence.	36
	(2) An interest in a water access licence need not be disclosed by a Member in a primary return or an ordinary return if—	37 38
	(a) the Member or Member’s spouse had the interest only in his or her capacity as the executor or administrator of the estate of a deceased	39 40

person and neither the Member nor the Member’s spouse was a beneficiary under the will or intestacy, or

- (b) the Member or Member’s spouse had the interest only in his or her capacity as a trustee and acquired the interest in the ordinary course of any occupation which is not related to the Member’s duties as a Member.

**[4] Schedule 1 Forms**

Insert “, 8A” after “8” in item 2 of the matter headed “Directions” in Form 1.

**[5] Schedule 1, Form 1, Section 1, Part 1A**

Insert after Part 1—

**Part 1A Water access licences**

Under clause 8A of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in Part 1A of the return the water access licence number of each water access licence in which you or your spouse had an interest on the date on which you took the pledge of loyalty (or at any time during the period of 5 years ending on that date) and the nature of the interest in the water access licence. Make a separate entry for each water access licence, separated by a line, in Part 1A of the return.

**Example entries only—**

Water access licence number	Nature of interest
WAL12345678	Co-holder
WAL87654321	Holder

**[6] Schedule 1, Form 1, Section 2, Part 1A**

Insert after Part 1—

**Part 1A Water access licences**

Water access licence number	Nature of interest

**[7] Schedule 1, Form 2, Section 1, Part 1A**

Insert after Part 1—

**Part 1A Water access licences**

Under clause 8A of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in Part 1A of the return the water access licence number of each water access licence in which you or your spouse had an interest at any time during the ordinary return period and the nature of the interest in the water access licence. Make a separate entry for each water access licence, separated by a line, in Part 1A of the return.

**Example entries only—**

Water access licence number	Nature of interest
WAL12345678	Co-holder
WAL87654321	Holder

**[8] Schedule 1, Form 2, Section 2, Part 1A**

Insert after Part 1—

**Part 1A Water access licences**

Water access licence number	Nature of interest

**[9] Schedule 1, Form 3, Section 1, item 3(a1)**

Insert after item 3(a)—

- (a1) held any interests in water access licences, or your spouse has held any interests in water access licences, which are additional to those already disclosed in your most recent return, or

**[10] Schedule 1, Form 3, Section 1, Part 1A**

Insert after Part 1—

**Part 1A Water access licences**

List in Part 1A in Division B of the return the water access licence number of each water access licence in which you or your spouse had an interest during the supplementary ordinary return period that is additional to the interests in water access licences that you have already disclosed in your most recent return.

**Example entries only—**

Water access licence number	Nature of interest
WAL12345678	Co-holder

Water access licence number	Nature of interest
WAL87654321	Holder

**[11] Schedule 1, Form 3, Section 2, Division B, Part 1A** 1

Insert after Part 1— 2

**Part 1A Water access licences** 3

Water access licence number	Nature of interest

**2.3 Water Management (General) Regulation 2018** 4

**[1] Clause 9 Applications generally** 5

Insert “and contain or be accompanied by any information required by the approved form”  
 after “approved form” in clause 9(1)(a). 6  
 7

**[2] Clause 9(1)(b)** 8

Insert “and verified by statutory declaration” after “each applicant”. 9

**[3] Clause 9(1A)** 10

Insert after clause 9(1)— 11

(1A) Without limiting subclause (1), the information required by the approved form  
 for an application under Part 2 of Chapter 3 of the Act is to include the  
 following in relation to each applicant— 12  
 13  
 14

(a) the applicant’s name, 15

(b) details of any existing interests in access licences held by the applicant, 16

(c) if the applicant is an individual—the applicant’s address and contact  
 details, 17  
 18

(d) if the applicant is a corporation— 19

(i) the corporation’s registered address, and 20

(ii) the corporation’s ACN or (if applicable) ABRN, and 21

(iii) the position held by the person making the application on behalf  
 of the corporation, and 22  
 23

(iv)	details of any other corporation that is a related body corporate of the applicant (within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth), and	1 2 3
(v)	the names of the directors of the corporation, and	4
(vi)	the name of any person entitled to 20% or more of the voting shares in the corporation,	5 6
(e)	if the access licence is to be co-held—details of any proposed tenancy arrangements,	7 8
(f)	details of any water source from which water is proposed to be extracted,	9 10
(g)	if applicable—the proposed category or subcategory of the access licence,	11 12
(h)	details of the purpose for which the access licence is sought,	13
(i)	details of the volume of water applied for and the basis of the calculation of that volume,	14 15
(j)	details of any land where water taken under the access licence will be used,	16 17
(k)	details of the water supply work approval number for any water supply works that are to be nominated on the access licence.	18 19
<b>[4] Clause 11A</b>		20
	Insert after clause 11—	21
<b>11A Updates to details in Water Access Licence Register</b>		22
(1)	A holder or co-holder of an access licence is to notify the Minister of any change of details of the licence within 28 days of becoming aware of the change.	23 24 25
(2)	In subclause (1), <i>details</i> of an access licence has the same meaning as in Subdivision 4 of Division 3A of Part 2 of Chapter 3 of the Act.	26 27