

# Water Management Amendment (Easements for Inundation) Bill

## What is the purpose of the Water Management Amendment Bill?

This Bill will ensure continued delivery of water across NSW by confirming WaterNSW's legal authority and protections. The Bill does not change what is already allowed under water sharing plans for routine water deliveries. Rather, it restores clarity to the statutory framework so that WaterNSW can continue delivering environmental water to where it's needed, in line with long-established practice.

The amendments do not alter or diminish good faith requirements under the Water Management Act in any way and they will not affect a landholder's ability to commence civil proceedings against WaterNSW if they do not make water releases in good faith.

In short, the Bill:

- restores legal clarity
- ensures all essential water deliveries can continue, including for environmental and irrigation purposes
- supports NSW to meet its environmental commitments
- does not introduce increased inundation under existing rules
- does not remove accountability
- does not replace negotiated compensation for new impacts
- does not provide unfettered powers to inundate private land (i.e. compliance with Water Sharing Plans)
- does not impact any negotiations for easements or deeds of release under the Reconnecting River Country or Reconnecting Watercourse Programs.

## Why is the Government making these amendments?

WaterNSW must perform water deliveries consistent with its legislative responsibilities including water sharing plans and its Operating Licence. This Bill enables WaterNSW to continue to do what

it has been required to do for many years – make environmental water and other water deliveries in good faith.

Delivery of environmental water is a routine part of WaterNSW's responsibilities, and it is essential to delivering the Basin Plan and connecting the water that is trapped in dams and channels to the ecosystems that desperately need it. It is essential for bird and fish breeding, for flora and fauna, and for native species of plants and animals that rely on that water.

We need to ensure that our legislative framework is fit for purpose now and into the future. WaterNSW needs to be able to confidently make routine, business-as-usual water releases in good faith without the risk of potential liability.

Under current provisions of the *WaterNSW Act* it is not clear that WaterNSW has a function enabling it to release water that inundates land. This means that while WaterNSW must operate consistently with its legislative responsibilities, it is also potentially exposed to statutory compensation claims under section 37 of the *Water NSW Act 2014* for routine water releases that inundate land. This is an unintended consequence of misaligned wording, given that the *Water Management Act* clearly intends to exclude liability for statutory functions.

Without the amendments, there is a risk that WaterNSW would not be confident to make other operational and consumptive releases, such as town water, irrigation, domestic and stock and flood mitigation, particularly when such releases are combined with environmental water releases.

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## What does the Bill do?

This Bill makes critical amendments to facilitate immediate water releases to support the environment and other needs, and to enable NSW to deliver its commitments under the Murray Darling Basin Plan.

The Bill amends the *Water Management Act 2000* to:

- enable WaterNSW to be registered as the beneficiary of easements in gross that permit inundation for environmental purposes (inundation easements)
- create a regulation-making power to enable other water authorities to be registered as beneficiaries of inundation easements, where this may be required for future constraints relaxation projects, such as on the Murray River where the river operate may be from interstate
- provide an efficient way for inundation easements to be transferred from the Water Administration Ministerial Corporation (WAMC) to the operator of the river.

It also amends the *Water NSW Act 2014* to provide WaterNSW with:

- clarity that its functions include releasing or supplying water or operating works that inundate land for an environmental purpose
- clarity that in the exercise of its other functions it can inundate land
- appropriate statutory protection from civil liability for water releases.

It does not impact any negotiations for easements or deeds of release under the Reconnecting River Country or Reconnecting Watercourse Programs. This is because these programs will deliver new and enduring environmental flows that are different to the current routine deliveries.

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## How will WaterNSW be held to account in response to landholder concerns?

The Bill is necessary and urgent, but the Government understands that concerns have been raised about how WaterNSW will be held to account and what good faith means.

WaterNSW is required to follow all relevant requirements in legislation, its Operating Licence and Reporting Manual, Water Sharing Plans, and work approvals, as well as any protocols and procedures that are in place with the Government department or environmental water manager such as environmental watering instructions and environmental water ordering, accounting and reporting processes.

WaterNSW reports and is audited annually on its compliance with its Operating Licence to the Independent Pricing and Regulatory Tribunal (IPART).

It also reports annually on its compliance with work approval conditions to the Natural Resources Access Regulator (NRAR), who can then investigate and take enforcement action. The Natural Resources Commission periodically audits WaterNSW on its compliance with Water Sharing Plans. At a minimum, this must be undertaken once within the first five years of the plan.

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## Does this mean the river operator can release whatever volume of water it wants?

No. 'Good faith' is commonly used in NSW legislation when excluding Crown liability for acts or omissions done in good faith in the exercise of government functions. This has been part of the legislative framework under the *Water Management Act 2000* since its inception.

Section 398 of the *Water Management Act 2000* provides civil liability protection for WaterNSW to be able to undertake its standard functions, including releasing water from storages and delivering environmental water, provided it does so in good faith. In general terms, matters which may go to WaterNSW demonstrating good faith include:

- adhering to relevant legislation, policies and procedures, such as water sharing plan rules and river operation procedures to ensure a risk-based approach to delivering environmental water release
- using the latest data and modelling
- ensuring appropriate approvals are obtained
- providing notifications of significant water releases to interested persons via its Early Warning Network
- taking reasonable care in making water releases.

The Bill gives WaterNSW the clear function to inundate land, and it follows that if they have that function, then statutory compensation for damages should not be payable under section 37 of the Water NSW Act 2014 and civil liability claims should only be available if that function is not performed in good faith.

Embedding this function explicitly in the WaterNSW Operating Licence now also means that an assessment of WaterNSW's performance against this function can be included in the scope of the review of the Operating Licence which is due to expire in 2028. This means consideration can be given to whether any conditions relating to releases that inundate land may be recommended for inclusion in the WaterNSW Operating Licence when it is remade, or sooner, if required.

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## What are the consequences without this amendment?

Without the amendments, there is a risk that WaterNSW would not be confident to make operational and consumptive releases, such as town water, irrigation, domestic and stock and flood mitigation, particularly when such releases are combined with environmental water releases. The Bill would provide the river operator with the necessary protections from liability so that it can undertake the functions that the Government and the NSW community expects of it.

### Example situation

A situation arose late last year in the Gwydir that is threatening the environmental condition of the river, connected floodplains and wetlands of international importance. WaterNSW withheld the routine release of environmental water passing over private land due to liability concerns.

The releases affected in the Gwydir are established environmental water releases that have been made by WaterNSW for decades under the relevant water sharing plan. The disruption to environmental water deliveries is causing serious impacts to the fauna, flora and ecosystems in the lower Gwydir Wetlands, including broad-shell turtles that have been temporarily relocated to

Taronga Western Plains Zoo. This is particularly concerning given that NSW is in a drying cycle with predicted potential for drought during 2026.

This Bill would immediately address this issue and prevent impediments to overbank environmental water releases in other regulated river systems across NSW.

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## Will WaterNSW inundate more land and towns because of these amendments?

No. The changes clarify that WaterNSW needs to inundate public and private land from time to time when providing water for the environment and for other needs, and this function must be performed consistent with requirements of its Operating Licence and the *Water Management Act* including Water Sharing Plan rules.

The liability protection provided in the Bill doesn't alter the regime of water releases that WaterNSW has made for decades. WaterNSW still needs to make releases in good faith, otherwise it may be exposed to civil claims of tort (e.g. nuisance, negligence or trespass) by impacted landholders or persons.

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## How do these amendments relate to the Reconnecting River Country Program and the Reconnecting Watercourse Country Program?

Constraints relaxation projects such as the [Reconnecting River Country Program](#) seek to facilitate higher or more frequent environmental water delivery that causes overbank flows.

Additional inundation of land will be a consequence of these programs, which is why negotiations are underway or planned with landholders to determine the best options to manage the impacts on an individual property basis, including compensating landholders for enduring inundation easements.

Inundation easements can provide WaterNSW with an enduring right to facilitate these changes to overbank flow regimes beyond the established patterns of inundation, and the NSW Government is committed to acquiring easements to ensure that landholders are appropriately compensated for the inundation impacts under these programs.

For inundation easements to be legally effective, they must be held by the relevant river operator. This ensures that the river operator is afforded the rights and protections provided by the easement, providing an enduring right for the river operator to inundate land for environmental purposes within the terms of the easement.

## Why can compensation still be paid in some instances where inundation easements impact landholders?

Separate to routine deliveries, the NSW Government has commitments under the Murray Darling Basin Plan which will result in impacts beyond current routine environmental water flows. To address these impacts, the NSW Government has committed to negotiating with all affected landholders under the Landholder Negotiation Scheme, delivered under programs such as the Reconnecting River Country Program and the Reconnecting Watercourse Country Programs.

Because this will involve significant change, the Commonwealth Government is funding compensation for easements as part of delivering the Murray Darling Basin Plan.

Easements is one mechanism that could be negotiated with landholders to secure new environmental flow corridors under these programs. Compensation for these easements would be provided as they provide an enduring legal right for river operators to inundate land in connection with future environmental watering regimes.

The legislative amendments simply provide WaterNSW the ability to be the beneficiary of easements in gross that are needed for the occasional inundation of land for environmental purposes.

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## How will inundation easements be negotiated with landholders?

The Reconnecting River Country Program and the Reconnecting Watercourse Country Program are proposing to relax physical, operational and policy constraints that will change environmental watering regimes. Because this will result in changes to current standard environmental watering practices, the Government is committed to addressing the impacts associated with these projects by ensuring landholders are appropriately compensated.

As additional inundation of land will be a consequence of these programs, negotiations under the Reconnecting River Country Program area already underway or planned with landholders to determine the best options to manage the impacts on an individual property basis, including compensating landholders for enduring inundation easements. Negotiations will still be conducted in accordance with the [Landholder Negotiation Scheme](#). The Bill does not change this requirement under the Water Management (General) Regulation 2025.

The Landholder Negotiation Scheme sets out a consistent and transparent voluntary negotiation process that goes beyond the requirements of the *Land Acquisition (Just Terms Compensation) Act*

1991 (the Just Terms Act), by mandating a negotiation period of up to 12 months and providing access to independent facilitation and mediation.

Participation in the Landholder Negotiation Scheme is entirely voluntary. Landholders can choose whether to enter negotiations and whether to reach agreement.

Compensation for inundation easements will be determined by the unique characteristics and circumstances of each individual landholding and considers matters such as the impact of the inundation on the market value of the land and any impeded access as a result of the inundation.

Landholders will also be eligible for costs to be covered for their reasonable legal and valuation costs incurred as part of participating in negotiations.

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## Will inundation easements infringe upon property rights?

Negotiation of easements is a voluntary process. The purpose of inundation easements is solely to permit the inundation of land from new and enduring environmental flow regimes under the constraints relaxation projects. These easements are designed to permit inundation associated with future environmental water releases, without altering land ownership or boundaries.

An easement is an interest in land only. It does not grant ownership; and does not alter the boundary of a landholder's property. Inundation easements will not permit public access to private property.

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## Are inundation easements still required for the Reconnecting River Country Program and the Reconnecting Watercourse Country Program now the Bill has passed?

Yes. The Reconnecting River Country Program is negotiating with affected landholders within the Murrumbidgee flow corridor to acquire easements that permit inundation associated with higher environmental flows for environmental purposes.

Not only do easements provide a mechanism for compensating landholders for the impacts of the proposed changes to environmental water release arrangements in the Murrumbidgee, they also provide certainty and safeguards through the easement terms that define an upper flow limit that river operators must adhere to.

The Reconnecting Watercourse Country Program in the Gwydir is working to establish the foundations for the creation of a new environmental water flow, which will entail the negotiation and acquisition of inundation easements. This work is subject to securing new funding, beyond the term of the current Program.

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## Have landholder negotiations started?

Yes. Negotiations with affected landholders started for the Reconnecting River Country Program Murrumbidgee Project on 1 September 2025.

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## What happens if the river operator exceeds the upper flow limit and buffer defined in the easement terms?

The easement terms for the Reconnecting River Country Program and the Reconnecting Watercourse Country Program include an upper flow limit with a buffer above the upper flow rate. This buffer is not the target for the intended environmental water releases; it exists to manage risks such as unexpected rainfall or tributary inflows during planned releases.

Landholders are compensated for inundation up to and including this buffer as part of the easement acquisition, but the buffer is not a delivery target.

To minimise the risk of exceeding easement terms, programs are implementing multiple safeguards, including:

1. Conservative peer reviewed modelling of the inundation mapping
2. Updated river operating procedures
3. Enhanced flow notification system
4. Improved weather monitoring and forecasting

If flows exceed the defined limit (including the buffer), the situation will be assessed on a case-by-case basis to determine the cause and identify any necessary actions.

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## Will the Reconnecting River Country Program maintain its commitment to deeds of release?

Yes. The Reconnecting River Country Program remains committed to exploring alternatives to easements, including deeds of release. The program has commenced negotiations with the most affected properties which require inundation easements.

The program is preparing to commence the roll out alternatives to easements, including deeds of release, for properties experiencing minimal inundation. This rollout will commence with Phase 1 landholders in the Murrumbidgee project over the coming months.

Properties in the program area have varying levels of inundation. The majority of properties in RRCP Murrumbidgee (around 80%) have  $\leq 20\%$  inundation. The department is committed for deeds of release for minimally affected properties.

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## Why aren't deeds of release being offered to all Reconnecting River Country Program landholders?

Due to the large scale of the Program and the diverse range of inundation impacts, the Program requires a suite of instruments to secure the environmental flow corridor.

Deeds of release are contractual arrangements with the current landholder and are not registered on title. While they can be appropriate where inundation impacts are minimal, they do not provide enduring certainty where impacts are more significant.

For properties that are highly affected or require long term certainty, enduring instruments such as inundation easements are more appropriate, as they provide protection and clarity for both landholders and the river operator.

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## Why aren't easements and formal landholder negotiations required for the longstanding Gwydir releases?

Environmental water releases, including those that inundate private land, have been routinely made by the State's river operators for more than 20 years in the Gwydir. Releases are provided for under existing water sharing plans. The deliveries are informed by advice from the independently chaired Gwydir Environmental Water Advisory Group that includes representatives from a range of backgrounds including scientists, the local farming sector, and Aboriginal community.

In making releases, the environmental water holder has informal agreements in place with some landholders to allow the releases to continue over their properties. While there is a long history of landholder concerns and opposition to some flows, it is only recently that a landholder has formally objected and the respective water orders have been rejected.

These existing flows and arrangements pre-date the creation of the Landholder Negotiation Scheme, which applies to new and enduring environmental flow regimes proposed under constraints relaxation programs.

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## Were people consulted?

Targeted consultation was undertaken on the part of the Bill relating to easements in gross prior to the Bill being introduced to Parliament in November 2025.

Given the sensitivity around compensation and urgency of the liability related amendments that were introduced to and passed by the Legislative Council on 7 May 2026, a consultation process was not undertaken on that part of the proposal.