

# Water Management (General) Regulation 2018

## Regulatory impact statement

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# Contents

1	Executive Summary .....	1
2	Consultation .....	2
3	Submissions.....	2
4	Requirement for regulatory impact statements .....	3
4.1	Methodology .....	3
4.2	Option assessment .....	4
4.3	Structure of this document.....	4
5	Regulatory framework for water extraction in NSW .....	4
5.1	Legislative background .....	4
6	Water Management (General) Regulation 2011 .....	6
7	Machinery matters .....	7
7.1	Machinery clauses .....	7
8	Water Management (General) Regulation option assessment .....	10
8.1	Form and content of applications.....	10
8.2	Water access licences .....	11
8.3	Exemptions for water access licences.....	11
8.4	Changes to drought relief exemption.....	14
8.5	New provision to permit applications for domestic and stock specific purpose access licences .....	14
8.6	Security interests and access register .....	16
9	Approvals .....	17
9.1	Exemption for approvals .....	18
9.2	Amendment of application of exemption in plantation areas in state forests.....	21
9.3	Amendment of exemption for water tanker trucks used to take water for dust suppression.....	21
9.4	Requirement for advertising approvals .....	22
9.5	Exemption from flood work approvals.....	23
9.6	Exemptions—controlled activity approvals .....	24
9.7	Security deposits for approvals.....	28
10	Water supply authorities .....	29
10.1	Background.....	29
10.2	Water supply authority area of operations and functions.....	31
10.3	Water supply and sewerage .....	31
10.4	Plumbing fittings, plumbing work and plumbing permits.....	32
10.5	Special areas .....	32
10.6	General finance .....	32
10.7	Concessions for eligible pensioners and others .....	32
10.8	Miscellaneous .....	32

10.9	Option 1—base case—the 2011 Regulation lapses .....	33
10.10	Option 2—remake the 2011 Regulation .....	34
10.11	Option 3—remake the 2011 Regulation with proposed amendments.....	34
11	Proposed regulatory option .....	37
12	Conclusion.....	37
13	References .....	39
14	Appendix A—Stakeholder groups and government agencies .....	40
15	Appendix B—Cost-benefit assumptions .....	41
16	Appendix C—Detailed impact tables .....	42
16.1	Form and content of applications.....	42
16.2	Exemptions for water access licences .....	43
16.3	Domestic and stock specific purposes access licences.....	45
16.4	Security interests and access register .....	46
16.5	Exemption for approvals .....	47
16.6	Requirement for advertising approvals .....	48
16.7	Exemption from flood work approvals.....	49
16.8	Exemptions—controlled activity approvals .....	50
16.9	Security deposits for approvals.....	52
17	Appendix D—Detailed list of proposed amendments .....	53
17.1	Water access licences .....	53
17.2	Exemptions from requirements for water access licences.....	53
17.3	Approvals.....	53
17.4	Exemptions from requirements for approvals .....	53
17.5	Water supply authorities .....	54
17.6	Miscellaneous .....	54
18	Appendix E—Summary of key changes following public consultation on proposed Regulation .....	55

## List of tables

Table 1-1	Summarised costs and benefits .....	1
Table 8-1	Benefit of prescribing the form and content of licence and approval applications .....	11
Table 8-2	Benefit of exemptions for water access licences .....	13
Table 8-3	Estimated costs of drought relief exemption amendment .....	14
Table 8-4	Benefit of domestic and stock specific purpose access licence amendment.....	16
Table 8-5	Benefit of enabling exemption from notification .....	17
Table 9-1	Benefits of works and water use approval exemptions .....	20
Table 9-2	Benefit of amendment for state forests plantations.....	21

Table 9-3 Cost to affected businesses of works approval advertising .....	23
Table 9-4 Impacts of flood work approval exemption .....	24
Table 9-5 Benefits of controlled activity exemption .....	26
Table 9-6 Identified impacts of changes to controlled activity exemptions.....	27
Table 9-7 Impacts of security deposits.....	29
Table 10-1 Water supply authorities' connected properties and water delivered.....	31
Table 10-2 Water supply authorities' asset values and revenue.....	31
Table 10-3 Water supply and sewerage service .....	34
Table 10-4 Identified impacts of proposed amendments to water supply authorities' provisions.....	36
Table 12-1 Summary of major identified impacts—net present value over five years (\$million).....	38
Table 16-1 Benefit of prescribing the form and content of licence and approval applications .....	42
Table 16-2 Identified transfer payments.....	42
Table 16-3 Benefits of exemptions for water access licences.....	43
Table 16-4 Identified transfer payments for exemptions for water access licences .....	43
Table 16-5 Estimated costs of amendment to drought relief exemption .....	44
Table 16-6 Identified transfer payments of amendment to drought relief exemption .....	44
Table 16-7 Benefit of domestic and stock specific purpose access licence amendment.....	45
Table 16-8 Benefit of enabling exemption from notification .....	46
Table 16-9 Works and water use approval exemptions .....	47
Table 16-10 Works and use approvals exemptions transfer payments .....	47
Table 16-11 Benefit of amendment for state forests plantations.....	47
Table 16-12 State forests plantations transfer payments.....	47
Table 16-13 Cost to affected businesses of works approval advertising .....	48
Table 16-14 Estimated transfers from works approval advertising .....	48
Table 16-15 Impacts of flood work approval exemption.....	49
Table 16-16 Estimated transfers from flood works approval exemption .....	49
Table 16-17 Impacts of controlled activity exemption .....	50
Table 16-18 Estimated transfers controlled activity approval exemption .....	50
Table 16-19 Identified impacts of changes to controlled activity exemptions.....	50
Table 16-20 Estimated transfers for proposed additional controlled activity approval exemptions.....	51
Table 16-21 Impacts of security deposits.....	52
Table 18-1 Summary of key changes following public consultation on proposed Regulation.....	55

# 1 Executive Summary

Water is essential for communities across NSW. The *Water Management Act 2000* (the WM Act) establishes a framework for the sustainable management of water in New South Wales. It provides for the development of statutory plans that share water between the environment and water users and it establishes the basis for water trading. The WM Act establishes and empowers a number of irrigation infrastructure providers and water supply authorities.

Section 400 of the WM Act enables the making of regulations to support the implementation of the WM Act. The current regulation, the Water Management (General) Regulation 2011 (the 2011 Regulation) provides procedural and technical matters related to the administration of the WM Act and also specifies exemptions from licence and approval requirements under the WM Act.

The 2011 Regulation is due for staged repeal (and will lapse) on 1 September 2018 in accordance with the *Subordinate Legislation Act 1989*.

To consider remaking the 2011 Regulation, the NSW Department of Industry has prepared this regulatory impact statement (RIS). The RIS explains the need for and the objectives of government action. It establishes and analyses the costs and benefits of a range of options. The options analysed are:

- Option 1 (the base case)—allow the 2011 Regulation to lapse (the WM Act, the *Water Act 1912*, water sharing plans and other statutory orders would remain in force)
- Option 2—reinstate the 2011 Regulation without any change
- Option 3—reinstate the 2011 Regulation with amended provisions (the proposed Regulation).

Option 3, preferred by the department, would retain the 2011 Regulation with some amendments (detailed in Appendix D) that:

- provide for the making of applications for specific-purpose access licences to take water for stock watering in prescribed circumstances
- create new exemptions from requirements for access licences and approvals to cut red tape and remove duplication, and clarify existing exemptions that are complex, unclear or have outdated references
- clarify certain operational matters for water supply authorities.

An assessment of the costs and benefits of the measures available to the state, rural landholders, local government and industry was carried out. The assessment identifies that the benefits of the proposed Regulation will outweigh the anticipated costs and it provides the largest net benefits of the alternatives available.

Table 1-1 summarises the net benefits and costs of quantified impacts from remaking the 2011 Regulation with its current provisions and the incremental impact of making the proposed amendments. A full summary table is included at Table 12-1.

**Table 1-1 Summarised costs and benefits**

Options	Impact benefit (cost) \$m
Option 1 Base case 2011 Regulation lapses	(\$17,789)
Option 2 Remake 2011 Regulation	\$17,752
Option 3 Remake 2011 Regulation with proposed amendments	\$17,774
Benefits of proposed Regulation	\$17,774

Note: figures in (parentheses) are costs

The analysis shows there is a quantified benefit of \$17,774 million from making the proposed Regulation, with the majority of this associated with the water supply authority provision in Section 10 of this RIS. These benefits are in addition to the unquantified benefits of enhanced transparency in decision-making derived from the proposed Regulation.

## 2 Consultation

Public consultation on the proposed Regulation was undertaken from 7 August 2017 until 3 September 2017. The proposed Regulation and supporting documentation was exhibited on the Department of Industry's website at [www.water.nsw.gov.au](http://www.water.nsw.gov.au). Hard copies of the exhibited documents could be requested from the department. No such requests were received.

Public notice of the exhibition appeared in:

- NSW Government Gazette on 4 August 2017
- NSW Government website *Have Your Say* on 7 August 2017
- Sydney Morning Herald and Daily Telegraph newspapers on 9 August 2017
- The Land newspaper on 10 August 2017.

The following stakeholder groups and government agencies were directly advised of the exhibition:

- Water NSW
- water supply authorities: Cobar Water Board, Central Coast Council, Sydney Olympic Park Authority, Essential Energy
- NSW Irrigators' Council
- NSW Farmers' Association
- NSW Minerals Council
- Nature Conservation Council
- Environmental Defenders Office NSW
- Local Government Association
- Forestry Corporation
- Soil Conservation Service.

On 31 August 2017, the exhibition period was extended to 10 September 2017 following requests for an extension from some stakeholders. The extension was notified on the Department of Industry's website. The above stakeholder groups and government agencies were directly advised of the extension unless the department had already received their submission.

## 3 Submissions

The Department of Industry received nine submissions from stakeholder groups on the proposed Regulation. These submissions were published on the department's website at [www.industry.nsw.gov.au/water](http://www.industry.nsw.gov.au/water).

The department considered all of the comments and submissions received. A report that documents the department's consideration of the submissions and response was also published on the department's website at [www.industry.nsw.gov.au/water](http://www.industry.nsw.gov.au/water).

Some amendments to the proposed Regulation have been made based on the department's consideration of the submissions. More information is provided in Appendix E of this RIS.

## 4 Requirement for regulatory impact statements

The objective of the *Subordinate Legislation Act 1989* is to improve the quality of regulatory proposals by assessing the economic and social impacts of proposed regulations and their alternatives prior to their introduction.

The *Subordinate Legislation Act 1989* requires the preparation of a RIS prior to making regulations. A RIS must state the objective of the regulation and the costs and benefits of alternatives available to achieve these objectives. In considering alternatives, the impact of not proceeding with any regulation must also be evaluated.

Social and economic costs and benefits, both direct and indirect, need to be considered and impacts on resource allocation, administration and compliance with statutory requirements evaluated. Wherever possible, these costs and benefits should be quantified. If quantification of anticipated impacts is not possible, the RIS should facilitate the comparison of alternatives. The *Subordinate Legislation Act 1989* requires that an assessment of the alternative that involves the greatest net benefit, or the lowest net cost to the community, be included in the RIS.

In making statutory instruments, the NSW Guide to Better Regulation identifies principles to cut red tape and reduce costs to business. This RIS sets out the analysis of the impact of the proposed Regulation. The RIS identifies and assesses the relevant costs and benefits of the proposed Regulation other than those parts that deal with matters of a machinery nature.

### 4.1 Methodology

This RIS relates to the proposed remaking of the Water Management (General) Regulation 2011. It does not include consideration of the by-laws for private irrigation districts under Part 2 of Chapter 4 of the WM Act as these are excluded instruments under Schedule 4 of the *Subordinate Legislation Act 1989*.

The following steps were undertaken to prepare this evaluation for each of the main sets of provisions:

- The Department of Industry identified general objectives for making regulations and possible alternatives for each provision.
- Data relevant to each option was collected from the department's databases.
- Costs and benefits were quantified where appropriate using the assumptions outlined in Appendix B.

Transfer payments are costs to one party but benefits to another. These are noted in each section of the Cost Benefit Analysis (CBA) but are not included in the Net Present Value (NPV) tables as they will have no net effect on the final result. For additional explanation see Appendix B and NSW Treasury TPP17-03.

In a number of areas it was not possible to quantify the costs and benefits of options, so these are defined qualitatively.

Structural changes to the 2011 Regulation are not assessed as they are excluded under the *Subordinate Legislation Act 1989*. Structural changes include administrative changes to machinery clauses (except for material changes to definitions), redundant clauses, the referral of material to schedules, and the consolidation of regulations. By their nature, these only have intrinsic value to the form of the proposed Regulation.

## 4.2 Option assessment

The base case option involves no new government action (NSW Treasury TPP17-03). Under this option, the 2011 Regulation would lapse from 1 September 2018. The WM Act, the *Water Act 1912*, water sharing plans and various statutory orders would continue to have effect but without the administrative clarity provided by the 2011 Regulation.

Substantive clauses of the 2011 Regulation are considered with regard to:

- remaking the 2011 Regulation in its existing form
- remaking the 2011 Regulation with proposed amendments
- other regulatory and non-regulatory options where these are available.

Marginal changes in the cost to business, cost to government and net social benefit (or cost) are measured quantitatively against the base case option.

## 4.3 Structure of this document

This RIS is structured around the existing clauses, parts and divisions of the 2011 Regulation as set out below:

- Regulatory framework for water extraction in NSW (see sections 5 and 6 of this RIS)
- Machinery matters (see section 7 of this RIS)
- Form and content of applications (see section 8.1 of this RIS)
- Access licences, including registers and exemptions from the requirement for a water access licence (see section 8 Water access licences of this RIS)
- Approvals, including exemptions from the requirement for an approval (see section 9 Approvals of this RIS)
- Water Supply Authorities (see section 10 of this RIS).

# 5 Regulatory framework for water extraction in NSW

The proposed Regulation is the Water Management (General) Regulation 2018 and is made under the *Water Management Act 2000*.

The Minister for Regional Water is the minister responsible for recommending that the Governor makes the proposed Regulation.

The Department of Industry and Water NSW are responsible for carrying out functions under the WM Act and its regulations, which will include the proposed Regulation.

## 5.1 Legislative background

The WM Act is the principal statute providing for the management and allocation of water resources (both surface water and groundwater) in NSW.

The WM Act requires water users to hold:

- a water access licence to take water
- a water supply work approval to construct and use a water supply work (such as a pump, dam or bore)
- a water use approval to use water for a particular purpose at a particular location (such as irrigation or town water supply)
- a controlled activity approval to carry out a controlled activity (such as extracting material from a river bed or constructing a watercourse crossing) at a particular location in, on or under waterfront land.

The WM Act further provides for the creation of categories of water access licences and the issuing of new water access licences of particular categories, the registration of financial interests in those water access licences, and the trade and transfer of those water access licence entitlements and water allocations.

The WM Act also establishes various private irrigation and drainage boards and districts, private water trusts, and water supply authorities.

Section 400 of the WM Act enables regulations, not inconsistent with the WM Act, to be made covering any matter required or permitted by the WM Act. In addition, several provisions of the WM Act explicitly permit regulations to be made to specify particular matters.

The 2011 Regulation makes key elements of the WM Act operational—including but not limited to the following areas:

- defining various procedural matters
- specifying the form and process requirements for applications for water access licences and approvals
- adopting a risk management approach by exempting various persons from the need for a water access licence, water use approval, water supply work approval or controlled activity approval in respect of certain low risk circumstances and activities, which will not be inconsistent with the objects and principles of the WM Act
- keeping public registers and details of the places and locations where they may be viewed
- specifying the categories of new water access licences that can be applied for
- specifying arrangements for private entities established by the WM Act (irrigation corporations, private irrigation districts, private drainage boards and private water trusts)
- specifying the functions, areas of operation, financing and powers of certain water supply authorities.

It is important to note that the WM Act, 2011 Regulation and the water sharing plans are not the only statutes and regulations that affect the water related environment in NSW.

The Department of Industry also supports the NSW Government in the administration of other NSW acts and regulations, including:

- *Dams Safety Act 1978*
- *Googong Dam Catchment Area Act 1975*
- *New South Wales–Queensland Border Rivers Act 1947*
- *Water Act 1912*
- *Water (Commonwealth Powers) Act 2008.*

# 6 Water Management (General) Regulation 2011

The 2011 Regulation assists in defining and implementing provisions of the WM Act.

**Part 1** deals with preliminary matters such as the name of the 2011 Regulation, its commencement and definitions.

**Part 2** deals with matters relating to access licences including exemptions.

**Part 3** deals with matters relating to approvals including exemptions.

**Part 4** deals with requirements and procedures for applications to include or exclude land from an irrigation corporation's area of operations.

**Part 5** deals with requirements and procedures for the election of members or directors of a private irrigation board, private drainage board or private water trust.

**Part 6** deals with matters relating to the governance of private drainage boards, including the number of directors which constitute a quorum; and requirements regarding financial matters.

**Part 7** deals with matters relating to the governance of private water trusts, including requirements regarding particular constitutional and procedural matters, and requirements regarding financial matters.

**Part 8** deals with requirements for statements under the WM Act related to works and maintenance programs for the Hunter Valley flood mitigation works.

**Part 9** deals with matters relating to water supply authorities including defining the areas of operations of water supply authorities, service and charging functions of water supply authorities, the control of activities in special areas, and promoting operational and administrative best practice.

**Part 10** deals with miscellaneous matters.

**Schedule 1** identifies excluded works for the purpose of exemptions from requirements for water supply work approvals.

**Schedule 2** provides the method of determining the stream order of a watercourse and identifies topographic maps with stream locations for the purpose of defining 'minor stream' in relation to the application of particular exemptions from approval requirements.

**Schedule 3** prescribes subcategories of access licences for the purpose of section 57(2) of the WM Act.

**Schedule 4** deals with transitional matters relating to access licences and approvals arising from former entitlements, and certain deemed approvals.

**Schedule 5** provides exemptions from requirements for access licences and controlled activity approvals.

**Schedule 6** provides particular forms for the certification of a preliminary roll of persons who are eligible to vote in the election of members or directors of a private irrigation board, private drainage board or private water trust; and applications for a person's enrolment or rejection in the final role for an election.

**Schedule 7–7A** provides maps for the purpose of defining 'special areas' of water supply catchment areas of Essential Energy and land declared to be a floodplain.

**Schedule 8** provides the penalty notice amount for specified penalty notice offences under the WM Act and 2011 Regulation.

**Schedule 9** provides savings and transitional provisions.

## 7 Machinery matters

The proposed Regulation will remake a number of provisions that are of a machinery nature, and amend some provisions in a machinery manner. Generally speaking, machinery clauses are those that could broadly be described as relating to ‘process’ rather than substantive policy matters. Machinery amendments generally relate to the form of a provision.

Matters of a machinery nature do not require a RIS. This RIS therefore does not consider these matters in detail, but comment on machinery clauses or machinery amendments may be included in submissions and will be considered.

### 7.1 Machinery clauses

The following machinery clauses in the 2011 Regulation are proposed to be remade without change in the proposed Regulation:

- Clause 1—The name of the Regulation
- Clause 2—The commencement date of the Regulation
- Clause 3—Definitions of certain terms used throughout the Regulation
- Clause 7—Form of notification of available water determinations
- Clause 7A—Form of notices to the holder of an access licence or approval about the imposition of conditions after the licence or approval is granted
- Clause 8—Form of publication of orders authorizing the taking of water under supplementary water access licences
- Clause 9—Form of applications relating to access licences
- Clause 11—Matters to be included on the Water Access Licence Register
- Clause 12—Notice requirements for dealings on default
- Clause 14—Particulars to be recorded in the register of available water determinations
- Clause 15A—Form of appointment of a nominee of a co-holder of an access licence
- Clause 16—Form of claims for compensation relating to access licences
- Clause 22—Definition of ‘aquifer interference activity’
- Clause 23—Form of applications relating to approvals
- Clause 25—Procedure for making an objection to the granting of an approval
- Clause 27—Form of the Register of approvals
- Clause 41A—Definition of ‘designated high risk flood area’
- Clause 42—Form of applications to include land within an irrigation corporation’s area of operations
- Clause 43—Form and procedure for objections to the inclusion of land within an irrigation corporation’s area of operations
- Clause 44—Form of applications to exclude land from an irrigation corporation’s area of operations
- Clause 45—Form and procedure for objections to the exclusion of land from an irrigation corporation’s area of operations
- Clause 46 to 86—Process for election of members or directors of private irrigation board, private drainage board or private water trust
- Clause 87 to 91—Constitution and procedures of private drainage boards
- Clause 92 to 103—Constitution and procedures of private water trusts
- Clause 104—Form of statement of particulars for Hunter Valley flood mitigation works

- Clause 105—Form of statement of cost of maintenance and compensation for Hunter Valley flood mitigation works
- Clause 107—Definitions of certain terms used in Part 9 of the proposed Regulation relating to water supply authorities
- Clause 108 to 114—Areas of operations and functions of water supply authorities
- Clause 115—Process for approval of a water supply authority’s strategic business plan
- Clause 187—Form of notice from public agency of proposed exercise of functions in relation to land in a special area of Essential Energy
- Clause 200—Process for adjustment of a service charge levied by a water supply authority
- Clause 201—Process for objecting to a service charge levied by a water supply authority
- Clause 202—Process for objecting to a water supply authority’s refusal to adjust a service charge
- Clause 203—Form of objection relating to service charge of water supply authority
- Clause 205—Process for declaring land to be a drainage area for a water supply authority
- Clause 208—Process for service of notices by a water supply authority
- Clause 211—Definitions of certain terms used in relation to concessions for eligible pensioners and others for service charges levied by a water supply authority
- Clause 223—Form of application for certificate of compliance for development
- Clause 232—Savings and transitional provisions.

### **7.1.1 Machinery amendment—circumstances in which approvals may be amended**

Section 107 of the WM Act empowers the Minister for Regional Water to amend an approval on the application of the approval holders, or in circumstances prescribed in the regulations.

Historically, where an approval has multiple holders, and all of the approval holders want the approval to be subdivided so they each have their own approval, the approval holders have made an application to the Minister for Regional Water for the approval to be subdivided under section 107(1)(a) of the WM Act.

Section 107(1)(b) was added to the WM Act in 2014 to provide an additional power for the Minister for Regional Water to amend a single approval to create two or more approvals in circumstances prescribed in the regulations. The 2011 Regulation was subsequently amended to specify in clause 26A that a single approval may be subdivided to create two or more approvals where the subdivision of the land benefited by the approval results in part of the land being held by the holder of the approval and part of the land being held by another landholder who was not a holder of the approval.

To recognise the addition of section 107(1)(b) to the WM Act and clause 26A to the 2011 Regulation, it is proposed to amend the 2011 Regulation to specify another circumstances when the Minister for Regional Water may amend a single approval to create two or more approvals is on the application of the holders of the approval.

The purpose of this proposed amendment is to provide consistency in the form of section 107 of the WM Act and the existing clause 26A in the 2011 Regulation, and the substantive operation of these provisions will not change.

### **7.1.2 Machinery amendment—prescribed Notice of Disposal**

Entities which are recognised or established by the WM Act as providing for the sharing of water infrastructure can levy rates and charges to meet their required costs and expenses. These rates and charges are imposed on the owner of the land to which goods and services are supplied.

Section 361 of the WM Act provides that when land that is subject to such rates and charges is sold, the vendor remains liable for those rates and charges until they dispose of the land or give a prescribed notice of disposal to the entity levying those rates and charges.

The Department of Industry has identified that a notice of disposal has not yet been prescribed for the purpose of section 361 of the WM Act.

It is proposed to amend the 2011 Regulation to prescribe the requirements of a notice of disposal for the purpose of section 361 of the WM Act

### **7.1.3 Machinery amendment—source of Strahler stream order data**

The definition of ‘minor stream’ in the 2011 Regulation uses the Strahler system of determining stream order for the purpose of describing where certain exemptions from approval requirements apply.

The source of the data by which the Strahler stream order is determined is specified in Part 2 of Schedule 2 of the 2011 Regulation as certain hard copy topographic maps issued by the NSW Land Information Centre between 1970 and 1999. These maps are not easily accessible and some editions may no longer be available.

It is proposed to amend Part 2 of Schedule 2 and the definition of ‘minor stream’ in the proposed Regulation to specify the source of Strahler stream order data as being the hydroline spatial data published by the Department of Industry on its website.

This change from hard copy data to electronic data that is publicly available on the internet will improve data accessibility without changing the substantive operation of the relevant provisions.

### **7.1.4 Machinery amendment—exemptions from access licence and approval requirements for which environmental assessment is required**

The 2011 Regulation provides the following exemptions that are conditional on the environmental impact of the activity being considered:

- access licence exemption for transport authorities—in relation to water required for the construction and maintenance of rail infrastructure facilities (clause 3 of Schedule 5)
- water use approval exemption for transport authorities—where the access licence exemption in clause 3 of Schedule 5 applies (clause 31(1))
- controlled activity approval exemption for network operators (clause 40(e)).

It is proposed to amend the form of these provisions to clarify their meaning with regard to the requirement for the environmental impact of the activity to be considered. It is not intended to change the substantive operation of these provisions.

### **7.1.5 Machinery amendment—particular provisions for access licences and approvals arising from former entitlements, and certain deemed approvals**

Schedule 4 deals with transitional matters relating to access licences and approvals arising from former entitlements, and certain deemed approvals.

It is proposed to preserve the ongoing operation of Schedule 4 by providing a savings and transitional provision in the proposed Regulation, rather than by replicating Schedule 4 in the proposed Regulation.

This machinery amendment will not affect the substantive operation of matters in Schedule 4.

# 8 Water Management (General) Regulation option assessment

The option assessment considers the base case of no regulation (the 2011 Regulation lapses), remaking the 2011 Regulation and remaking the 2011 Regulation with amendments for the major substantive areas of the regulation. Costs and benefits of each option are quantified and included in tables within each section of this RIS and summarised in Table 12-1.

## 8.1 Form and content of applications

### Objective

The objective is to standardise documentation and simplify the licence and approval application process to reduce costs and increase transparency.

### 8.1.1 Option 1—base case—the 2011 Regulation lapses

In the base case, the 2011 Regulation would lapse and with it the procedures and requirements for the making of applications for new water access licences and approvals.

Without standardised information requirements on what details are required to accompany applications:

- applicants will spend additional time to find out exactly what information is needed
- The Department of Industry and Water NSW will spend additional time processing applications that do not provide sufficient information.

### 8.1.2 Option 2—remake the 2011 Regulation

The 2011 Regulation would continue to provide standard procedures and requirements for applications under the WM Act. The 2011 Regulation expressly provides for the electronic lodgement of applications for new access licences and approvals in accordance with the requirements of the *Electronic Transactions Act 2000*.

To estimate the costs and benefits it has been assumed that prescribing the form, content and method of making applications for new water access licences will reduce the number of non-complying applications by 10%. The major benefits for those customers will be:

- a reduced delay in conducting the activity that requires a water licence (estimated to be \$2,450 for one week production loss )
- an estimated two hours of time saved (valued at \$61 per hour) as the need to resubmit applications with additional information will be avoided.

Government avoids the cost of rejecting non-conforming applications. However, as a result of cost recovery this is expected to be a transfer payment.

Clauses 9, 23 and 229 of the 2011 Regulation prescribe the approved form, content and method of making applications for new water access licences and approvals. The following costs and benefits are associated with remaking the Regulation:

- Business avoids costs of \$321,500 each year in lost production through consequential delays (\$306,250) and excess time to complete applications (\$15,250).
- The estimated net present value of the benefit is \$1.32 million.

**Table 8-1 Benefit of prescribing the form and content of licence and approval applications**

Identified impacts	Estimation units	Net present value \$m
Number of applications per year	1,250	
Total estimated benefit		\$1.32

Source: Department of Industry estimate

### 8.1.3 Option 3—remake the 2011 Regulation with amendments

No amendments to these provisions in the 2011 Regulation are proposed.

## 8.2 Water access licences

The WM Act provides for the sharing of water available for extraction in a water source through water allocations made for categories of access licences in accordance with rules in the relevant water sharing plan. Currently there are approximately 35,000 access licences in NSW.

Water allocations are made based on whether the water source is regulated by dams or is unregulated (natural surface water flows and groundwater recharge), and the number of licence shares in the water source.

An access licence specifies the number of shares in the available water held by the licence; and the times, rates and circumstances, and the areas and locations, where water may be taken under the licence. Access licences also have a water allocation account that reflects the water allocations which have been made for the licence category and the amount of water the licence holder is entitled to take at a particular point in time.

The WM Act enables the granting of particular types of access licences and the conversion of entitlements under other legislation to access licences. The WM Act also provides a framework for the trade of access licences, licence shares and water allocations.

Ownership of and security interests in access licences are recorded on a public register administered by NSW Land and Property Information.

## 8.3 Exemptions for water access licences

### Objective

The objective of having exemptions from the WM Act's requirements for access licences is to:

- minimise the regulatory burden on minor or small-scale water users commensurate with the small volume of water taken and the low level of associated impact
- allow the Department of Industry and Water NSW to manage its regulatory responsibilities in a cost-effective and practical manner.

### Background

Exemptions from the requirement to hold an access licence provide a net social benefit by avoiding transaction costs for both government and water users where:

- the risks to the environment and other water users are low  
or
- those risks are already managed through a different mechanism (such as an approval)  
and/or
- there are distinct socio-economic or environmental benefits, such as drought relief or dust suppression.

Clause 18 and Part 1 of Schedule 5 of the 2011 Regulation provide that the following persons are exempt from the requirement to hold a water access licence for the taking and use of water from a water source:

- a roads authority engaged in the construction and maintenance of roads
- a transport authority in relation to water required for the construction or maintenance of rail infrastructure facilities
- any person lawfully engaged in the carriage and use of water for drought relief
- any person lawfully engaged in using water for dust suppression
- any person lawfully engaged in hydrostatic testing of gas pipelines, in relation to water required for that purpose
- any person lawfully engaged in prospecting or fossicking for minerals or petroleum, in relation to water required for that purpose
- any landholder, in relation to water required for generating electricity for domestic consumption provided that the water is returned to the water source from which it was taken
- any person lawfully engaged in the testing of a new bore, in relation to water required for that purpose during the week following completion of the bore's construction
- any person in relation to the taking of water from or by means of an exempt monitoring bore for the purposes of measuring water levels, water pressure or water quality
- any person lawfully engaged in the operation of a hydro-electric power station in connection with a water supply work owned by the Ministerial Corporation in relation to water required for the purpose of generating hydro-electric power in certain circumstances
- any landholder in relation to the taking water from or by means of an excluded work
- any person taking water from an artificial channel in certain circumstances where the water is used to establish sugar cane plantings
- the Ministerial Corporation for approved watering for basic human needs
- a public authority for approved watering for environmental work construction
- holders of certain approvals in relation to the taking of any water from Bungaree Creek or Bingera Creek
- any person in taking water for emergency safety measures complying with a direction given under the *State Emergency Service Act 1989* or the *State Emergency and Rescue Management Act 1989*.

### 8.3.1 Option 1—base case—the 2011 Regulation lapses

If the base case is adopted and the 2011 Regulation is allowed to lapse, any extraction of water from a water source under the WM Act would require authorisation by an access licence.

Under the WM Act, all water that is taken from a water source requires an access licence. It is an offence to take water from a water source without holding an access licence that authorises the extraction. The defences available are where the water is taken pursuant to a basic landholder right under the WM Act (this type of take does not require a water access licence), an interstate assignment of allocation, an authorisation to take water from uncontrolled flows or if the person was exempt, pursuant to the WM Act or the regulations, from any requirement for a water access licence in relation to the taking of water from that water source. The 2011 Regulation contains all of the exemptions from the requirement for a water access licence.

As discussed above, if the 2011 Regulation was allowed to lapse and the exemptions from requirements for access licences no longer applied, then all of those exempt types of water extraction would require an access licence. The WM Act strictly limits the categories of new access licences. The 2011 Regulations and water sharing plans provide for applications to be made for limited categories of specific purpose access licences only. Accordingly, in the absence of an amendment to the WM Act, the water requirements for those persons that are currently exempt could only be met by the purchase of existing water entitlements on the open market, either on a permanent or temporary basis. In some instances this may be difficult where entitlement is not readily available to be purchased on the water market because demand for entitlement is high, or the water market for a particular water source is not well developed.

In some water sources there are established water trading markets. Historically these are the regulated river systems, but there are recognised markets in a smaller number of unregulated river and groundwater sources. In other unregulated river and groundwater areas there is no history of trading and as a consequence opportunities to purchase entitlement are limited.

There will also be an increased cost to government to process the additional transaction applications that will occur as a result of removal of the exemption provisions, although this could be offset by application fees.

It is difficult to estimate the frequency of an activity that the Department of Industry does not undertake—as these activities are currently exempt. However given the nature of the exempt activities it is expected that there would be a fairly large number conducted each year. For the purpose of the RIS it is estimated that 5,000 activities per year are potentially subject to the licence exemptions. .

The analysis estimates the costs to business based on the additional time taken to apply for the required licences and to prepare documentation to undertake water market transactions to purchase water on the open market, notwithstanding that not all affected persons may be able to buy water to meet their needs. Additional business costs associated with the delay is assumed to be one week (refer Appendix B).

The following costs and benefits are associated with removing the exemptions:

- Transfer from business to government amount to \$4.1 million per year for application fees associated with allocation assignment dealings.
- Transfers between businesses for small amounts of water valued at approximately \$1 million per year.
- Costs of delays in undertaking activities are estimated to be \$12.2 million per year.
- Costs of additional time taken to prepare the additional applications are estimated to be \$1.2 million per year.

Water transfers represent a cost to individual enterprises that currently enjoy an exemption. However there are benefits as well. Where water is available for sale, existing licence holders will benefit from additional water sales revenue.

The major costs associated with the removal of the exemptions would be incurred where water is not available for sale. In these circumstances, activities such as dust suppression—that have well established social, health and environmental benefits—would not take place.

### 8.3.2 Option 2—remake the 2011 Regulation

The benefits associated with remaking the exemptions are largely avoided costs:

- Business conducting small-scale activities avoid a cost of \$4.1 million per year for application fees (transfer) and water purchase costs \$1 million per year (transfer).
- Government avoids the considerable costs that would be incurred in processing additional water access licence applications that would arise if the licence exemption provisions were removed as well as the additional compliance costs associated with these licences.
- Activities with well-established social, health and environmental benefits such as dust suppression are facilitated.
- Business avoids the costs of delays in undertaking affected activities such as road maintenance estimated to be \$12.2 million per year as there are no delays in obtaining licences and acquiring water on the market.
- Business also avoids the cost of time taken to prepare applications estimated to be \$1.2 million per year.

**Table 8-2 Benefit of exemptions for water access licences**

Identified impacts	Annual units	Net present value \$m
Number of exempt activities including drought relief	5,000	
Benefit to currently exempt business		\$55.23

Source: Department of Industry estimate

### 8.3.3 Option 3—Remake the 2011 Regulation with proposed amendments

The exemptions from the need for an access licence can be clarified, extended, limited or eliminated to better meet operational management requirements.

While it is proposed that many exemptions be retained, amendments to the drought relief exemption are proposed, as discussed below.

## 8.4 Changes to drought relief exemption

### Objective

The objective is to clarify the application of an exemption for a person lawfully engaged in carriage of water for drought relief from holding an access licence to circumstances where the drought relief is for domestic consumption and stock watering.

### Background

The current drought relief exemption may be interpreted broadly. For example, it was not intended that this exemption extend to the carriage of water to irrigate crops in drought-affected areas.

#### 8.4.1 Option 1—base case the 2011 Regulation lapses

The number of activities undertaken with the benefit of the drought relief exemption varies considerably from year to year. In years where rainfall is plentiful there may be no activities. However, during drought there may be thousands of domestic and stock users across NSW requiring small amounts of water to supplement essential needs.

The estimated costs associated with the removal of the exemption are included in Section 8.3.2 of this RIS.

#### 8.4.2 Option 2—remake the 2011 Regulation

The benefits of remaking the 2011 Regulation are included in the estimates set out in Table 8-2.

#### 8.4.3 Option 3—remake the 2011 Regulation with amendments

It is proposed to limit the exemption to circumstances where the drought relief is for domestic consumption and stock watering. This means only a small volume of water should be taken and there would be a large benefit.

Those water users irrigating crops would need to purchase water on the market. For the purposes of this analysis it is estimated that five businesses per year may be affected by the proposed amendment.

**Table 8-3 Estimated costs of drought relief exemption amendment**

Identified impacts	Estimation units	Net present value \$m
Estimated number of drought relief activities affected per year	5	
Estimated cost to businesses using drought exemption to irrigate crops		\$0.06

Source: Department of Industry estimates

## 8.5 New provision to permit applications for domestic and stock specific purpose access licences

### Objective

The objective is to ensure that where a domestic and stock specific purpose access licence is attached to a nominated parcel of land, those people purchasing the nominated parcel of land can continue to use water for stock watering purposes.

### Background

Domestic and stock specific purpose access licences are generally limited by conditions of the licence to authorise the extraction of water for domestic and stock purposes at a particular landholding. If the landholding is sold, the vendor can no longer use the licence as they no longer occupy the landholding. The licence may be transferred to the purchaser of the landholding under section 71M of the WM Act, however, the vendor is not required by the WM Act to do so.

Many water sharing plans prohibit applications for new domestic and stock specific purpose access licences other than for the subcategory 'domestic'. This means if the purchaser of a landholding does not also purchase an existing domestic and stock specific purpose access licences from the vendor, the purchaser may not be able to access water for stock watering.

This means that the purchaser of a landholding has to purchase an existing domestic and stock specific purpose licences from the vendor to be able to access water for stock watering.

### 8.5.1 Option 1—base case—the 2011 Regulation lapses

There are approximately 4,300 domestic and stock specific purposes access licences that have a component of stock watering. Of these there are currently about 400 specific purpose access licences where there is a discrepancy between the licence holder and the holder of the approval for the water supply work nominated by the licence.

If the 2011 Regulation lapsed, these licences would not be affected except after the transfer of land ownership. In the circumstance where land is transferred without the specific purpose access licence, the new owners would not be able to apply for a new licence unless that was specifically permitted by the relevant water sharing plan.

The main reasons an existing domestic and stock specific purpose access licence is not transferred to the purchaser of a landholding are:

- the solicitor or conveyancer may incorrectly assumed the licence would be transferred as part of the sale of the land
- the vendor, solicitor or conveyancer did not understand the licence could only be used at the particular landholding.

Although a transfer under section 71M of the WM Act may be possible, it may not always be workable or expedient to negotiate a transfer with the vendor.

### 8.5.2 Option 2—remake the 2011 Regulation

Where the existing regulation is remade the new owners may apply for a new licence for domestic purposes only. There can be a considerable interruption to businesses caught in this situation requiring access for stock water.

It is expected that this could account for up to \$350 per day for up to six months. It is expected that either the business would not be able to carry stock for this period or that they would need to transport water to the site.

### 8.5.3 Option 3—remake the 2011 Regulation with proposed amendments

It is proposed to amend the 2011 Regulation to allow a landholder to apply for a new domestic and stock specific purpose access licence in the following circumstances:

- within 12 months of the landholder purchasing the landholding
- if a domestic and stock specific purpose access licence for the landholding was held by the vendor immediately prior to the sale of the landholding
- if the domestic and stock specific purpose access licence held by the vendor has been or should be cancelled under section 77A of the WM Act because it can no longer be used by the vendor
- the domestic and stock specific purpose access licence applied for is of the same subcategory (if any) as held by the vendor immediately prior to sale of the landholding

- the amount of share component applied for under the new specific purpose access licence is no more than the share component of the vendor's specific purpose access licence—so there is not an increase in entitlements to take water.

**Table 8-4 Benefit of domestic and stock specific purpose access licence amendment**

Identified impacts	Estimation units	Net present value \$m
Average per year	26	
Estimated benefits		\$8.08

Source: Department of Industry estimate

## 8.6 Security interests and access register

### Objective

The objective is to ensure there are exemptions in relation to access licence dealings and security interest holders so that the interests of the security interest holder are not affected.

### Background

Persons with a security interest in an access licence (such as a financial institution) must consent to changes being made to information contained in the Access Register in regard to the access licence in which the security interest is held. However, where those changes do not adversely affect the security interest, such consent should not be required.

Clauses 20 and 21 of the 2011 Regulation provide exemptions in relation to security interests in access licences. Clause 20 provides exemptions from the requirement for a security holder to consent to the recording of certain dealings under sections 71U and 71Q of the WM Act in the Access Register. Clause 21 exempts a person claiming a security interest in a replacement access licence from having to advise the holder of the licence of the existence of the security interest claimed and give written notice of the advice to the Director General, if the licence holder requests the Director General, in writing, to register the security interest.

### 8.6.1 Option 1—base case—the 2011 Regulation lapses

Lapsing of the 2011 Regulation would result in the consent and notification exemptions also lapsing, which would add to the cost and processing times of some dealings in access licences by requiring the consent of security interest holders or notification by persons claiming to be a security interest holder to the holders of replacement access licences. As shown in Table 8-5 the cost is estimated to be \$0.4 million over the five year period.

### 8.6.2 Option 2—remake the 2011 Regulation

Remaking the 2011 Regulation avoids the unnecessary impost on security interest holders of having to consent to access licence dealings, or notify holders in relation to replacement access licences, where the interests of the security interest holder are not affected. This option meets the objective of ensuring that there are exemptions in relation to access licence dealings and security interest holders, where the interests of the security interest holder are not affected. Table 8-5 summarises the costs and benefits associated with enabling exemption from notification.

Table 8-5 Benefit of enabling exemption from notification

Identified impact	Estimation units	Net present value \$m
Number of dealings per year	750	
Portion involving increase in shares	50%	
Benefit		\$0.4

Source: Department of Industry estimate

### 8.6.3 Option 3—remake the 2011 Regulation with proposed amendments

No amendments to these provisions of the 2011 Regulation are proposed.

## 9 Approvals

The WM Act specifies that certain works and activities that have the potential to impact on land and water resources require authorisation by an approval. This requirement ensures potential impacts from these works and activities can be regulated and minimised through conditions on an approval.

Approvals generally have effect for a period not exceeding 10 years and may be extended on application.

The relevant types of approvals are:

- **water supply work approval**—authorises the approval holder to construct and use a specified water supply work such as a pump, bore, dam or pipe, at a specified location. There are 94,310 current water supply work approvals; and 22,974 current water supply work approvals combined with water use approvals
- **flood work approval**—authorises the approval holder to construct and use a specified flood work such as a barrage, causeway, cutting or embankment, at a specified location. There are 1,634 current flood work approvals
- **water use approval**—authorises the approval holder to use water for a particular purpose such as irrigation or commercial use, at a particular location. There are 2,538 current water use approvals, and 22,974 current water supply work approvals combined with water use approvals (as identified above)
- **controlled activity approval**—authorises the approval holder to carry out a specified activity, such as the erection of a building or the construction of a watercourse crossing, at a specified location in, on or under waterfront land. Waterfront land is land within 40 metres of the highest bank of a river, the shore of a lake or the mean high water mark of an estuary. There are approximately 1,200 current controlled activity approvals with an average duration of 3 years.

The WM Act also provides for drainage work approvals and aquifer interference activity approvals.

Requirements for these types of approvals have not yet commenced. Drainage works are currently regulated under Part 2 of the *Water Act 1912* and aquifer interference activities are regulated under Part 5 of that WM Act.

The 2011 Regulation provides for a range of procedural and technical matters related to approvals, which include:

- requirements for advertising approvals and process for making objections to the granting of an approval
- form and content of Register of Approvals
- requirements for security deposits for the fulfilment of obligations under an approval
- exemptions from requirements for approvals
- exemptions from the transfer of approvals to successive landholders.

Requirements to advertise applications for approvals ensure that the community is made aware of applications. Exemptions from the requirement to advertise are prescribed for particular works with short or limited timeframes.

Security deposits may be required as a condition of an approval to ensure that persons undertaking projects under the authority of approvals take all requisite care in the conduct of operations and that the land is satisfactorily remediated once the project is complete.

Exemptions from the requirement to hold an approval are appropriate where the potential impacts from a particular work or activity are managed by another process or authorisation, or are very small and/or of short duration. This approach minimises transactions costs and reduces red tape by eliminating unnecessary duplication and recognising the proportionate risk of a proposed work or activity.

## 9.1 Exemption for approvals

### Objective

The objective is to retain exemptions for approvals in the 2011 Regulation to allow the Department of Industry and Water NSW to:

- manage approval requirements in a cost-effective and practical manner
- minimise the regulatory burden on persons undertaking low impact activities.

### Background

Exemptions from the requirement to hold an approval are appropriate where the risk of impacts arising from a particular work or activity are:

- managed via other processes  
or
- have only limited and/or short term impacts.

This minimises transaction costs and reduces red tape, and recognises the proportionate risk of a proposed work or activity.

The 2011 Regulation currently exempts certain persons in certain circumstances from requirements for approvals in the WM Act in relation to the:

- use of water
- construction or use of a water supply work or flood work
- carrying out of a controlled activity.

### 9.1.1 Exemptions for water use approvals

Clause 32(1) of the 2011 Regulation exempts a person from the offence under section 91A (1) of the WM Act of using water without a water use approval in the following situations:

- where a Development Consent is in force under the *Environmental Planning and Assessment Act 1979* other than the use of water for power generation by a major utility
- water for domestic consumption or stock watering
- water taken under a specific purpose access licence for Aboriginal cultural purposes
- environmental purpose in accordance with a plan for implementing an adaptive environmental water condition on an access licence
- a roads authority engaged in the construction and maintenance of roads
- a transport authority in relation to water required for the construction or maintenance of rail infrastructure facilities
- any person lawfully engaged in the carriage and use of water for drought relief
- any person lawfully engaged in using water for dust suppression
- any person lawfully engaged in hydrostatic testing of gas pipelines, in relation to water required for that purpose

- any person lawfully engaged in prospecting or fossicking for minerals or petroleum, in relation to water required for that purpose
- any landholder, in relation to water required for generating electricity for domestic consumption provided that the water is returned to the water source from which it was taken
- any person lawfully engaged in the testing of a new bore, in relation to water required for that purpose during the week following completion of the bore's construction
- any person in relation to the taking of water from or by means of an exempt monitoring bore for the purposes of measuring water levels, water pressure or water quality
- any person lawfully engaged in the operation of a hydro-electric power station in connection with a water supply work owned by the Ministerial Corporation in relation to water required for the purpose of generating hydro-electric power in certain circumstances
- any landholder in relation to the taking water from or by means of an excluded work
- any person taking water from an artificial channel in certain circumstances where the water is used to establish sugar cane plantings
- the Ministerial Corporation for approved watering for basic human needs
- a public authority for approved watering for environmental work construction
- holders of certain approvals in relation to the taking of any water from Bungaree Creek or Bingera Creek
- any person in taking water for emergency safety measures complying with a direction given under the *State Emergency Service Act 1989* or the *State Emergency and Rescue Management Act 1989*.

### 9.1.2 Exemptions for water supply works approvals

The 2011 Regulation exempts a person from the need to hold a water supply work approval for the construction and/or use of water supply works in certain circumstances.

Clause 34 of the 2011 Regulation provide exemptions from the requirement for a water supply work approval in relation to the construction only (not the use) of the following water supply works:

- water supply work constructed for the purpose of prospecting or fossicking for minerals or petroleum
- water pipe to convey water from one place to another
- water reticulation work located on a landholding for which there is a water use approval.

These exemptions do not apply on specified lands with high conservation value including land declared to be critical habitat, land in a heritage conservation area, SEPP 14 wetlands and state forest within the meaning of the *Forestry Act 2012*.

Clause 35 of the 2011 Regulation provides exemptions from the requirement for a water supply work approval in relation to the use only (not the construction) of the following water supply works:

- water supply work constructed for the purpose of prospecting or fossicking for minerals or petroleum
- water storage work, water reticulation work or water impounding work that was in use before 1 July 2004 to convey or impound water in certain circumstances
- water reticulation work used to convey water to a landholding for which there is a water use approval or which does not require a water use approval
- hydro-electric power station operated in connection with a water supply work owned by Water NSW or the Ministerial Corporation in certain circumstances.

Clause 36 of the 2011 Regulation provides an exemption from requirements for a water supply work approval for the construction *and* use of water supply works in the following circumstances:

- a landholder in relation to an excluded work listed in Schedule 1 of the 2011 Regulation
- any person in relation to an exempt monitoring bore
- the Ministerial Corporation in relation to a work for approved watering for basic human water needs

- any person engaged in an aquifer interference activity in connection with the mining or extraction of any material in relation to the construction or use of a water management work for the purpose of taking and using water from an aquifer
- any person for the purpose of complying with a direction under the *State Service Act 1989* or the *State Emergency and Rescue Management Act 1989* in an emergency in certain circumstances
- any person in relation to a work for the control or prevention of soil erosion which is included in a project under section 10 of the *Soil Conservation Act 1938*.

### 9.1.3 Option 1—base case—the 2011 Regulation lapses

If the 2011 Regulation is allowed to lapse, all works, uses and activities that are currently exempted from approval requirements would require an approval.

This would result in the following additional burdens on business:

- Additional costs would be incurred including application fees, the expense of preparing applications and the cost of the relevant approval (also noting that approvals will require renewal from time to time which is an additional cost). The cost of preparing applications could be quite significant especially if the proponent is required to engage the services of a consultant.
- There will be duplication of effort for those works, uses and activities which also require development approval from a local council or other consent authority as the work or activity will now require an approval as well as development consent.
- There may be additional delay in the commencement of projects as a result of the additional time required to process approval applications that are submitted to the Department of Industry or Water NSW.

There will also be an increased cost to government in regard to processing the additional transaction applications that will occur as a result of the lapsing of the exemption provisions, although this increased cost will be offset by application fees.

### 9.1.4 Option 2—remake the 2011 Regulation

Remaking the exemptions contained in the 2011 Regulation ensures that water users avoid the cost of obtaining an approval for the exempted works, uses and activities.

**Table 9-1 Benefits of works and water use approval exemptions**

Identified impact	Estimation units	Net present value \$m
Number of exempt works and uses	5,000	
Benefit		\$52.7

Note: Short-term, low-risk applications

As shown in Table 9-1 the benefits associated with remaking the exemptions for approvals for water supply works and water use include the removal of a time delay to commence works business valued at \$50.2 million in delayed production and \$2.5 million in time savings to prepare applications.

### 9.1.5 Option 3—remake the 2011 Regulation with proposed amendments

It is proposed to retain many of the existing exemptions for approvals. However a number of opportunities to make improvements have been identified. It is proposed to make amendments to some existing exemption provisions and also to include some new exemptions for state forest plantations and water tanker trucks used for dust suppression, as discussed in following sections.

## 9.2 Amendment of application of exemption in plantation areas in state forests

### Objective

The objective is to recognise that plantation areas of state forests are not sensitive environmental areas like other areas nominated in Clause 34.

### Background

Subclause 34(1) of the Regulation exempts a person from having to hold a water supply work approval to construct a water supply work for certain purposes. Subclause 34(2) of the Regulation states that subclause 34(1) of the Regulation does not apply to water supply works on certain types of land, including, at paragraph 34(2)(g), land within a state forest within the meaning of the *Forestry Act 2012*.

Plantations (as defined in the *Forestry Act 2012*) are not considered to be sensitive environmental areas like the other types of land listed in subclause 34(2) of the 2011 Regulation because they are highly modified and have been assessed as not requiring the same level of protection as more natural areas of state forest.

### 9.2.1 Option 1—base case—the 2011 Regulation lapses

All new water supply works constructed in state forests would require an approval for construction. Approximately 1,600 works have been constructed in state forests to date.

The estimated costs associated with the removal of the exemption are included in Table 9-1.

### 9.2.2 Option 2—remake the 2011 Regulation

All new water supply works constructed in state forests would require an approval for construction. Approximately 1,600 works have been constructed in state forests to date with 140 of these being in plantation areas.

### 9.2.3 Option 3—remake the 2011 Regulation with proposed amendments

Plantation areas account for approximately 16% of the total forest estate, with most of this being under softwood. Of the 1,600 works that have been constructed in state forest to date, approximately 140 have been located in plantation areas.

It is estimated there would be 14 works constructed in plantation areas of state forest per year that would be exempt from requiring a water supply work approval.

**Table 9-2 Benefit of amendment for state forests plantations**

Identified impact	Estimation units	Net present value \$m
Number of exempt works per year	14	
Benefit		\$0.14

Source: Department of Industry estimate

## 9.3 Amendment of exemption for water tanker trucks used to take water for dust suppression

### Objective

The objective is to expand existing exemptions from approval requirements for dust suppression.

### Background

Clause 18 and clause 5 of Schedule 5 of the 2011 Regulation exempts any public authority (including local councils) from holding an access licence in relation to taking water from a water source for the purpose of dust

suppression. Subclause 31(1) of the 2011 Regulation extends the exemption to the need to obtain an approval to use water for that purpose.

Option 1—base case— the 2011 Regulation lapsesThe current exemptions from requirements for an access licence and water use approval would not apply. Public authorities undertaking dust suppression activities would be required to hold:

- an access licence to account for any water taken for the purpose of dust suppression
- a water use approval that authorises the use of water for dust suppression.

The estimated costs associated with the removal of the exemption are included in Table 9-1.

### 9.3.1 Option 2—remake the 2011 Regulation

The current exemptions from requirements for an access licence and water use approval would continue to apply.

### 9.3.2 Option 3—remake the 2011 Regulation with proposed amendments

Water tanker trucks may have built-in pumps, or they may need to be attached to a stand-alone pump to take water from a water source. It is proposed to amend the 2011 Regulation to clarify that a local council does not need a water supply work approval to use a water tanker truck with an in-built pump to take water for lawful dust suppression activities, but only if the local council is satisfied that the take of water will not have a significant adverse impact on basic landholder rights or sensitive environmental areas (being the land currently identified in clause 34(2)(a)–(j) of the 2011 Regulation).

It is expected that this would mainly apply to local government authorities outside the Sydney metropolitan area. It is estimated that 95 local government authorities have on average two water tankers.

The major benefit would be removal of confusion over whether or not the tanker truck was undertaking a lawful activity.

## 9.4 Requirement for advertising approvals

### Objective

The objective is to ensure that certain applications for approvals are advertised to provide an opportunity for community comment.

### Background

Section 92 (7) of the WM Act enables regulations made under the WM Act to require any application or any specified class of applications to be advertised. Clause 24 of the 2011 Regulation identifies the types of applications for an approval that must be advertised. These include river pumps, production bores, and works within a river (weirs and dams). In some cases if the water supply work is to be used for a period of not more than six months, or for purposes that are generally exempt such as dust suppression, the application does not need to be advertised.

This clause also sets out the means by which the Minister for Regional Water publishes, and the content of, an advertisement. The administrative actions associated with advertising take a minimum of 35 days.

### 9.4.1 Option 1—base case—the 2011 Regulation lapses

If the regulation were to lapse there would be no requirement to advertise applications for approvals.

In the base case, the community would not have the opportunity to comment on any types of applications for approvals under section 93(1) of the WM Act because no applications for approvals would require advertising.

### 9.4.2 Option 2—remake the 2011 Regulation

The 2011 Regulation requires that prescribed types of applications for approvals be advertised. For certain low-risk activities, for example a water supply work that will not be used for more than 6 months, there is an

exemption available from the requirement to advertise. It is estimated that there are 500 applications advertised per year.

**Table 9-3 Cost to affected businesses of works approval advertising**

Identified impact	Estimation units	Net present value \$m
Number of advertised approval applications	500	
Cost		\$25.1

Source: Department of Industry estimate

The following impacts are associated with remaking this provision:

- Business incurs advertising fees associated with the requirements to advertise applications. While this is a cost to the affected business it is a transfer payment as the newspapers receiving advertising payments benefit.
- The net present value of delays in conducting the activity are the major costs accounting for \$25.1 million.
- There is a social benefit of remaking the exemption from the increased transparency by actively notifying the community and providing an opportunity to comment.

### 9.4.3 Option 3—remake the 2011 Regulation with proposed amendments

Only one minor amendment to the existing provision is proposed to clarify the method of advertising. It is proposed to change the advertising method from *advertising applications from 'in a local newspaper' to in a newspaper circulating among the local community*. This amendment recognises some local newspapers have been discontinued.

This amendment will not make a significant impact on the cost of the proposed Regulation.

## 9.5 Exemption from flood work approvals

### Objective

The objective of having exemptions from requirements for flood work approvals is to allow the Department of Industry and Water NSW to:

- minimise the regulatory burden on minor or small-scale flood works commensurate with the small volume of water impeded and the low level of associated impact
- manage its regulatory responsibilities in a cost-effective and practical manner.

### Background

Under the WM Act a flood work is defined as a work that:

- is situated in or near a river, estuary or lake, or within a floodplain
- affects the flow of water to or from a river, estuary or lake, or the distribution or flow of floodwater in times of flood, because of its size or configuration
- includes all associated pipes, valves, metering equipment and other equipment.

Examples of flood works are levees, access roads, causeways and embankments.

An approval is required to construct or use a flood work under section 91D(1) of the WM Act. When these approval requirements commenced in 2015 (with the repeal of Part 8 of the *Water Act 1912*), the 2011 Regulation was amended to provide exemptions from requirements for a flood work approval for certain low-risk flood works.

The circumstances when exemptions from requirements for flood work approvals apply include

- any person for the purpose of complying with state emergency directions
- any person in certain urban areas

- persons who own and occupy landholding less than 0.2HA in certain circumstances relating to ring embankments around a dwelling house, shed or storage silo
- certain public authorities if the flood work is constructed or used for the purposes of a railway or public road
- certain earthworks less than 150 mm above the natural surface.

### 9.5.1 Option 1—base case—the 2011 Regulation lapses

Under the base case, all flood works would require an approval. Levies and embankments have been developed on private and public land over the last 200 years. While it is not possible to determine how many flood works would be impacted by the lapsing of the exemption the number is expected to be extremely large. For the purposes of this assessment it is expected that there would be 5,000 existing works and up to 500 new flood works each year.

For the flood works already established there would be no production delays associated with the obtaining the approvals as the works have already been constructed.

For the 500 new minor or small scale flood works expected to be constructed each year the expected cost of construction delays is estimated to be \$6.13 million over the five years of the analysis.

Additional costs for the time to prepare applications is estimated to be \$0.915 million.

Over the five years of the analysis the total cost estimated to be \$7.04 million.

### 9.5.2 Option 2—remake the 2011 Regulation

**Table 9-4 Impacts of flood work approval exemption**

Identified impact	Estimation units	Net present value \$m
Number of existing flood works	5,000	
Number of new flood works	500	
Benefit		7.04

Source: Department of Industry estimate

In addition, there may be circumstances where approval could not be issued under the WM Act for a particular existing work. The costs of infrastructure modifications would be an additional cost.

### 9.5.3 Option 3—remake the 2011 Regulation with proposed amendments

Clause 41D of the 2011 Regulation provides an exemption from requirements for a flood work approval for ring embankments around dwelling houses, sheds and storage silos. This exemption does not apply unless the embankment:

- does not enclose more than two hectares or 10% of the person's land, whichever is less
- is not located within a designated high-risk flood area.

It is proposed to extend the exemption to apply to partial-ring embankments on sloping land, as these embankments have the same effect as a full-ring embankment that completely enclose an area of land.

Currently there are nine applications for this type of flood work and the impact is expected to be minor over the next five years.

## 9.6 Exemptions—controlled activity approvals

Clauses 38–40 of the 2011 Regulation provide exemptions from the offence under section 91E(1) of the WM Act of carrying out a controlled activity without a controlled activity approval.

Under the 2011 Regulation, public authorities (excluding Landcom and the Superannuation Administration Corporation) and local councils are exempt from requiring a controlled activity approval in relation to all controlled activities that they carry out in, on or under waterfront land.

Any person (other than a public authority) is exempt from requiring a controlled activity approval in relation to the carrying out of the following controlled activities in, on or under waterfront land:

- activities carried out in accordance with any lease, licence, permit or other right in force under the *Mining Act 1992*, the *Crown Lands Act 1989*, or the *Crown Lands (Continued Tenures) Act 1989*, *Western Lands Act 1901* or a petroleum title in force under the *Petroleum (Onshore) Act 1991*
- activities carried out in accordance with any lease, licence, permit or other right in force in respect of land under the ownership or control of the Maritime Authority of NSW or a Port Corporation (within the meaning of the *Ports and Maritime Administration Act 1995*)
- for which the minister administering the *Ports and Maritime Administration Act 1995* is the consent authority under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- certain activities comprising the excavation of the bed of a river, lake or estuary for the purpose of facilitating the use of a water supply work
- certain activities carried out pursuant to section 52 of the WM Act in relation to a person's extraction of water with respect to their domestic and stock rights
- activities carried out, in accordance with a harvestable rights order, in connection with the construction or use of a dam on land within the harvestable rights area constituted by the order
- activities carried out in connection with the construction or use of fencing, or of a vehicular crossing or an access track, that does not impound water, being an activity carried out in, on or under waterfront land relating to a minor stream and within a rural zone
- certain activities carried out in connection with the construction or use of a work under a Part 2 licence or Part 8 approval issued under the *Water Act 1912*
- activities comprising nothing more than the removal of vegetation in circumstances that would otherwise be lawful
- carrying out of development in accordance with section 16 of Part E (Rouse Hill Regional Centre) of *Baulkham Hills Development Control Plan*, on the land to which that section applies (being land bounded by Windsor Road, Commercial Road and Withers Road, Rouse Hill)
- carrying out of development in accordance with the *Oran Park and Turner Road Waterfront Land Strategy 2009*, as published in the Gazette on 17 July 2009
- activities carried out on waterfront land relating to a river where the channel of the river is fully concrete lined or is a fully enclosed pipe channel
- certain construction, modification, repair or maintenance of, or emergency work on certain infrastructure by a network operator licensed or authorised under the *Water Industry Competition Act 2006*, the *Gas Supply Act 1996* or the *Electricity Supply Act 1995*, or a licensee under the *Pipelines Act 1967* (a pipeline licensee)
- activities carried out in connection with the erection, alteration, addition to or the provision of ancillary facilities for a dwelling house or dual occupancy building provided they comprise exempt development or are subject of a development consent or complying development certificate and are not being carried out in, on or over the bed of any river, lake or estuary
- 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.

### 9.6.1 Option 1—base case—the 2011 Regulation lapses

Adoption of the base case would result in the lapsing of the existing exemption provisions in the 2011 Regulation which would mean that controlled activities would require a controlled activity approval.

This would result in the following additional burdens on business:

- Additional costs would be incurred including application fees, the expense of preparing applications and the cost of the relevant approval (also noting that approvals may require renewal from time to time which is an additional cost). The cost of preparing applications could be quite significant, especially if the proponent engages the services of a consultant.
- There will be duplication of effort for those activities that also require development approval from a local council or an authorisation from other consent authority.
- There may be additional delay in the commencement of projects as a result of the additional time required to process approval applications that are submitted to the Department of Industry.

There will also be an increased cost to government in regard to processing the additional transaction applications that will occur as a result of the lapsing of the exemption provisions, although this increased cost will be offset by application fees.

### 9.6.2 Option 2—Remake the 2011 Regulation

If the 2011 Regulation is remade in its current form, there would be no change to the existing exemptions from requirements for controlled activity approvals. The existing exemptions which are considered unclear would not be clarified and the proposed new exemptions would not be created.

Remaking the existing controlled activity exemptions would avoid the costs identified in the base case.

Business would avoid the cost of additional approvals estimated at \$9.3 million over the five years and the delays in conducting minor activities. The cost of the approvals is a transfer to government assuming cost recovery in fees and charges.

The major cost is the cost of delays for business which account for \$50.2 million.

**Table 9-5 Benefits of controlled activity exemption**

Identified impact	Estimation units	Net present value \$m
Estimated number of controlled activities covered by exemptions	1,000	
Benefit		\$10.54

Source: Department of Industry minimum fee controlled activity approvals

### 9.6.3 Option 3—Remake the 2011 Regulation with proposed amendments

It is proposed to clarify the operation of several existing exemptions, and also create a number of new exemptions from requirements for controlled activity approvals.

It is proposed to clarify the following existing exemptions:

- removal of vegetation (paragraph 23 of Schedule 5)—clarification the exemption does not apply to the removal of soil or rocks surrounding the vegetation; clarification the exemption only applies when the removal of vegetation is lawful under other legislation including when no authorisation is required; and clarification the exemption does not apply to the removal of large woody debris which is important in providing river bank and bed stability, reducing flow velocities and providing habitat.
- activities on land of Maritime Authority or Port Corporation (paragraph 17 of Schedule 5)—clarification the exemption also applies to land under the ownership or control of port operators as defined in the *Ports and Maritime Administration Act 1996* but only in situations where the environmental impact of the activity has been considered.
- development at Rouse Hill Regional Centre (paragraph 24 of Schedule 5)—clarification of the relevant Development Control Plan.

## 9.6.4 Proposed new exemptions from controlled activity approvals

### Objective

To recognise additional activities as low risk activities that do not require a controlled activity approval; and recognise additional activities which are subject to other assessment and approval requirements.

### Background

It is proposed to create new exemptions for the following:

- Any type of controlled activity which is the subject of enforcement action being undertaken by another NSW government agency (for example, direction from EPA to remove an illegal dam constructed across a watercourse using asbestos) but only if the Minister for Regional Water has approved the carrying out of the activity without a controlled activity approval.
- Any type of controlled activity which is required to be carried out by a court.
- Maintenance of existing lawful works on waterfront land, which does not involve changes in the size of the work, or additions or improvements to the work.
- Repair or restoration of storm damage to access tracks, watercourse crossings, water supply works or essential services infrastructure, or removal of storm debris.
- Construction of a jetty, pontoon or mooring pole on waterfront land relating to an estuary or lake in certain circumstances.
- Any type of controlled activity on waterfront land relating to an estuary or lake which has been highly modified by urban/industrial development where we are proposing the exemption should apply—the areas where the exemption applies will be depicted in supporting maps.
- Any type of controlled activity which relates to waterfront land for a 1st, 2nd or 3rd order stream and where the activity is separated from that stream by a public road, carpark, other hard stand area or levee walls.
- Any type of controlled activity carried out by government entities in certain circumstances.

Estimates from the Department of Industry indicate that there are around 600 of these types of applications per year which would be subject to these new exemptions with 75% being in the Sydney region.

In the case of activities subject to enforcement activity by another agency the proposed exemption will streamline regulatory activities and expedite the repair or removal of any harmful works. For the maintenance of lawful works, the proposed exemption avoids duplication of assessment processes.

Some of these activities occur in urban or industrial situations. As such they will require development consent from local government. Any environmental impact, which by definition is low as a result of the highly modified environment, will be dealt with under the *Environmental Planning and Assessment Act 1979*.

In these cases the proposed exemption makes current practice more efficient. It saves the need for local councils to obtain concurrence from the department for these activities.

- Business benefits from a \$0.5 million annual reduction in application fees associated with controlled activity lodgement. While this is a cost to the affected business it is a transfer payment to government
- the net present value of avoided delay is the major benefit accounting for \$5.8 million and time taken to prepare applications is estimated to be \$0.3 million

**Table 9-6 Identified impacts of changes to controlled activity exemptions**

Identified impact	Estimation units	Net present value \$m
Estimated number of affected activities per year	579	
Benefit		\$6.1m

Source: Department of Industry estimates

## 9.7 Security deposits for approvals

### Objective

Security deposits ensure that project proponents take added care when developing land and that the land is satisfactorily remediated once the project is complete.

### Background

There is a risk to the environment, other water users and the community generally that proponents will not fulfil their obligations in regard to the satisfactory construction of works or completion of activities associated with approvals granted by the Minister for Regional Water.

In order to minimise that risk, clause 28 of the 2011 Regulation allows the minister to impose a condition on an approval that compels the proponent to provide security for the cost of performing the holder's obligations under an approval. It also allows for those funds to be paid out to meet the holder's cost of performing their obligations should they default. This relates to obligations such as the rehabilitation of land after the conclusion of an activity or construction of works in a prescribed manner. The financial effect of this provision is to require a capital commitment prior to the commencement of works.

Based on recent figures, approximately 50 security deposits are provided per year. A separate security deposit may be required for different stages of the same project. The amount of the deposit varies according to the anticipated cost of remediation. On average the cost of a security deposit is \$300,000 and the duration it is held is between one and two years.

### 9.7.1 Option 1—base case—the Regulation lapses

If the 2011 Regulation is allowed to lapse, the conditions of an approval could require a security deposit for the fulfilment of obligations under the conditions of the approval. However, this requirement for a security deposit would not be supported by the framework currently provided in clause 28 of the 2011 Regulation. This may lead to uncertainty regarding how the amount required for a security deposit is determined, how a security deposit is provided, and the status of a security deposit if the approval expires.

In the base case the security deposits would still be collected, and for the purposes of the analysis it is assumed that \$15 million is collected per year. Assuming that the deposits are held for two years, the opportunity costs of capital is estimated to be approximately \$2.1 million per year with a NPV of \$8.6 million over the five years of the analysis.

### 9.7.2 Option 2—remake the 2011 Regulation

Clause 28 of the 2011 Regulation provides for conditions of approvals to require security deposits for the fulfilment of approval obligations.

The security deposit is released to the approval holder when works are satisfactorily completed. Assuming that the deposits are held for two years, the opportunity costs of the capital (7% assumed) for those companies conducting appropriate remediation is estimated to be approximately \$2.12 million per year with a NPV of \$8.6 million over the five years of the analysis.

The benefit of remaking the regulation is that it provides certainty regarding how the amount required for the security deposit is calculated and the protection against unwarranted costs transfers from businesses to government and the community in the event that the works are not satisfactorily completed.

It is estimated that 5% of sites may be abandoned without appropriate remediation. As a result of the security deposit in place there is an additional \$900,000 per year available to undertake remediation at designated abandoned sites. Over the period of the analysis this amounts to \$3.7 million.

As a result, the NPV of the cost of security deposits is estimated to be \$4.9 million.

**Table 9-7 Impacts of security deposits**

Identified impact	Estimation units	Net present value \$m
Number of security deposits lodged	50	
Estimated cost of security deposits		\$4.9

Source: Department of Industry estimates

### 9.7.3 Option 3—remake the 2011 Regulation with proposed amendments

No amendments to the current provisions in the 2011 Regulation are proposed.

## 10 Water supply authorities

### 10.1 Background

Sydney Water, Water NSW, and Hunter Water are created by and derive their responsibilities and areas of operations from their respective Acts (*the Sydney Water Act 1994, the Water NSW Act 2014, and the Hunter Water Act 1991*).

The 93 regional urban local water utilities derive their responsibilities from and operate mainly under the *Local Government Act 1993*. Five authorities operate as water supply authorities under the *Water Management Act 2000*. Central Coast Council is a local water utility and a water supply authority.

The 2011 Regulation applies to

- Central Coast Council—incorporates former Gosford City Council and Wyong Shire Council
- Essential Energy (Broken Hill and surrounds)
- Water NSW (Fish River Water Supply Scheme)
- Cobar Water Board
- Sydney Olympic Park Authority.

Central Coast Council and Essential Energy have both water and sewerage functions. Cobar Water Board and Water NSW (Fish River Scheme) have only water supply functions. Sydney Olympic Park Authority supplies recycled water.

Independent Pricing and Regulatory Tribunal (IPART) has a standing reference under the *Independent Pricing and Regulatory Tribunal Act 1992* Schedule 1 for water supply authorities and makes price determinations for Water NSW, Essential Energy and Central Coast Council.

The power for local water utilities to levy developer charges for water supply, sewerage and stormwater derives from section 64 of the *Local Government Act 1993* by reference to section 306 of the *Water Management Act 2000*. Clause 224 of the 2011 Regulation relates to levying of water supply and sewerage developer charges.

In relation to water supply authorities, the 2011 Regulation:

- defines the areas of operations of water supply authorities
- provides for the service and charging functions of water supply authorities in a manner that integrates natural resource management outcomes into water supply authority functions and achieves greater consistency with other authorities undertaking similar functions
- provides for, and controls activities in, special areas
- promotes operational and administrative best practice.

### 10.1.1 Central Coast Council—Gosford and Wyong

Central Coast Council water supply system serves approximately 138,000 connected properties between the Hawkesbury River in the south, Tuggerah Lake to the north and Mooney Mooney Creek to the west. The system also provides services to a number of large industrial and commercial customers including Vales Point power station. In 2015–16 the system delivered 29,000 megalitres of water.

Gosford City Council and Wyong Shire Council are listed as water supply authorities under the WM Act. Central Coast Council was proclaimed in May 2016 and carries out its water supply and sewerage functions as a water supply authority in the area of operations of the former Gosford and Wyong councils.

### 10.1.2 Essential Energy

Essential Energy's water-related functions include providing water and sewerage services to about 10,500 connected properties in and around Broken Hill. Essential Energy supplies a total of approximately 6,000 megalitres of water per year.

Essential Energy also provides water supply to two mining companies, Perilya Ltd (Perilya) and CBH Resources Ltd (Broken Hill Operations).

### 10.1.3 Water NSW (Fish River Water Supply Scheme)

The Fish River Water Supply Scheme is a pipe and pump scheme that supplies around 23,500 properties with approximately 3,700 megalitres of water per year.

The scheme sources water from Oberon Dam and supplies bulk water to four major customers (Energy Australia, Lithgow City Council, Oberon Council and WaterNSW Greater Sydney) and approximately 280 smaller customers along the pipe route. These smaller customers are farmers and some industrial customers (collieries) who use the water for domestic purposes (such as showers and toilets). The scheme also supplements town water supplies in the Blue Mountains.

### 10.1.4 Cobar Water Board

The Cobar Water Board is a water supply authority with three main stakeholders—Cobar Shire Council, which supplies water to Cobar township and separately provides sewerage services; Endeavour Operations (Elura Gold Mine) and Peak Gold Mines Pty Ltd (Peak Gold Mine).

Peak Gold Mine on-supplies water to Cobar Management Pty Ltd (CSA Mine) under an agreement. The scheme also supplies water to other 'minor' consumers, as approved by its board.

### 10.1.5 Sydney Olympic Park Authority

The Sydney Olympic Park Authority is constituted under the *Sydney Olympic Authority Act 2001*. The minister responsible for the *Sydney Olympic Authority Act 2001* is the Minister for Sport. The Office of Sport is an executive agency related to the Department of Industry.

The Sydney Olympic Park Authority operates the Water Reclamation and Management Scheme (WRMS) that provides a recycled water option for development within Sydney Olympic Park and surrounding areas. The water is sourced from sewage and stormwater, and the recycled water is used for a variety of purposes including irrigation and toilet flushing in office buildings and apartments as well as homes in the adjacent suburb of Newington.

In 2015–16, the WRMS produced 930 megalitres of recycled water and provided services to an estimated 26,000 residents and workers (SOPA Annual Report 2015–16).

**Table 10-1 Water supply authorities' connected properties and water delivered**

Customer	Total annual water delivered ML	No. of Connected properties
Central Coast Council	29,000	137,800
Cobar Water Board	3,500	2,260 + Mines
Essential Energy Broken Hill	5,700	10,530 + Mines
Fish River	3,700	23,500
Sydney Olympic Park Authority (recycled water)		
<b>Total</b>	<b>40,900</b>	<b>174,090</b>

Source: NSW Performance Monitoring 2015–16

**Table 10-2 Water supply authorities' asset values and revenue**

Customer	Asset current replacement costs \$m	Annual revenue \$m
Central Coast Council	5,512	183.1
Cobar Water Board \$m	162	4.14
Essential Energy Broken Hill (water)	674	30.8
Fish River	225	10
Sydney Olympic Park Authority		1.88
<b>Total</b>	<b>6,573</b>	<b>229.92</b>

Source: NSW Performance Monitoring 2015–16 and Sydney Olympic Park Authority Annual Report

## 10.2 Water supply authority area of operations and functions

Division 2 of Part 9 of the 2011 Regulation defines water supply authorities' areas of operations and specifies which functions (such as water supply and sewerage) apply to each water supply authority.

This division currently requires water supply authorities to carry out their functions in accordance with a strategic business plan that is approved by the Minister for Regional Water. The strategic business plan involves long term planning for water supply authorities' operation, management and infrastructure investment.

This division reduces regulatory burdens by exempting water supply authorities from the requirement under section 292(1)(a) of the WM Act to obtain the minister's approval to construct, maintain and operate non-critical water and sewerage works.

## 10.3 Water supply and sewerage

Division 3 of Part 9 provides a framework for the provision of urban water services by water supply authorities. Water services cover the water supply pipework from its point of connection to a water supply authority's water supply system up to and including the customer water meter.

This division provides for effective operation and management of water supply works such as meters and fire hydrants, and includes provisions for efficient use and conservation of water. This division defines the responsibilities of property owners and water supply authorities. The provisions in this division are essential for public health safety and maintaining continuity of supply.

Division 4 of Part 9 provides a framework for controlling sewerage system operations and for regulating discharges into sewers. Sewerage system provisions apply to Essential Energy and Central Coast Council. This division provides for installation and maintenance requirements for sewerage service and defines responsibilities of property owners, also provides limitations on sharing sewerage services.

Part of this division, discharges into sewerage systems, applies only to Essential Energy and provides for measures to control discharges into the sewerage system in order to avoid sewerage system failure and to protect the environment. Discharges into the sewerage systems of Central Coast Council are regulated by the similar provisions in the *Local Government (General) Regulation 2005*.

## 10.4 Plumbing fittings, plumbing work and plumbing permits

Division 5 of Part 9 provides a framework for plumbing to connect to water supply authorities' systems. This division applies to Essential Energy, Cobar Water Board, Water NSW (Fish River Water Supply Scheme) and Sydney Olympic Park Authority.

The main purpose of this division is to ensure any plumbing works on the water supply authorities' water supply and sewerage pipeworks are undertaken with appropriate authority from the water supply authority and that only approved fittings are used. This ensures the drinking water continues to remain safe for public consumption and that the safety, reliability and longevity of the water supply authorities' assets are protected.

## 10.5 Special areas

Division 6 of Part 9 controls activities within important water catchment areas termed 'special areas' and only applies to Essential Energy.

The main purpose of this division is to identify and control the activities within the drinking water supply dam catchments of Essential Energy. This ensures the drinking water supplied from these dam catchments remains safe for public consumption and the costs of water treatment are minimised.

## 10.6 General finance

Division 7 of Part 9 of the Regulation provides for the financial functions of water supply authorities.

This division provides the basis for water supply authorities' determination and levying of service charges for their water supply and sewerage services, and sets the requirements for approval of the service charges by the Minister for Regional Water. This subdivision ensures the fees and charges levied to customers are fair, equitable and transparent.

It also provides the water supply authorities with power to levy, collect and adjust the service charges and the terms of payments including the process for service charges objections management.

## 10.7 Concessions for eligible pensioners and others

Division 8 of Part 9 of the Regulation provides for the reduction of service charges payable by pensioners and certain other eligible people. It regulates the basis for pensioner and hardship concessions for customers.

This division also provides the circumstances under which the water supply authority could restrict or discontinue the provision of water supply and sewerage services to its customers including the record-keeping requirements.

## 10.8 Miscellaneous

Division 9 of Part 9 contains provisions for the following miscellaneous matters:

- the supply of sewerage plans by a water supply authority on request on behalf of an owner
- information that must accompany applications for certificates of compliance for developments within water supply authorities area under section 305(2) of the WM Act
- the kinds of developments that are subject to the requirements of section 306 of the WM Act—under this section a water supply authority may impose certain requirements before granting certificate of compliance, which enables an authority to provide appropriate infrastructure provisions to service developments

- prescribes Peak Gold Mines Pty Ltd as a mining company that can nominate a member of the Cobar Water Board.

## 10.9 Option 1—base case—the 2011 Regulation lapses

If the regulation were to lapse, the authorities would continue to exist as statutory entities as they are constituted under the WM Act, and some functions would also continue under the WM Act. The WM Act specifies the area of operation is to be prescribed under the regulation.

If the regulation were to lapse the authorities would not be constrained to provide nominated services to a particular area and this could place authorities, customers and water supplies at risk.

In addition, ministerial approval would be required to construct, maintain and operate water management works and other associated works under section 292(1)(a) of the WM Act including the works exempted under clause 116 of the Regulation.

This means routine maintenance could not be undertaken without minister's approval. This would impose significant costs on government and on the authorities as well as limit their ability to respond to network emergencies and provide ongoing water supply and sewage services.

Approvals would need to be obtained on a daily basis to undertake maintenance on mains and treatment plants.

Without the requirement for strategic plans to be regularly reviewed to consider changed circumstances such as population variation, and for these plans to be approved, service delivery could be at risk.

Without the 2011 Regulation there would be a substantially increased economic burden for local communities and the wider NSW community as water supply authorities would lose their powers to charge customers for water supplied or sewerage service provided. This would have serious detrimental impacts on Central Coast Council, Essential Energy, Water NSW (Fish River Water Supply Scheme) and Cobar Water Board. Without revenues, these bodies will not be able to operate.

Sydney Olympic Park Authority would also be affected, but to a substantially lesser extent. It is assumed that the NSW Government would fund the operating deficit of the Sydney Olympic Park Authority caused by their inability to levy charges.

The customers of these water supply authorities, excluding Sydney Olympic Park, would need to make alternative arrangements for the supply of water and sewerage services. The cessation of water supply and sewerage services and the 'mothballing' of associated infrastructure would have substantial impacts on the cost of water supply and sewerage, property values and regional growth.

In the base case, residential and commercial premises would be retrofitted with rainwater tanks, wastewater tanks and pumps. Water would be purchased and carted from the nearest alternative source. Sewage would be stored onsite and carted to the nearest alternative treatment plant or land disposal area.

The capital and recurrent costs for this are significant at about \$11 billion for capital and about \$1.7 billion for annual recurring costs.

The largest single capital cost is the estimated \$9 billion loss of property values resulting from the replacement of reticulated water supply and sewerage services by onsite water storage and sewage collection tanks for developed properties. This estimate is based on a study undertaken by Hornsby Shire Council in 1999 that indicates that a general property improvement of \$30,000 per residence would be gained in the Galston area if it were sewered (Rolyat Services Pty Ltd 2003).

Total additional costs over the five years are estimated \$17.68 billion.

**Table 10-3 Water supply and sewerage service**

Identified impact	\$m	Net present value \$m
<b>Capital costs</b>		
Rainwater tanks	977	
Rail head discharge	1	
Wastewater tanks	1,328	
Loss of property value	9,008	
<b>Recurrent costs</b>		
Water price	33	
Water Cartage	489	
Wastewater disposal	880	
Pumping costs	16	
Mothball assets	43	
Loss of development margin	140	
Electricity costs	133	
<b>Total</b>		<b>\$17,679</b>

Source: Department of Industry estimates

## 10.10 Option 2—remake the 2011 Regulation

The benefits of remaking the 2011 Regulation are primarily avoided costs. These are estimated to have a net present value of approximately \$17.68 billion.

## 10.11 Option 3—remake the 2011 Regulation with proposed amendments

It is proposed to:

- improve the quality of maps in Schedule 7 of the 2011 Regulation and publish them on the Department of Industry's website instead of in the Regulation itself
- update the 2011 Regulation to reflect that approval of a water supply authority's determination for any charging year is not to be granted unless an integrated water cycle management strategy or a strategic business plan was approved within the last four years, and both the integrated water cycle management strategy and the strategic business plan have been approved by the Minister for Regional Water within the last eight years. This amendment will commence on 1 December 2020.
- clarify that water meters installed, or directed to be installed, by a water supply authority should be installed on the water supply authority's water supply service pipe as close as practicable to the boundary of the land supplied
- add intermittently operating water transfer pipelines as a circumstance when a fire hydrant may not be fully charged.

### 10.11.1 Integrated water cycle management strategy and Best Practice Management of Water Supply and Sewerage Framework

It is proposed to amend the 2011 Regulation to clarify that the Minister for Regional Water may approve an integrated water cycle management strategy, and to update the current provision regarding the approval of service charge determinations to reflect the NSW Government's Best Practice Management of Water Supply and Sewerage Framework.

## Background

The 2011 Regulation grants the Minister for Regional Water power to approve strategic business plans and specifies the approval of a water supply authority's service charges must not be granted unless a strategic business plan has been approved by the minister within the last four years (clauses 115 and 196).

The proposed amendment will update the 2011 Regulation to reflect the NSW Government's Best Practice Management of Water Supply and Sewerage Framework (2016), which requires water supply authorities to update and have an approved integrated water cycle management strategy and strategic business plan alternatively every four years. That is, if an integrated water cycle management strategy is approved this year, in four years' time a strategic business plan is required to be approved, and four years after that an integrated water cycle management strategy, and so on.

## Expected impacts

Currently under the NSW Best Practice Management Water Supply and Sewerage Guidelines (2007), integrated water cycle management strategies were to be prepared and implemented by June 2008. The integrated water cycle management strategy was to be reviewed and updated within six years.

Updating the integrated water cycle management strategy is expected to cost \$135,000 for each water supply authority. Currently having an approved updated integrated water cycle management strategy is part of the Best Practice Framework and it is a statutory requirement under the Access Licence Dealing Principles Order (2004) that applies if a water supply authority intends to trade surplus water allocations from a local water utility access licence or access licence of the subcategory town water supply. It is also a requirement under the *Local Government Act 1993* if the water supply authority wishes to pay a dividend.

Central Coast Water and Essential Energy have IPART price reviews currently underway. The IPART final reports and determinations are scheduled for release in May 2019 for commencement 1 July 2019.

This amendment will commence on 1 December 2020 to ensure that all water supply authorities have sufficient time to update their integrated water cycle management strategies and accommodate IPART determinations expected in 2019.

As a result there are no additional costs expected for the water supply authorities to prepare the integrated water cycle management strategy.

### 10.11.2 Location of water meters

#### Objective

It is proposed to amend the 2011 Regulation to clarify that water meters installed, or directed to be installed, by water supply authorities should be installed on the water supply authority's water service pipe as close as practicable to the boundary of the land being supplied.

#### Background

Water supply authorities own the water meters and the pipelines leading to the water meter and are responsible for its repair/replacement. Water supply authorities are responsible to repair any break in a water pipe upstream of the water meter.

The owner of the premises owns and is responsible for the upkeep of the water pipes downstream of the meter. If there is a break in the water pipes downstream of the meter, the owner is responsible for its repair and should pay for the water that has passed through the meter.

In regional areas the water supply authority's supply main can be a considerable distance from the premises requiring water. If the meter is incorrectly located adjacent to the premises and not as close as practicable to the boundary of the land supplied the authority can incur significant additional costs as it will be responsible for any water losses that occur along the length of the pipework upstream of the incorrectly located water meter.

The primary benefits of new meters being installed as close as practicable to the boundary of the land would be more rapid maintenance of leaking service mains, as customers would more readily observe sudden increases in their metered water use, and better cost recovery for water used by the water supply authority's customers.

### 10.11.3 Supply of water to fire hydrants

It is proposed to amend the 2011 Regulation to set out an additional circumstance in which a fire hydrant may not be fully charged.

#### 10.11.3.1 Option 1—base case—the 2011 Regulation lapses

Under the base case there would be no specific requirement to supply water to fire hydrants. This could lead to considerable addition risk in the community as fire authorities would not be certain that water for firefighting would be available at standpipes.

#### 10.11.3.2 Option 2—remake the 2011 Regulation

Under the 2011 Regulation, a water supply authority must at all times keep charged with water any water main or pipe supplying water to fire hydrants installed by the authority unless prevented from doing so by drought or other emergency or if there are necessary repairs being carried out to the main, pipe or hydrant.

However, some water mains are only intermittently used by water supply authorities, particularly when the water main is used to top up a storage facility or where the main is only used as a backup during drought.

Under these circumstances it is possible that a fire authority may find that they do not have access to the required water for firefighting purposes in an emergency.

#### 10.11.3.3 Option 3—remake the 2011 Regulation with proposed amendments

It is proposed to amend the 2011 Regulation to ensure that water supply authorities are not required to keep charged a water main or pipe supplying water to a fire hydrant installed by the authority if the water main or pipe is a water transfer pipeline which is not in continuous operating mode and the authority has advised the relevant fire services that the supply to that fire hydrant is intermittent.

The main benefits of the proposed amendment are improved transparency and emergency response for fire authorities.

Overall the proposed amendments to the water supply authorities' provisions are not expected to have significant cost impacts. The installation of backflow prevention is expected have benefits in in reduced risk of water supply contamination and these are valued at \$12 million.

**Table 10-4 Identified impacts of proposed amendments to water supply authorities' provisions**

Identified impacts	Estimation units	Net present value \$m
IWCM	existing requirement	
Location of water meter	minor	
Supply of water to fire hydrants	transparency	
<b>Total</b>		minor

Source: NSW Department of Industry estimates

## 11 Proposed regulatory option

The proposed option is to remake the 2011 Regulation with amendments.

Table 12-1 shows the estimated benefits of the options of remaking and/or amending the Regulations compared to allowing the 2011 Regulation to lapse (base case).

The proposed benefit of remaking the 2011 Regulation with the proposed amendments is estimated to be \$17,774 million.

The major contributing factors are:

- avoiding production delays arising from requirements to obtain water supply work approvals and water use approvals for currently exempt works
- reducing the regulatory burden on minor or small-scale water users
- retention of the existing water supply authorities' operational capabilities.

The largest beneficiaries are the customers of the water supply authorities, who avoid the cost of re-establishing their access to water supply and sewerage services.

The net incremental impact of the proposed amendments to the 2011 Regulation is modest—a net benefit of around \$12 million. While the incremental quantified impacts of the amendments is relatively small, it must be recognised that they will generally clarify, limit or extend exemptions so that they better reflect their original intent or reduce duplication with other assessment processes.

In addition to the quantified benefits, there are various unquantified impacts, the majority of which are expected to be positive.

## 12 Conclusion

The objective of the proposed Regulation is to remake, with various changes (where appropriate), the provisions of the Water Management (General) Regulation 2011.

The 2011 Regulation is due to be automatically repealed under clause 10 of the *Subordinate Legislation Act 1989* on 1 September 2018 and the intention is to continue to have regulations in place that support the relevant provisions of the WM Act. The proposed Regulation, the subject of this RIS, provides the preferred regulatory framework from 1 September 2018.

The proposed Regulation remakes the 2011 Regulations, with the amendments to exemptions for water access licences, water use approvals, water supply work approvals and controlled activity approvals.

The focus of these changes relates to exemptions. These changes have been made to ensure better consistency across exemptions, create some new exemptions to reduce red tape and clarify the parameters of some existing exemptions.

The objective of having exemptions from requirements for access licences and approvals is to allow the Department of Industry to:

- manage its regulatory responsibilities in a cost-effective and practical manner by exempting certain instances of water extraction from the requirement to hold an access licence and certain activities from the requirement to hold a water supply work approval, water use approval or controlled activity approval
- minimise the regulatory burden on such persons extracting water or undertaking exempt activities commensurate with the low level of associated impact or recognising other authorisation requirements.

The RIS assesses the costs and benefits of measures available to the state, rural landholders, local government and industry to achieve the objectives of the WM Act and identifies the benefits of the proposed Regulation.

The benefits of the proposed Regulation will outweigh the anticipated costs of maintaining a rigid regulatory framework requiring substantive government involvement. There will be minimal adverse impacts to the state's resources and it provides the largest net benefits of the available alternatives.

**Table 12-1 Summary of major identified impacts—net present value over five years (\$million)**

Substantive matters	Base case \$m	Remake existing Regulation \$m	Proposed amendments \$m	Proposed Regulation 2018 \$m
<b>General Regulation 2018</b>				
Benefit of prescribing form content and electronic lodgement of applications	-\$1.32	\$1.32		\$1.32
Exemptions for water access licences	-\$55.23	\$55.23		\$57.40
Amendment to drought relief exemption			-\$0.06	-\$0.06
Special Purpose Access Licence	-\$7.03	-\$7.03	\$7.03	\$7.03
Notification exemption security interest	-\$0.46	\$0.46		\$0.46
Cost of delays from works approval advertising		-\$25.10		-\$25.10
Benefit of exemptions for works approvals	-\$21.60	\$21.60		\$21.60
Flood work approvals	-\$15.13	\$15.13		\$15.20
Amendment to flood work			minor	
Impacts of security deposits amendments	\$1.12	\$1.12		\$1.12
<b>Controlled activities</b>				
Controlled activity exemptions	-\$10.0	\$10.0		\$10.0
Additional controlled activity exemptions			\$5.80	\$5.80
Water Supply Authorities	-\$17,679.00	\$17,679.00		\$17,679.00
Fire hydrants			transparency	
Metre locations			minor	
IWCM			existing requirement	
<b>Total NPV \$m</b>	<b>-\$17,789.66</b>	<b>\$17,751.72</b>	<b>\$12.78.00</b>	<b>\$17,773.78</b>

## 13 References

The Department of Industry (2011) *Water Management (General) Regulation 2011—Regulatory Impact Statement*

Rolyat Services Pty Ltd (2003) *Regulatory Impact Statement Water Supply Authorities Regulation*

NSW Treasury 2017 *NSW Government Guide to Cost-Benefit Analysis* TPP17-03

# 14 Appendix A—Stakeholder groups and government agencies

Water NSW

Water supply authorities: Cobar Water Board, Gosford City Council, Sydney Olympic Park Authority, Wyong Council, Essential Energy

NSW Irrigators' Council

NSW Farmers' Association

NSW Minerals Council

Nature Conservation Council

Environmental Defenders Office NSW

Local Government Association

Forestry Corporation

Soil Conservation Service

## 15 Appendix B—Cost-benefit assumptions

- Net Present Value (NPV) is calculated using a 7% discount over five years.
- Cost to business associated with delays in conducting particular activities is estimated at \$350 per day or around \$2,450 per week. In some cases the actual cost may be appreciably more and in some it may be less. The estimate is intended to provide an indication of the order of magnitude potentially associated with delay, rather than to accurately reflect the circumstances of the thousands of individuals or business potentially impacted.
- Estimate of time for preparation of applications is assumed to cost \$61.00 per hour.
- It is difficult to estimate the frequency of an activity that the Department of Industry does not currently undertake—as these activities are exempt. However given the nature of the exempt activities it is expected that there would be a fairly large number conducted each year. For the purpose of the RIS estimates of the number of activities that are potentially subject to the exemptions are:
  - licences 5,000
  - works approvals and use approvals 5,000
  - flood works approvals 5,000
  - controlled activities 1,000.
- Government fees and charges are assumed to be transfer payments between business and government based on full cost recovery (no deadweight loss is calculated).
- Transfer payments are payments that are costs to some members of the community but benefits to others. As a result they appear on both sides of the ledger and do not influence the result of the cost benefit analysis. NSW Government Guide to Cost-Benefit Analysis, NSW Treasury (TPP17-03) indicates they should be noted in the analysis but will have no net effect on the result.
- NSW Government would either fund Sydney Olympic Park Authority's operating deficit if it could not levy charges or Sydney Olympic Park Authority would discharge to the Sydney Water sewer.

# 16 Appendix C—Detailed impact tables

## 16.1 Form and content of applications

**Table 16-1 Benefit of prescribing the form and content of licence and approval applications**

Identified impacts	Estimation units	Calculation
Number of applications per year (a)	1,250	
Avoided additional non complying applications (b)	10%	
Avoided hours to revise and resubmit per application (c)	2	
Avoided days of lost production per application (d)	7	
Labour cost per hour (e)	\$61	
Daily cost of lost production (f)	\$350	
Hours to assess additional non-complying per application (g)	2	
Avoided cost to business per year	\$306,250	$a*b*d*f$
Time cost to business per year	\$15,250	$a*b*c*e$
Total Benefit NPV \$m	\$1.32	

Source: Department of Industry estimate

**Table 16-2 Identified transfer payments**

Identified transfers	Estimation units	Calculation
Number of applications (a)	125	
Time costs to government (b)	2 hrs	$a*b*c$
Labour cost per hour (c)	\$61	
Time cost to government	\$15,250	$a*b*c$
Additional cost to business for applications based on costs recovery	\$15,250	
Total NPV transfer \$m	\$0.06	

Source: Department of Industry estimate

## 16.2 Exemptions for water access licences

**Table 16-3 Benefits of exemptions for water access licences**

Identified impacts	Estimation units	Calculation
Number of exempt activities including drought relief (a)	5,000	
Labour cost per hour (b)	\$61	
Daily cost of lost production (c)	\$350	
Delays in undertaking specified activities 1 week (d)		
Cost of delays per year \$m	\$12.2	$a*c*d$
Cost of time to prepare applications and water market transactions 4hrs per application \$m per year (e)	\$1.2	$a*b*e$
Benefit to exempt business NPV \$m	\$55.23	
Delays in undertaking activities until market water becomes available	Significant benefit not able to be quantified	

Source: Department of Industry estimate

**Table 16-4 Identified transfer payments for exemptions for water access licences**

Identified transfers	Estimation units	Calculation
Number of exempt activities including drought relief (a)	5,000	
Average exemption volume per annum (1 ML) (b)	1	
Water trading at \$200/ML (transfer payment) (c)	\$200/ML	
Estimated water trading transfers	\$1 m per year	$a*b*c$
Fee for zero share water access licence (d)	\$326.67	
Standard unregulated water source dealing (e)	\$498.61	
Government fees and charges (transfer payment) (f)	\$4.1 m per year	$a*(d + e)$
Transfers NPV \$m	\$21.02	

Source: Department of Industry estimate

**Table 16-5 Estimated costs of amendment to drought relief exemption**

Identified impacts	Estimation units	Calculation
Number of exempt activities including drought relief (a)	5	
Labour cost per hour (b)	\$61	
Daily cost of lost production (c)	\$350	
Delays in undertaking specified activities 1 week (d)		
Cost of delays per year \$m	\$0.012	$a*c*d$
Time to prepare applications and water market transactions per transaction (e)	4hrs	
Cost of time per year \$m	\$0.001	$a*b*e$
Cost to exempt business NPV \$m	\$0.06	
Delays in undertaking activities until market water becomes available	Significant benefit not able to be quantified	

Source: Department of Industry estimate

**Table 16-6 Identified transfer payments of amendment to drought relief exemption**

Identified transfers	Estimation units	Calculation
Number of exempt activities including drought relief (a)	5	
Average exemption volume per annum (5 ML) (b)	5	
Water trading at \$200 per ML (transfer payment) (c)	\$200/ML	
Estimated water trading transfers per year \$m	\$0.005	$a*b*c$
Fee for zero share water access licence (d)	\$326.67	
Standard unregulated water source dealing (e)	\$498.61	
Government fees and charges per year \$m (transfer payment) (f)	\$0.004	$a*(d*+e)$
Transfers total NPV \$m	\$0.04	

Source: Department of Industry estimate

## 16.3 Domestic and stock specific purposes access licences

Table 16-7 Benefit of domestic and stock specific purpose access licence amendment

Identified impacts	Annual Estimation units	Calculation
Total licences domestic and stock specific purpose access licence	4,300	
Number with different address (a)	400	
Years since commencement (b)	15	
Average per year (c)	26	
Time saving—complex negotiations 7-30 days per application (d)	30	
Labour cost per day( e)	\$427	61*7
Estimated time saving per year (f)	\$0.3	c*e*d
Daily cost of lost production (g)	\$350	
Loss to business 6 months (h)	6 months	
Business production loss per year	\$1.6	c*g*h
Total estimated benefits NPV \$m	\$8.08	

Source: Department of Industry database

## 16.4 Security interests and access register

Table 16-8 Benefit of enabling exemption from notification

Identified impact	Estimation units	Calculation
Number of dealings per year(a)	750	
Portion involving increase in shares (b)	50%	
Impacted dealings (c)	350	a*b
Hours to prepare lodgement (d)	1	
Labour cost per hour (e)	\$61	
Register fees (s711) (f) \$ per application	\$240.7	
Estimated annual benefits	\$0.133	(c*e)+(c*f)
Total estimated benefits NPV \$m	\$0.4	

Source: Department of Industry estimate

## 16.5 Exemption for approvals

**Table 16-9 Works and water use approval exemptions**

Identified impact	Annual estimation units	Calculation
Number of exempt works and uses (a)	5,000	
Delays in undertaking specified activities (b)	1 week	
Production loss per day	\$350	
Labour costs per hour	\$61	
Weekly cost of lost production (c)	\$2,450	
Times costs to prepare applications	2 hours	
Annual production delays \$m	\$12.25	a*c
Annual time cost \$m	\$0.61	
Total estimated benefits NPV \$m	\$52.7	

Source: Department of Industry estimate

Note: Short-term, low-risk applications

**Table 16-10 Works and use approvals exemptions transfer payments**

Identified transfer	Estimation units	Calculation
Number of exempt works and uses (a)	5,000	
Government fees and charges (b)	\$1,053	
Annual transfer	\$5.2 per year	a*b
Total estimated transfer NPV \$m	\$21.6	

Source: Department of Industry estimate

Note: Transfer payments are a cost to one party and a benefit to another. In this case businesses pay additional fees and charges for approvals however there are benefits to government.

**Table 16-11 Benefit of amendment for state forests plantations**

Identified impact	Estimation units	Calculation
Number of exempt works per year (a)	14	
Delays in undertaking specified activities – (b)	1 week	
Production loss per day ©	\$350	
Benefit per year	\$34,000	a*b*c
Total estimated benefit NPV \$m	\$0.14	

Source: Department of Industry estimate

**Table 16-12 State forests plantations transfer payments**

Identified transfer	Estimation units	Calculation
Number of exempt works and uses (a)	14	
Government fees and charges (b)	\$1,053	
Transfer per year	\$0.01	a*b
Total estimated transfer NPV \$m	\$0.06	

Source: Department of Industry estimate

Note: Transfer payments are a cost to one party and a benefit to another. In this case businesses pay additional fees and charges for approvals however there are benefits to government.

## 16.6 Requirement for advertising approvals

**Table 16-13 Cost to affected businesses of works approval advertising**

Identified impact	Estimation units	Calculation
Number of approval applications (a)	500	
Daily cost of lost production (b)	\$350	
Cost of lost production 35 days per application (c)	\$12,250	$b \times 35$
Estimated annual cost of delay \$m (d)	\$6.1	$a \times c$
Reduced availability for information	Not costed	
Cost of work approval advertising NPV \$m	\$25.1	

Source: Department of Industry estimate

**Table 16-14 Estimated transfers from works approval advertising**

Identified transfer	Estimation units	Calculation
Number of advertisements (a)	500	
Estimated advertising cost per ad (b)	\$530	
Estimated annual advertising cost \$m (c)	\$0.26	$a \times b$
Total estimated transfer NPV \$m	\$1.08	

Source: Department of Industry estimate

## 16.7 Exemption from flood work approvals

**Table 16-15 Impacts of flood work approval exemption**

Identified impact	Estimation units	Calculation
Number of existing flood works (a)	5,000	
Number of new flood works per year(b)	500	
Cost of delay in production per day (c)	350	
Estimated delay days (d)	7	
Delay cost \$m of per year 1–5	1.25	$b*c*d$
Estimated hrs to prepare applications (e)	2	
Time cost to prepare applications (f)	\$61	
Time cost year 1	0.671	$(a+b)*e*f$
Times cost \$m Years 2–5 per year	0.061	$b*e*f*$
Modification of existing works	Not costed	
Total estimated benefits NPV \$m	\$7.04	

Source: Department of Industry estimate

**Table 16-16 Estimated transfers from flood works approval exemption**

Identified transfer	Estimation units	Calculation
Number of approval applications existing works Year 1 (a)	5,000	
Number of approval applications new works each year Years 1–5 (b)	500	
Max charges for new approval application per application	\$1,286.30	
Transfer Year 1 total		$a*c$
Transfer Year 2–5 total		$b*c*4$
Total estimated transfer NPV \$m	\$9.0	

Source: Department of Industry estimate

## 16.8 Exemptions—controlled activity approvals

**Table 16-17 Impacts of controlled activity exemption**

Identified impact	Estimation units	Calculation
Estimated number of controlled activities covered by exemptions per year (a)	1,000	
Delays in conducting activities (b)	1 week	
Cost of delayed activity per day (c)	\$350	
Cost of delay per year	\$2.4m	$a*b*c$
Time cost to prepare application (d)	2 hours	
Time cost per hour (e)	\$61	
Cost to prepare applications per year	\$0.12	$e*d$
Total estimated transfer NPV \$m	\$10.54	

Source: Department of Industry minimum fee controlled activity approvals

**Table 16-18 Estimated transfers controlled activity approval exemption**

Identified transfer	Estimation units	Calculation
Number of approval applications per year 1 (a)	1,000	
Cost of approval application	\$932	
Transfer per year		$a*c$
Total estimated transfer NPV \$m	\$3.8	

Source: Department of Industry estimate

**Table 16-19 Identified impacts of changes to controlled activity exemptions**

Identified impact	Estimation units	Calculation
Additional activities exempt (a)	579	
Delays in conducting activities (b)	1 week	
Cost of delayed activity per day (c)	\$350	
Cost of delay per year		$a*b*c$
Times cost to prepare applications	2 hours	
Time cost per hour	\$61	
Times cost saving	\$0.29m	
Benefit of additional exemptions	\$1.41	
Total estimated benefits NPV \$m	\$5.8	

Source: Department of Industry estimate

**Table 16-20 Estimated transfers for proposed additional controlled activity approval exemptions**

Identified transfer	Estimation units	Calculation
Number of approval applications per year 1 (a)	579	
Cost of approval application (b)	\$932	
Transfer per year		a*c
Total estimated transfer NPV \$m	\$2.2	

Source: Department of Industry estimate

## 16.9 Security deposits for approvals

The analysis has been completed based on \$15 million in security deposits collected per year. Funds are held for two years. Ninety five per cent of funds \$14.1 million are returned each year. These funds are costed at the opportunity cost of capital for the two years the funds are retained using an interest rate of 7%. Over the period this accounts for \$4.8 million.

Funds amounting to \$900,000 are retained to fund remediation of unsatisfactory works.

**Table 16-21 Impacts of security deposits**

Identified impact	Estimation units	Calculation
Number of security deposits lodged (a)	50	
Average value of deposit (b)	\$300,000	
Amount collected annually	\$15 million	
Amount returned annually	\$14.1 million	
Number of abandoned sites at 5% (c)	3	
Amount available for abandoned sites	\$0.9 million	
Benefit to society	Improved instream and stream side conditions	
Estimated cost to businesses conducting adequate rehabilitation (d)	\$8.6	
Additional money available for rehabilitation of designated abandoned sites (e)	\$3.7	
Total estimated cost NPV \$m	4.9	d-e

Source: Department of Industry estimate

# 17 Appendix D—Detailed list of proposed amendments

Following is a detailed list of proposed amendments to the regulation including a reference to how they are treated in the RIS.

## 17.1 Water access licences

- provide for the making of applications for specific purpose access licences to take water for stock watering in prescribed circumstances—section 8.5 of this RIS

## 17.2 Exemptions from requirements for water access licences

- clarify the scope of the existing licence exemption for the carriage of water for drought relief—section 8.4 of this RIS
- clarify the meaning of the existing licence exemption for approved watering for environmental work construction—machinery

## 17.3 Approvals

- specify the Minister for Regional Water may amend an approval to correct an error in a description of the relevant management plan, water source or management zone to which the approval relates—machinery
- specify the Minister for Regional Water may amend an approval to create two or more approvals on the application of all of the approval holders—machinery
- amend the required means of advertising applications for approvals to recognise in some areas some local newspapers are no longer in production—section 9.4 of this RIS
- clarify reporting requirements for exempt monitoring bores—machinery

## 17.4 Exemptions from requirements for approvals

- specify the existing exemption from the requirement for a water supply work approval to construct a water supply work for certain purposes does apply in plantation areas in state forests (currently the exemption does not apply in any areas in state forests)—section 9.2 of this RIS
- provide a new exemption from the requirement for a water supply work approval for local councils taking water using tanker trucks for the purpose of dust suppression in certain circumstances—section 9.3 of this RIS
- clarify the existing exemption from the requirement for a flood work approval for ring embankments applies to partial ring embankments in certain circumstances—section 9.5 of this RIS
- clarify the existing exemption from the requirement for a controlled activity approval for the removal of vegetation on waterfront land does not apply to the removal or disturbance of soil or other extractive material in connection with the removal of vegetation, or the removal of large woody debris—machinery
- provide new exemptions from the requirement for a controlled activity approval for the following (section 9.6 of this RIS):
  - jetties, pontoons and mooring poles constructed on waterfront land relating to a lake or estuary in certain circumstances
  - certain kinds of development on waterfront land relating to certain mapped lakes and estuaries, where the land has been highly modified by urban or industrial development

- certain kinds of development on waterfront land where the location of the development is separated from a 1st, 2nd or 3rd order watercourse by existing development
- activities which are required to be undertaken in accordance with enforcement action by another NSW government agency or an order of a court
- maintenance of existing lawful works on waterfront land
- repair of storm damage to access tracks, watercourse crossings, water supply works or essential services infrastructure on waterfront land in certain circumstances
- removal of debris deposited on waterfront land as a result of a storm event
- activities carried out on land under the ownership or control of a port operator under the *Ports and Maritime Administration Act 1995* in certain circumstances
- controlled activities carried out by government entities in certain circumstances

## 17.5 Water supply authorities

- clarify when references to an ‘authority’ are references to a water supply authority—machinery
- provide for the Minister for Regional Water to approve a water supply authority’s Integrated Water Supply Management Strategy on an eight year basis—section 10.11.1 of this RIS
- clarify water meters required to be installed on private properties should be installed on the property’s service main as close as practicable to the boundary of the land supplied—section 10.11.2 of this RIS
- to set out an additional circumstance in which a fire hydrant may not be fully charged—section 10.11.3 of this RIS

## 17.6 Miscellaneous

- update the source of Strahler stream order data, which is used to identify when exemptions from approval requirements apply, from historic hardcopy topographic maps issued between 1970 and 1999 to data held in the Department of Industry’s digital database, which will be shared publicly on the department’s website
- improve the quality of existing maps—machinery
- update or clarify miscellaneous provisions—machinery, including:
  - updating references to the Department of Industry and Director General
  - updating the reference to the Development Control Plan for the Rouse Hill Regional Centre in relation to the existing exemption from the requirement for a controlled activity approval
  - clarifying the definition of ‘transport authority’ regarding the existing exemption from the requirement for a water access licence in relation to water required for the construction or maintenance of road or rail facilities
  - clarifying the meaning of a project ‘in existence’ under section 10 of the *Soil Conservation Act 1938*
  - extending the expiry date of the current exemption under clause 226C for the Board of Anabranch Water Private Irrigation District until 30 June 2020.

# 18 Appendix E—Summary of key changes following public consultation on proposed Regulation

Note. The clause numbering in this table refers to the clause numbering in the proposed Regulation that was publically exhibited in August–September 2017.

**Table 18-1 Summary of key changes following public consultation on proposed Regulation**

Clause in draft regulation	Proposed change	Reason
Clause 9	Omit clause 9 as it is redundant and should not be included in the proposed regulation.	This provision is redundant because section 70 of the <i>Water Management Act 2000</i> has been amended to provide that management plans may make provision for or with respect to the circumstances in which the taking of supplementary water is authorised, rather than by order published in accordance with the regulations.
Clause 3(1)	Correction of typographical error in definition of 'minor stream' in clause 3(1): between sub-clause (a) and sub-clause (b) 'and' should be 'or'.	Typographical error
Clause 198(1)(b)	Delay the commencement of the requirement in clause 198(1)(b) of the proposed regulation until 1 December 2020.	Central Coast Council advised it will not be practical for council to comply with the new requirement in clause 198(1)(b) in time for the commencement of the proposed Regulation.  The commencement of this new requirement will be delayed until 1 December 2020 to provide council additional time to comply.
Clause 19(b) of Schedule 4	Correction of typographical error in clause 19(b) of Schedule 4: 'he' should be 'the'.	Typographical error

Clause in draft regulation	Proposed change	Reason
Clause 35 of Schedule 4	<p>Amend clause 35 of Schedule 4 of the proposed regulation to clarify that the application of the provision extends to:</p> <ul style="list-style-type: none"> <li>• a direction, request or order made by the department</li> <li>• any order which can be made by a government agency under an act or law, and which is made by a court</li> <li>• a direction, request or order made under the WM Act or any other act or law, but only if the Minister for Regional Water approves the carrying out of the activity without a controlled activity approval.</li> </ul>	<p>The department identified that this provision as drafted may operate to require the department to provide concurrence to its own direction, request or order for the exemption to apply. This effect is not intended.</p> <p>The department has identified that section 203 of the <i>Fisheries Management Act 1994</i>, which provides for the Minister for Regional Water to make an order requiring the carrying out of remedial work, includes that a court may also make such an order. The department considers this proposed new exemption should extend to any order which can be made by a government agency under an act or law, and which is made by a court.</p> <p>The department has identified that the requirement for the Minister for Regional Water to provide concurrence to a direction, requires or order made by another NSW government agency is unnecessary as it has the same effect as the requirement for the Minister for Regional Water to approve the carrying out of an activity required by a direction, requires or order made by another NSW Government agency without a controlled activity approval.</p>
Clause 37 of Schedule 4	Omit clause 37 of Schedule 4 from the proposed regulation.	<p>The NSW Government is developing a Marine Estate Management Strategy, which sets out the vision and priorities for management of the marine estate.</p> <p>An implementation plan will accompany the final strategy and it is anticipated that some management actions will relate to the drainage of floodplains for agricultural purposes.</p> <p>The department considers that this proposed exemption should be withdrawn, pending further consideration following the development of management actions to implement the Strategy.</p>
NA	Prescribe a notice of disposal in the proposed regulation for the purpose of section 361 of the WM Act.	<p>Section 361 of the WM Act provides that when land which is subject to such rates and charges is sold, the vendor remains liable for those rates and charges until they dispose of the land or give a prescribed notice of disposal to the entity levying those rates and charges.</p> <p>The department has identified that a notice of disposal has not yet been prescribed for the purpose of section 361 of the WM Act.</p> <p>A notice of disposal should be prescribed in the proposed Regulation for the purpose of section 361 of the WM Act.</p>

Clause in draft regulation	Proposed change	Reason
	Use the term 'satisfied' rather than 'reasonably satisfied' where occurring.	<p>EDO NSW raised concern the insertion of the term 'reasonably satisfied' in clause 3 of Schedule 4 of the proposed Regulation with regard to the assessment of whether an activity is likely to significantly affect the environment.</p> <p>The department considers this test should require that the decision-maker be satisfied on grounds that are reasonable in the circumstances that the activity is not likely to significantly affect the environment.</p> <p>This provision has been clarified by using the term 'satisfied' rather than 'reasonably satisfied'.</p>