

# Explanatory Statement

## WATER LEGISLATION AMENDMENT BILL 2023

### SERIAL NO. 83 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR ENVIRONMENT, CLIMATE CHANGE AND WATER SECURITY

#### GENERAL OUTLINE

This Bill amends the *Water Act 1992 and Water Regulations 1992*.

The purpose of this Bill is to modify the statutory right to access water for new subdivisions in areas prescribed by the Minister for Environment, Climate Change and Water Security and to create a head power in the *Water Act 1992* that allows regulations to be made that fast track the transition or previously excluded or exempted water users into a water licensing regime.

The purpose of the Bill is also to create regulations to finalise the transition commercial groundwater users in the Darwin Rural Water Control District and to improve the transition of mining operators into the water extraction licensing framework.

#### NOTES ON CLAUSES

##### **Clause 1. Short Title.**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Water Legislation Amendment Act 2023*.

##### **Clause 2. Commencement.**

This clause sets out how the amendment Act will be commenced. In this case this will be done by notice given by the Administrator in the Northern Territory Government Gazette.

If the Act is not commenced before 21 March 2025 it will commence on 21 March 2025.

##### **Clause 3. Act amended**

This is the formal clause that amends the *Water Act 1992*.

##### **Clause 4. Section 4 amended (Interpretation)**

Inserts the term Restricted Water Extraction Area which is introduced under Clause 7 and described in proposed section 14A(1) to guide the interpretation of the Act.

##### **Clause 5. Section 11 amended (Rights of owners or occupiers of land in contact with waterway to take water for certain purposes)**

Makes explicit that water taken by an owner or occupier of land on or immediately adjacent to a waterway may only take water from the waterway for domestic purposes on the land. This makes section 11(a) consistent with sections 11(b) and (c).

##### **Clause 6. Section 14 amended (Right of owners of overlying land to take groundwater for certain purposes)**

Makes explicit that groundwater taken by an owner or occupier from beneath the land may only be used for domestic purposes on the land. This makes section 14(a) consistent with sections 14(b) and (c).

#### **Clause 7. Sections 14A to 14E inserted**

Inserts new section 14A that empowers the Minister to declare an area where the statutory right to take water under sections 11 and 14 of the Water Act is subject to specified restrictions in the event of a subdivision or consolidation of land in the declared area: a Restricted Water Extraction Area.

Section 14A outlines the restrictions that will be invoked by the declaration, the considerations of the Minister when making a declaration and the information that must be included in the declaration. The restriction being that of the proposed number of titles to be created under a subdivision only one of the subsequent titles will have a statutory right to access water the restriction may be limited to groundwater or surface water or both. The intended effect is to maintain a status quo in the volume of water being taken from a water resource while providing a pathway for further development.

Section 14B describes what effect the declaration has. It explains how the statutory right to access water applies after land is subdivided or consolidated including examples for interpretation. In essence if one lot is subdivided into two lots, on only one of the lots will owners or occupiers be able to take groundwater or surface water for use on that land. If three lots are consolidated into 2 the owners and occupiers of the two new lots will both be able to take water on their land.

Section 14C describes the obligations on a person who intends to subdivide land in a Restricted Water Extraction Area. The requirements intersect with the application requirements and considerations of the consent authority under the *Planning Act 1999* which is the consent authority for subdivisions under that Act.

Section 14C also describes obligations on a person with respect to the *Unit Titles Scheme Act 2009* and for completeness the *Unit Titles Act 1975*.

Section 14D addresses the risk of water being taken on land titles that do not have a statutory right to groundwater by requiring the decommissioning of any bores on titles in a proposed subdivision that have not been identified to carry forward the nominated right to access groundwater. It also prevents the Controller from accepting an application for a bore work permit and therefore granting a bore work permit for the construction of a bore that could be used for to take groundwater for a water right that does not exist.

Section 14E explains that a declaration of a Restricted Water Extraction Area is effective until it is revoked. Section 14D outlines the effect of revoking a declaration and how statutory rights to access water will forthwith apply to all land in the previously declared area.

Revocation of a declaration appropriately relies on section 43 of the *Interpretations Act 1978*.

#### **Clause 8 Section 19 amended (Delegation)**

Clause 8 appropriately recognises the significant power the Minister has to restrict statutory rights to access water by restricting the Minister's ability to delegate the power to declare a Restricted Water Extraction Area under section 14A(1).

#### **Clause 9 Section 45 amended (Licence to take water)**

With regard to water extraction licences to take water from a waterway, Clause 9 prohibits the Controller from accepting certain applications and granting licences on their own initiative in a

Restricted Water Extraction Area. Creating efficiencies and ensuring only those applications with the greatest prospect of being granted are accepted for processing by the department.

This section also explains the types of applications that the Controller may continue to consider including applications for a water extraction licence associated with Crown land, applications relating to trade between existing licences or within a development precinct.

### **Clause 10 Section 60 amended (Grant of licence to take groundwater)**

In the same way as Clause 9 outlines the restriction on surface water licences, Clause 10 prohibits the grant of groundwater extraction licences.

### **Clause 11 Section 71F amended (Application by developer)**

This clause addresses the declaration Restricted Water Extraction Areas as they apply to applications by developers. Consistent with water extraction licences under earlier sections of the Water Act the Controller is prohibited from accepting an application for a licence under this section in a Restricted Water Extraction Area. Applications associated with Crown land are excluded and may be accepted by the Controller.

### **Clause 12 Part 6C inserted**

This section allows for different considerations to apply to section 45 or section 60 licence decisions for transitioning previously exempt water users efficiently into the water extraction licensing framework. Being water use that was exempt from water licensing it is generally recognised that such water use is acceptable and consequently requires no further consideration by the Controller removing the requirement to publish notices and consider section 90(1) factors. Although, this section does provide the Controller the option to consider section 90(1) factors at their discretion.

Part 6C also facilitates the swift transition of mining activities into the water licensing framework.

Section 71P puts to an end the former transitional arrangements for mining activities and petroleum activities under section 113 and 114 of the Water Act to provide the space for new arrangements to be made.

Section 71Q creates a fixed 2 year transitional period such that mining operators with a previously authorised water entitlement must apply for a water extraction before 2 years after the commencement of the Amending Act.

Section 71R outlines the particulars of the mining activity or petroleum activity to which this part applies; the requirements that must be met for the Controller to grant a licence; and the procedure for granting a licence.

On the basis that a mining or petroleum operator who meets the specified requirements was previously exempt from water licensing it is generally recognised that such water use was previously determined as acceptable and consequently requires no further consideration by the Controller removing the requirement to publish notices and consider section 90(1) factors. Although, this section does provide the Controller the option to consider section 90(1) factors at their discretion.

Section 71S provides clarity that in the event there is a discrepancy between a water extraction licence granted under this Part and a mine management plan approved under the *Mine Management Act 2001* or environment management plan approved under the *Petroleum Act 1987*, the water extraction licence prevails if the inconsistency relates to the amount of water specifically.

### **Clause 13 Section 108 amended (Regulations)**

This clause inserts the provisions into the Water Act that will allow the regulations to be created that prescribe the circumstances, procedures and requirements for applications to which Part 6C applies.

#### **Clause 14 Act amended**

This is the formal clause that amends the *Planning Act 1999*.

#### **Clause 15 Section 3 amended (Interpretation)**

Inserts the term Restricted Water Extraction Area which is introduced into the Planning Act under Clause 18 and 19 and described in proposed section 14A(1) to guide the operation of the Act.

#### **Clause 16 Section 30C amended (Making concurrent application)**

This section inserts the requirement for concurrent applications under the Planning Act to include information required under section 14C(1) of the Water Act including to nominate which new title will retain the right to take water and which title will no longer have a statutory right to water.

#### **Clause 17 Section 30P amended (Preliminary decision about development proposal)**

This clause inserts that the consent authority before making a preliminary decision about a development proposal that they also take into account if the development proposal relates to land in a Restricted Water Extraction Area and whether the subdivision or consolidation complies with the relevant restrictions and the requirement to identify which of the proposed lots either retain and do not retain the statutory right to access water.

#### **Clause 18 Section 30W amended (Determination of development proposal)**

This clause inserts that the consent authority must refuse consent to an amendment proposal concurrent development application in a Restricted Water Extraction Area unless the development proposal complies with the relevant restrictions and the requirement to identify which of the proposed lots retain and do not retain the statutory right to access water.

#### **Clause 19 Section 38 amended (Application for permit or variation of permit)**

This section outlines the requirement of an exceptional development permit in a Restricted Water Extraction Area to include the information about which of the proposed lots retain and do not retain the statutory right to access water.

#### **Clause 20 Section 40 amended (Grant or variation of permit or refusal to grant or vary)**

This clause inserts that the consent authority must refuse consent to an exceptional development permit in a Restricted Water Extraction Area unless the development proposal complies with the relevant restrictions and the requirement to identify which of the proposed lots retain and do not retain the statutory right to access water.

#### **Clause 21 Section 42 amended (Matters to be taken into account when making decision)**

The clause inserts the requirement to consider the requirements under a declared Restricted Water Extraction Area when deciding to grant or vary an exceptional development permit.

### **Clause 22 Section 46 amended (Development applications)**

For a proposed subdivision in a Restricted Water Extraction Area, this clause inserts the requirement for an applicant to include the information required under section 14B(1)(a) of the Water Act. This includes identifying the proposed land title that will continue to be affected by the right to take water.

### **Clause 23 Section 51 amended (Matters to be taken into account)**

This section inserts the requirement for the consent authority to consider a Restricted Water Extraction Area when making a decision about a subdivision application.

### **Clause 24 Section 52 amended (Limits on consent)**

Prohibits the consent authority from granting a development permit for a subdivision if the application for the permit does not satisfy the requirements of the Restricted Water Extraction Area declaration.

### **Clause 25 Part 12, Division 8 inserted**

Division 8 outlines the transitional arrangements that will be in effect relating to subdivision of land and Restricted Water Extraction Areas. The arrangements will ensure that any development application submitted but not decided by the consent authority will be subject to the restrictions declared in a Restricted Water Extraction Area.

Restrictions will not apply to applications to extend development permits.

### **Clause 26 Act amended**

This is the formal clause that amends the *Unit Title Schemes Act 2009*.

### **Clause 27 Section 5 amended (Definitions)**

Inserts the term Restricted Water Extraction Area which is introduced into the Unit Title Schemes Act under Clause 23 and 24 and described in proposed section 14A(1) to guide the operation of the Act.

### **Clause 28 Section 18 amended (Requirements about scheme statement)**

This section inserts the requirement for the scheme statement to include the information under section 14B(2).

### **Clause 29 Section 22 amended (Endorsement of consent authority)**

Prohibits the consent authority from endorsing a statement in a Restricted Water Extraction Area unless it contains the information required by section 14B(2) of the Water Act.

### **Clause 30 Part 4.6 inserted**

Part 4.6 outlines the transitional arrangements that will be in effect relating to subdivision of land and Restricted Water Extraction Areas. The arrangements will ensure that any development application submitted but not decided by the consent authority will be subject to the restrictions declared in a Restricted Water Extraction Area.

### **Clause 31 Act amended**

This is the formal clause that amends the *Unit Title Schemes Act 2009*.

### **Clause 32 Section 21GA inserted**

Section 21GA inserts the requirement for unit plans to be lodged with the relevant information and provides that the Registrar-General must refuse to register a units plan if that information is not provided.

### **Clause 33 Part XV inserted**

This part outlines the transitional arrangements that will be in effect relating to subdivision of land and Restricted Water Extraction Areas. The arrangements will ensure that any development application submitted but not decided by the consent authority will be subject to the restrictions declared in a Restricted Water Extraction Area.

### **Clause 34 Regulations amended**

This is the formal clause that amends the Water Regulations 1992.

### **Clause 35 Part 3, Divisions 2A and 2B inserted**

This clause creates regulations that provide for commercial water users in the Darwin Rural Water Control District who previously benefited from an exemption to require a water extraction licence to transition into the water licensing framework.

Section 14A prescribes the circumstances for which section 60B(1)(b) of the Water Act apply i.e. commercial water users in the Darwin Rural Water Control District who immediately prior to 6 July and routinely after that date used groundwater for their commercial activities.

Section 14B prescribes the requirements the application requirements for the water user.

Section 14C outlines the application procedure including that a public sector employee may return applications with reasons and that the Controller give notice of the decision to the applicant within 20 business days of making a decision and includes the licence and reasons for the decision on the public register under section 95 of the Water Act.

Section 14D outlines the application requirements and procedures specific to mining activity and petroleum activity provisions under the Water Act.

### **Clause 36 Repeal of Act**

This clause repeals this Act the day after it commences.