

## Water Management



# Water Management

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## Overview

The *Water Management Act 2000* provides a framework for controlling the extraction of water, the use of water, the construction of works such as dams and weirs, and the carrying out of activities on or near water sources in NSW.<sup>2</sup>

For information on water pollution, see our [Fact Sheet on Pollution](#).

## Repeal of Water Act 1912

Since the *Water Management Act 2000* came into force, the *Water Act 1912* is being progressively phased out and will be completely repealed once the whole of the *Water Management Act 2000* becomes operational.<sup>3</sup>

## Water management in NSW

For the purpose of water management, NSW is divided into water management areas which are managed by water management committees.

<sup>1</sup> [http://www.edonsw.org.au/legal\\_advice](http://www.edonsw.org.au/legal_advice)

<sup>2</sup> See also the *Water Management (General) Regulation 2011* (NSW).

<sup>3</sup> *Water Management Act 2000* (NSW), s. 401; Sch 7 will repeal the *Water Act 1912* (NSW) once it commences.

## **Water management areas**

Water management areas are created when the Minister for Regional Water publishes an order in the NSW Gazette.<sup>4</sup> The water management areas for NSW are: Border Rivers, Central Coast, Central West, Darling, Gwydir, Hawkesbury Nepean, Hunter, Lachlan, Lower Murray Darling, Lower North Coast, Mid North Coast, Murray, Murrumbidgee, Namoi, Northern Rivers, South Coast, South East, Sydney, Sydney Harbour, Upper North Coast and Western.<sup>5</sup>

## **Water management committees**

Water management committees are appointed by the Minister for Regional Water.<sup>6</sup> They consist of between 12 and 20 members and must include:

- at least two representatives of environmental protection groups,
- at least two representatives of water user groups,
- at least two representatives of local councils,
- at least one person nominated by Local Land Services,
- at least two Aboriginal members representing the interests of Aboriginal people,
- at least one employee of the Department of Primary Industries Water, and
- at least one member nominated by the Minister for Environment.

## **Water management principles**

The *Water Management Act 2000* is underpinned by water management principles.<sup>7</sup> It is the duty of everyone exercising functions under the Act to do so in accordance with, and so as to promote, the water management principles.

Some water management principles are outlined below.

- Water sources, floodplains and dependent ecosystems (including groundwater and wetlands) should be protected and restored and, where

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<sup>4</sup> *Water Management Act 2000* (NSW), s. 11.

<sup>5</sup> For maps of the water management areas, see: <http://www.water.nsw.gov.au/water-management/water-sharing/plans-commenced>

<sup>6</sup> *Water Management Act 2000* (NSW), s. 13.

<sup>7</sup> *Water Management Act 2000* (NSW), s. 4.

possible, land should not be degraded.

- The water quality of all water sources should be protected and, wherever possible, enhanced.
- The cumulative impacts of water management licences and approvals and other activities on water sources and their dependent ecosystems, should be considered and minimised.
- Geographical and other features of Aboriginal significance should be protected.
- The principles of adaptive management should be applied, which should be responsive to monitoring and improvements in understanding of ecological water requirements.
- Sharing of water from a water source must protect the water source and its dependent ecosystems.
- Water use should be consistent with the maintenance of productivity of land in the long term and should maximise the social and economic benefits to the community,
- The impacts of water use on other water users should be avoided or minimised.

## Water sharing plans

Water sharing plans, also known as water management plans, have been developed for rivers and groundwater systems across NSW.<sup>8</sup> The plans set out how much water is available for extraction, and establish rules for sharing the water between different types of water use - such as town supply, rural domestic supply, stock watering, industry and irrigation - and the environment.

Each water management committee must develop a water management plan in accordance with the terms of reference set by the Minister.<sup>9</sup> The committee must also exercise its functions consistently with the principles of ecologically sustainable development.<sup>10</sup>

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<sup>8</sup> Current water sharing plans can be accessed here: <http://www.water.nsw.gov.au/water-management/water-sharing/plans-commenced>

<sup>9</sup> *Water Management Act 2000* (NSW), ss. 12, 13, 15.

<sup>10</sup> *Water Management Act 2000* (NSW), s. 14(3).

If a water management committee fails to prepare a water management plan, the Minister can prepare it instead.<sup>11</sup>

### **Contents of water sharing plans**

Water sharing plans are prepared by a water management committee for a water management area.<sup>12</sup>

They cover matters such as:<sup>13</sup>

- Water sharing – including the rules under which water can be taken (the rates, times and circumstances, etc ), the rules for the buying and selling of licences and for annual allocations, basic landholder rights, and the requirements for environmental water.<sup>14</sup>
- Water use – including the identification of activities which might cause environmental degradation, such as soil erosion, native vegetation damage and salinity.<sup>15</sup>
- Drainage management – including the identification of the hydrological regimes in the area, any existing works, and the cumulative impacts on water quality.<sup>16</sup>
- Floodplain protection – including the identification of natural flooding regimes (frequency, duration and extent), the ecological benefits that flooding brings (particularly to wetlands), the identification of existing flood works and any proposals to modify or remove them.<sup>17</sup>

### **The public can have a say about water sharing plans**

Once the water management committee has prepared a draft water sharing plan, it will be placed on public exhibition.<sup>18</sup> During the public exhibition period, any person can make a submission to the Minister.<sup>19</sup>

### **Minister approves water sharing plans**

Water sharing plans are made by the Minister for Regional Water.<sup>20</sup> Once made, a water sharing plan remains in force for 10 years.<sup>21</sup> It must be reviewed by the

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<sup>11</sup> *Water Management Act 2000* (NSW), s. 15 (3).

<sup>12</sup> *Water Management Act 2000* (NSW), ss. 11, 15.

<sup>13</sup> *Water Management Act 2000* (NSW), s. 15(1).

<sup>14</sup> *Water Management Act 2000* (NSW), s. 20.

<sup>15</sup> *Water Management Act 2000* (NSW), s. 23.

<sup>16</sup> *Water Management Act 2000* (NSW), s. 26.

<sup>17</sup> *Water Management Act 2000* (NSW), ss. 29, 30.

<sup>18</sup> *Water Management Act 2000* (NSW), s. 38.

<sup>19</sup> *Water Management Act 2000* (NSW), s. 39.

<sup>20</sup> *Water Management Act 2000* (NSW), s. 41.

<sup>21</sup> *Water Management Act 2000* (NSW), s. 43.

Minister 5 years after it was made to assess whether it is still adequately implementing the water management principles.<sup>22</sup>

### **Legal challenges to water sharing plans**

The legal validity of a water sharing plan may be challenged by any person in the Land and Environment Court within 3 months after the plan (or an amendment of it) was published in the NSW Government Gazette.<sup>23</sup>

For more information on taking legal action in the Land and Environment Court, [see our Fact Sheet](#).

### **Finding water sharing plans**

Not all water sources are subject to a water sharing plan. To see existing and proposed water sharing plans, visit the DPI Water [website](#).<sup>24</sup>

## **Water access licences**

In many cases, a water access licence will be needed in order to access the available water governed by the water sharing plan.

### **Water access licence characteristics**

Water access licences are not attached to a specific land title (as they were under the *Water Act 1912*). They can therefore be traded up and down a river, or even between rivers and States (in limited circumstances).

### ***Share component***

A water access licence entitles the holder to take a share of the available water from a specified water source. This is called the “share component” and is defined on the licence.<sup>25</sup>

For example, the share component might be expressed as:

- a maximum volume of water over time,
- a specified proportion of the available water,
- a specified proportion of the storage capacity of a dam, or
- a specified number of units.

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<sup>22</sup> *Water Management Act 2000* (NSW), s. 43(2).

<sup>23</sup> *Water Management Act 2000* (NSW), s. 47, and s. 336.

<sup>24</sup> See: <http://www.water.nsw.gov.au/water-management/water-sharing>

<sup>25</sup> *Water Management Act 2000* (NSW), s. 56(1)(a).

### ***Extraction component***

A water access licence also entitles the holder to take water at specified times, at specified rates, or in specified circumstances, which is called the “extraction component”.<sup>26</sup>

### ***Conditions***

A water access licence will often contain conditions which regulate how water can be taken (discretionary conditions).<sup>27</sup> In addition, the relevant water sharing plan can require conditions to be imposed on all licences (mandatory conditions).<sup>28</sup>

### ***Duration of licences***

Water access licences are granted in perpetuity and do not need to be renewed. The licence has effect unless and until it is cancelled.<sup>29</sup>

### ***Licence categories***

A range of water access licences can be issued.<sup>30</sup>

Different categories of water access licences have different levels of water security.<sup>31</sup> Domestic and stock licences and local water utility or major utility licences will have priority over all other users, followed by high security licences, then low security licences and so on.<sup>32</sup>

The cost of water access licences will vary depending on the licence category, the catchment, and the available water in each catchment.

### ***Allocating water to licences***

#### ***Available water determinations***

On 1 July each year, and periodically throughout the year, the Minister makes an “available water determination” for each water source as to how much water is available to be taken, either in relation to categories of licences, or for individual licences.<sup>33</sup>

The allocation will depend upon the prevailing weather conditions and the amount of water available in the water source. So in a dry year the available

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<sup>27</sup> *Water Management Act 2000* (NSW), s. 66(1)(b).

<sup>28</sup> *Water Management Act 2000* (NSW), s. 66(1)(a).

<sup>29</sup> *Water Management Act 2000* (NSW), s. 69.

<sup>30</sup> *Water Management Act 2000* (NSW), s. 57.

<sup>31</sup> *Water Management Act 2000* (NSW), s. 58(3).

<sup>32</sup> *Water Management Act 2000* (NSW), s. 58.

<sup>33</sup> *Water Management Act 2000* (NSW), ss. 59, 60.

water determination may be revised downwards, and in a wet year the available water determination may be increased.

### ***Water allocation accounts***

After the available water determination has been made, each licence is credited with its water allocation. Each licence has a water allocation account for this purpose. The account records the actual water allocations (in megalitres) which accrue to the licence annually or within certain intervals. Water is credited each year and debited when any water is taken at the extraction point.

### **Offences**

It is an offence to:

- take water from a water source without an access licence, or to take water other than as authorised by an access licence,<sup>34</sup>
- breach the conditions of a water access licence,<sup>35</sup>
- take water under a water access licence when there is no, or insufficient, water credited (allocated) to that account.<sup>36</sup>

It is a defence if:<sup>37</sup>

- the water was taken under a basic landholder right,
- there was a Ministerial order permitting an “uncontrolled flow” to be taken, or
- the person is exempt from the need to obtain a licence, for example, where the person holds native title rights (see below).

### **Basic landholder rights**

Landholders (owners and occupiers) are entitled to do the following things without the need for a water access licence:<sup>38</sup>

- take water from any water source on which their land has frontage for the purpose of domestic consumption and stock watering (but this does not include the right to build a dam or water bore), and
- If the land is in a “harvestable rights area” (which are declared by the Minister), to construct and use a dam to collect rain-water run-off.

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<sup>34</sup> *Water Management Act 2000* (NSW), s. 60A.

<sup>35</sup> *Water Management Act 2000* (NSW), s. 60B,

<sup>36</sup> *Water Management Act 2000* (NSW), s. 60C.

<sup>37</sup> *Water Management Act 2000* (NSW), ss. 60F(2), 85A.

<sup>38</sup> *Water Management Act 2000* (NSW), ss. 53, 54.

## **Exemptions from requirement to obtain a water access licence**

Certain people have an exemption from the need to obtain a water access licence.

Examples include:<sup>39</sup>

- Any person lawfully engaged in the carriage of water for drought relief.
- Any public authority lawfully engaged in the use of water for dust suppression.
- Any person prospecting or fossicking for minerals or petroleum under the *Mining Act 1992* or *Petroleum (Onshore) Act 1991* up to a limit of 3 megalitres in any water year.
- Any landholder using water for electricity generation for domestic consumption, but only if the water is returned to its water source within 50 metres of where it was taken and in the same quality as when it was taken.

## ***Native title rights***

A native title holder is entitled to exercise their native title rights without the need for a water access licence, water supply work approval or water use approval. This does not extend to the right to build a dam or water bore, or to construct or use a water supply work on land that he or she doesn't own.<sup>40</sup>

## **Obtaining a water licence**

A water access licence can be obtained by either:<sup>41</sup>

- applying to the Minister (eg for a specific purpose access licence), or
- acquiring the right to use an existing licence.

In response to the historical over-allocation of water licences, there is a Statewide embargo on the granting of new licences.<sup>42</sup> In practice, it is therefore only possible to obtain a water access licence by buying one on the water market.<sup>43</sup>

## **Water trading**

The water trading market is still developing, and water access licences are becoming increasingly valuable as the demand for water increases and water

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<sup>39</sup> *Water Management (General) Regulation 2004* (NSW), cl. 18 and Part 1 of Schedule 5.

<sup>40</sup> *Water Management Act 2000* (NSW), s. 55.

<sup>41</sup> *Water Management Act 2000* (NSW), s. 61.

<sup>42</sup> *Water Management Act 2000* (NSW), s. 65.

<sup>43</sup> *Water Management Act 2000* (NSW), s. 71Q.



availability decreases. Water trading can take place within NSW water sources, and between States.<sup>44</sup> Water trading usually takes place through the use of a water broker (which are not regulated).

Two types of water trades are possible:

- permanent transfers, or
- temporary transfers.

### ***Permanent transfers***

Permanent transfers are also called “permanent trades” or “assignment of share components”. It is the equivalent of selling a licence.

Some or all of the shares available under a water access licence may be sold to the holder of the same category of water access licence in the same water source.<sup>45</sup>

Permanent trades require Ministerial consent and must be registered by Land and Property Information on the Water Access Licence Register before they can take effect.<sup>46</sup>

If the Minister refuses consent, either party can appeal to the Land and Environment Court.<sup>47</sup> For more information on *mertis* appeals, see our Fact Sheet on the [Land and Environment Court](#).<sup>48</sup>

### ***Temporary transfers***

Temporary transfers are also called “temporary trades”, “water allocation assignments” or “term transfers”.<sup>49</sup>

Licence holders can make a temporary transfer of their water allocation to another licence holder. This is equivalent to “leasing” the water.

To give effect to a temporary transfer, the water allocation account of one licence is debited by a volume and the water allocation account of the receiving licence is credited by the same volume. The dealing must be for a minimum of 6 months but has no permanent effect on the licence itself.

The Minister’s consent is not required but the term transfer must be registered by Land and Property Information on the Water Access Licence Register before it can take effect.<sup>50</sup>

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<sup>44</sup> *Water Management Act 2000* (NSW), ss. 71U, 71V.

<sup>45</sup> *Water Management Act 2000* (NSW), s. 71Q.

<sup>46</sup> *Water Management Act 2000* (NSW), ss. 71A, 71L, 71T.

<sup>47</sup> *Water Management Act 2000* (NSW), s. 368(e).

<sup>48</sup> See: [http://www.edonsw.org.au/about\\_environmental\\_law](http://www.edonsw.org.au/about_environmental_law)

<sup>49</sup> *Water Management Act 2000* (NSW), s. 71N.

## Environmental flows

The *Water Management Act 2000* establishes a scheme to ensure that sufficient water remains in a water source for the environment once all other extractions have been made.<sup>51</sup>

There are two types of environmental water:

- planned environmental water, and
- adaptive environmental water.

Water sharing plans must identify the rules for the establishment and maintenance of each of these types of environmental water.<sup>52</sup> This must be done by reference to at least two of the following things:<sup>53</sup>

- the physical presence of water in the water source,
- the long-term average annual commitment of planned environmental water, or
- how much water is not committed after other commitments have been met.

### ***Planned environment water***

Planned environmental water is water that is committed under a water sharing plan for environmental purposes to ensure the health of ecosystems. This water can be committed either generally or at specified times (such as for bird breeding seasons). It cannot be taken or used for any other purpose.<sup>54</sup>

### ***Licensed environmental water***

Licensed environmental water is water that is committed by the conditions of a water access licence for environmental purposes.<sup>55</sup> For example, a condition requiring adaptive management may generate water savings that can be dedicated to environmental purposes.<sup>56</sup>

## Public register

The Minister must keep a [register of water access licences](#)<sup>57</sup> and all dealings, including any caveat or security interest (eg mortgage) over the licence must be

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<sup>50</sup> *Water Management Act 2000* (NSW), s. 71A.

<sup>51</sup> *Water Management Act 2000* (NSW), ss. 3, 20(1)(a).

<sup>52</sup> *Water Management Act 2000* (NSW), s 8(2), (3).

<sup>53</sup> *Water Management Act 2000* (NSW), s 8(1A).

<sup>54</sup> *Water Management Act 2000* (NSW), ss. 8(1)(a), 8A.

<sup>55</sup> *Water Management Act 2000* (NSW), s. 8(1)(b),

<sup>56</sup> *Water Management Act 2000* (NSW), s. 8B.

<sup>57</sup> See: [http://www.lpi.nsw.gov.au/land\\_titles/public\\_registers/water\\_access\\_licence\\_register](http://www.lpi.nsw.gov.au/land_titles/public_registers/water_access_licence_register)

noted.<sup>58</sup> The Water Access Licence Register is administered by Land and Property Information (LPI).

## Approvals

A water access licence only gives the holder the right to *take* water. It does not give the person the right to *use* the water or to *build* any of the works required to extract and store the water, such as pipes, pumps or dams.

These things require a “water use approval” and a “water supply work approval”. Any work on or under a river bank will also require a “controlled activity approval”.

### Water use approvals

A water use approval is required before water taken under a water access licence can be used.<sup>59</sup> The water use approval gives the holder the right to use water for a particular purpose at a particular location. Applications for water use approvals are made to the Minister.

One of the main objectives of requiring approval to use water is to avoid or minimise the land degradation, such as soil erosion, soil compaction, contamination, acidity and waterlogging, that can be caused by inappropriate water use.<sup>60</sup>

### Offences

It is an offence to use water without an approval for that use, or to use water otherwise than as authorised by an approval.<sup>61</sup>

Exemptions from the need to obtain a water use approval include where:<sup>62</sup>

- the water was used for domestic consumption or stock watering,
- the person held a development consent authorising the use of the water, or
- the water was used for Aboriginal cultural purposes.

### Water management works approvals

There are three kinds of water management works approvals:<sup>63</sup>

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<sup>58</sup> *Water Management Act 2000* (NSW), ss. 71, 71A.

<sup>59</sup> *Water Management Act 2000* (NSW), s. 89.

<sup>60</sup> *Water Management Act 2000* (NSW), s. 5(4)(a).

<sup>61</sup> *Water Management Act 2000* (NSW), s. 91A.

<sup>62</sup> *Water Management Act 2000* (NSW), s. 91M(2); *Water Management (General) Regulation 2011* (NSW), cls 32.

<sup>63</sup> *Water Management Act 2000* (NSW), s. 90.

- Water supply work approvals – these authorise the holder to construct and use a water supply work such as water pumps and water bores, tanks or dams to capture rain-water runoff, water banks or levees to divert water, and weirs.<sup>64</sup>
- Drainage work approvals – these give the holder the right to construct and use drainage works such as pumps, pipes and sluice gates, but does not include any sewage work.<sup>65</sup>
- Flood work approvals – these allow the holder to construct and use specified flood works such as a barrage, causeway, cutting or embankment that is likely to have an effect on the flow of water or on flood waters.<sup>66</sup>

Applications for water management works approvals are made to the Minister.

### **Offences**

It is an offence to construct or use these things without approval, or to do so otherwise than as approved.<sup>67</sup>

Exemptions from the need to obtain a water supply work approval include where:<sup>68</sup>

- the work is constructed solely for the purpose of prospecting or fossicking for minerals or petroleum under the *Mining Act 1992* or *Petroleum (Onshore) Act 1991*,
- the work is a water pipe used solely to convey water from one place to another, or
- the work comprises water reticulation works on land that has a water use approval.

### **Approvals for works on waterfront land**

If a “controlled activity” is proposed on waterfront land, an activity approval is required for that work.<sup>69</sup> Applications are made to the Minister.

‘Waterfront land’ is land that is 40 metres either side of the bed of any river, lake or estuary, including the bed itself.<sup>70</sup>

<sup>64</sup> *Water Management Act 2000* (NSW), Dictionary “water management work”.

<sup>65</sup> *Water Management Act 2000* (NSW), Dictionary “drainage work”.

<sup>66</sup> *Water Management Act 2000* (NSW), Dictionary “flood work”.

<sup>67</sup> *Water Management Act 2000* (NSW), ss. 91B, 91C, 91D.

<sup>68</sup> *Water Management Act 2000* (NSW), s. 91M(2); *Water Management (General) Regulation 2011* (NSW), cl. 34, 35, 36.

<sup>69</sup> *Water Management Act 2000* (NSW), s. 91(2),

<sup>70</sup> *Water Management Act 2000* (NSW), Dictionary “waterfront land”.

‘Controlled activities’ include:<sup>71</sup>

- erection of a building or the carrying out of a work,<sup>72</sup>
- removal of material (whether or not extractive material) or vegetation from land, whether by way of excavation or otherwise,
- deposition of material (whether or not extractive material) on land, whether by way of landfill operations or otherwise, or
- carrying out of any other activity that affects the quantity or flow of water in a water source.

### **Offences**

It is an offence to carry out a controlled activity on waterfront land without approval, or in breach of the conditions of an approval.<sup>73</sup>

Exemptions from the need to obtain a controlled activity approval include where:<sup>74</sup>

- the person is a public authority,
- the activities are carried out in connection with a dwelling-house which has development consent,<sup>75</sup> or
- the activity relates to a river where the channel of the river is fully concrete lined or is a fully enclosed pipe channel.

### **Applications**

#### ***Minister grants approvals***

Applications for water approvals are made to the Minister, who is responsible for deciding applications.<sup>76</sup> The Minister must not grant an application for an approval if there is an embargo in place in any water management area.<sup>77</sup>

In deciding the application, the Minister must be satisfied that no more than minimal harm will be done to any water source or its dependent ecosystems as a consequence of the construction or use of the proposed work.<sup>78</sup>

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<sup>71</sup> *Water Management Act 2000* (NSW), Dictionary “controlled activity”.

<sup>72</sup> Within the meaning of the [Environmental Planning and Assessment Act 1979](#),

<sup>73</sup> *Water Management Act 2000* (NSW), ss. 91E, 91G.

<sup>74</sup> *Water Management Act 2000* (NSW), s. 91M(2); *Water Management (General) Regulation 2011* (NSW), cl. 37-40, Part 2 of Schedule 5.

<sup>75</sup> So long as they are not carried out on or in the bed or bank of any river, the bed or shore of any lake, or the bed or land lying between the bed and the mean high water mark of any estuary.

<sup>76</sup> *Water Management Act 2000* (NSW), ss. 92, 95.

<sup>77</sup> *Water Management Act 2000* (NSW), s. 110.

<sup>78</sup> *Water Management Act 2000* (NSW), s. 97.

## ***Advertising of applications***

Some, but not all, classes of applications must be advertised. These include:<sup>79</sup>

- applications for water supply work approvals for the taking of water from a river, or for bores (other than bores used exclusively for basic landholder rights), or works such as weirs that have the effect of impounding water, or works such as tanks and dams that are constructed or used for the purpose of capturing rainwater run-off,<sup>80</sup>
- applications for water use approvals for *irrigation*,
- where the relevant water sharing plan requires the application to be advertised.

Advertising is not required if the application is part of an application for integrated development consent under planning laws (see below).<sup>81</sup>

Where advertising is required, the application must be advertised through a notice:<sup>82</sup>

- in a local newspaper, and
- in a newspaper circulating among such Aboriginal communities as could be affected by the granting of such an approval, and
- on DPI Water's website.

## ***Integrated development***

A development which requires both development consent and an approval under the *Water Management Act 2000* will be processed as integrated development.<sup>83</sup> The effect of this is that the consent authority (usually the local council) must, before granting development consent, request the Minister for Regional Water to indicate whether the approval would be granted and the general terms of such approval. In addition, the public loses its right to object to the granting of a water approval, or appeal if approval is granted, unless the development is also designated development.<sup>84</sup>

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<sup>79</sup> *Water Management Act 2000* (NSW), s. 92(7); *Water Management (General) Regulation 2011* (NSW), cl. 24.

<sup>80</sup> But see some exceptions to this in the *Water Management (General) Regulation 2011* (NSW), cl. 24(2).

<sup>81</sup> *Water Management Act 2000* (NSW), s. 99(2).

<sup>82</sup> *Water Management (General) Regulation 2011* (NSW), cl. 24(5).

<sup>83</sup> EPA Act, s. 91; *Water Management Act 2000* (NSW), s. 99.

<sup>84</sup> *Water Management Act 2000* (NSW), s. 99(3), (4).

For more information on integrated development and designated development, see our [Fact Sheet on Development applications and consents](#).<sup>85</sup>

### **Objections to Minister**

If an application for an approval has been advertised, any person can object to the granting of the approval (unless the approval is being sought as part of an integrated development that is not also designated development - see above).<sup>86</sup> The Minister must endeavour to resolve the issues raised by the objection through consultation with the applicant and objector.<sup>87</sup>

### **Objector appeals**

If the Minister grants a designated approval, an objector may challenge the decision on the merits in the Land and Environment Court.<sup>88</sup>

For more information on appeals to the Land and Environment Court, see our Fact Sheet on the [Land and Environment Court](#).<sup>89</sup>

### **Applicant appeals**

An applicant who is dissatisfied with the Minister's decision in relation to an application for works approval may appeal to the Land and Environment Court within 28 days of the decision being made.<sup>90</sup>

### **Judicial review**

Any person can bring legal proceedings in the Land and Environment Court to challenge the validity of any water approval. This is known as judicial review.<sup>91</sup>

For more information on judicial review proceedings in the Land and Environment Court, see our Fact Sheet on the [Land and Environment Court](#).<sup>92</sup>

## **Enforcement of the Water Management Act 2000**

The Minister and DPI Water have extensive powers to investigate and enforce breaches of the *Water Management Act 2000*, including the power to:

- give directions to landholders not to waste water,<sup>93</sup>
- impose temporary water restrictions,<sup>94</sup>

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<sup>85</sup> See: [http://www.edonsw.org.au/planning\\_development\\_heritage](http://www.edonsw.org.au/planning_development_heritage)

<sup>86</sup> *Water Management Act 2000* (NSW), s. 93.

<sup>87</sup> *Water Management Act 2000* (NSW), s. 93(5).

<sup>88</sup> *Water Management Act 2000* (NSW), s. 368(1)(h), (6).

<sup>89</sup> [http://www.edonsw.org.au/about\\_environmental\\_law](http://www.edonsw.org.au/about_environmental_law)

<sup>90</sup> *Water Management Act 2000* (NSW), s. 368.

<sup>91</sup> *Water Management Act 2000* (NSW), s. 368(4).

<sup>92</sup> [http://www.edonsw.org.au/about\\_environmental\\_law](http://www.edonsw.org.au/about_environmental_law)

<sup>93</sup> *Water Management Act 2000* (NSW), s. 325.

- issue stop work orders,<sup>95</sup>
- give a landholder a direction to prevent stock from straying from a landholder's land into water courses,<sup>96</sup>
- take remedial measures,<sup>97</sup>
- issue penalty notices for certain offences,<sup>98</sup> and
- bring criminal prosecutions in the Land and Environment Court where a person has committed an offence.<sup>99</sup>

The Minister can apply to the Land and Environment Court for an injunction to require a person who has been given a direction to comply with that direction.<sup>100</sup>

### ***Civil enforcement by the community***

Any person can bring legal proceedings to remedy or restrain a breach of the *Water Management Act 2000*.<sup>101</sup> This is known as civil enforcement.

For more information on civil enforcement in the Land and Environment Court, see our Fact Sheet on the [Land and Environment Court](#).<sup>102</sup>

## **Role of the Commonwealth**

The Commonwealth has recently adopted a leading role in the regulation and management of water between States in the Murray-Darling Basin.

### ***Water Act 2007 (Cth)***

The *Water Act 2007* is intended to allow the Commonwealth to coordinate the management of water resources in the Murray-Darling Basin in conjunction with the Basin States.<sup>103</sup>

The Act establishes the Murray-Darling Basin Authority as the national regulatory authority. A key requirement of the Act was the implementation of the Murray-Darling Basin Plan which provides for a coordinated approach to water management across the Murray–Darling Basin's four states - South Australia, Victoria, NSW and Queensland - and the Australian Capital Territory. The Basin

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<sup>94</sup> *Water Management Act 2000* (NSW), s. 324.

<sup>95</sup> *Water Management Act 2000* (NSW), ss. 327, 328, 330

<sup>96</sup> *Water Management Act 2000* (NSW), s. 332.

<sup>97</sup> *Water Management Act 2000* (NSW), s. 336A.

<sup>98</sup> *Water Management Act 2000* (NSW), s. 365.

<sup>99</sup> *Water Management Act 2000* (NSW), s. 364.

<sup>100</sup> *Water Management Act 2000* (NSW), s. 336.

<sup>101</sup> *Water Management Act 2000* (NSW), s. 336.

<sup>102</sup> [http://www.edonsw.org.au/about\\_environmental\\_law](http://www.edonsw.org.au/about_environmental_law)

<sup>103</sup> *Water Act 2007* (Cth), s. 3(a).



Plan sets the amount of water that can be extracted annually from the Basin for consumptive use (urban, industrial and agricultural) without having a negative impact on the natural environments of the Basin.

The Basin Plan came into effect in November 2012 and is being progressively implemented.

When it is fully operational in 2019, the Basin Plan will cap water use by setting average sustainable diversion limit (SDLs) for each catchment and aquifer in the Basin. In the meantime, focus has been on helping water users to reduce their water consumption and extraction levels through water recovery programs.

Since the Basin Plan came into effect, water has been recovered through direct purchase of water entitlements by the Australian Government, or the exchange of water entitlements for investment in modern infrastructure.

## Glossary

### ***Key to terms used in this Fact Sheet***

**DPI Water** means the NSW Department of Primary Industries, Water Division

**EPA Act** means the Environmental Planning and Assessment Act 1979

**Minister** means the NSW Minister for Regional Water

## Useful websites

Water management in NSW is managed by the NSW [Department of Primary Industries – Water](#).

Water management within the Murray-Darling Basin is managed by the [Murray-Darling Basin Authority](#).

The main legislation regulating water use in NSW is the [Water Management Act 2000 \(NSW\)](#).

## Useful legal texts

- *Environmental & Planning Law in New South Wales*, by Lyster, Lipman, Franklin, Wiffen and Pearson, The Federation Press (2007), Chapter 6, pp 234 – 278.
- *The Environmental Law Handbook*, Farrier and Stein, eds (2006), Chapter 14, pp 516 - 542