

Water Act Amendments 2024

Information paper

The Water Act is the principal legislation for the allocation, management and protection of the Northern Territory's water resources.

The *Parks and Water Legislation Amendment Bill 2024* amends the Water Act and Water Regulations to improve the way the legislation is administered. This information paper summarises what will change, and the reasons why.

The changes will be effective from the 2 July 2024.

Independence of the Controller

What will change: The role of the Controller of Water Resources (Controller) and the Minister will be more clearly separated, supporting independence of the Controller.

The Minister and the Controller are the primary decision makers under the Act. Historically the role of the Controller has been held by a senior public servant in the department that administers the Water Act.

As the Territory has grown, our water management framework has matured. In 2023, the Minister appointed the Controller separate from the department to clearly distinguish the policy development, science and advisory role of the department, with the statutory role of Controller.

These amendments clarify the Controller's role for permitting and licensing functions, including granting, renewing, refusing, and amending licences or permits. The Controller is also responsible for taking action to address breaches of a licence or permit, including failure to obtain a licence or permit.

Operational powers to enter land previously held by the Controller have been removed, these powers support field activities that are retained by authorised officers.

The Controller is not an employee of the department, so to safeguard the Controller's ability to perform their functions, new provisions have been introduced to require the department to provide staff and resources to support the Controller. These are the staff and resources of the department that support the Controller today.

The Minister's role is to set the strategic direction for water management. Their existing powers to establish water allocation plans, set the standards for water quality, respond to emergencies and appoint the Controller are retained. In addition, the Minister's role now includes implementing a continuous water science program, receiving advice from water advisory committees, and directing the Controller to take into account matters of policy.

Powers associated with the financial and resourcing arrangements for the department are transferred to the Minister. This includes responsibility for appointment of authorised officers, approving use of the Territory's bores, and taking actions that incur a debt to the Territory.

Other amendments improve clarity and efficiency where the Controller and the Minister's roles interact and prevent the Minister from directing the Controller's decisions.

Improved enforcement powers

What will change: Compliance and enforcement tools will be modernised and strengthened to ensure the Act can be enforced.

Enforcement powers allow for potential breaches of the Act to be investigated, and dealt with.

The amendments clarify when authorised officers can use their powers, and what they can do. Powers of authorised officers to undertake their responsibilities are modernised and duplication reduced.

New powers to seize documents and enter residential premises under a search warrant are added. This is balanced by placing duties on authorised officers to ensure their powers are used fairly, and transparently.

The amendments establish powers of the Minister to require a person to take action to enable the Minister to perform their powers and functions, and to recover costs from land owners and occupiers where that action is not taken. A similar power was previously held by the Controller.

The amendments also clarify the respective powers of the Controller and Minister to obtain the information from Territorians that would enable them to perform their powers and functions.

Review jurisdiction to NTCAT

What will change: Northern Territory Civil and Administrative Tribunal (NTCAT) will become responsible for reviewing water decisions instead of the Minister, improving efficiency and consistency.

The NTCAT provides a forum for reviewing a wide range of administrative decisions. It was established as a 'single, easy to find, easy to use, non-judicial body for a fair and independent resolution of disputes relating to administrative decisions'¹. Since commencing operations, NTCAT's jurisdiction has expanded to almost 50 Acts of Parliament.

Transitioning review functions to NTCAT will remove the Water Act's stand alone, and ad-hoc review functions, improving efficiency and consistency.

It will support the independence of the Controller from the Minister by ensuring the Minister has no role in specific licence or permit decisions of the Controller.

Where technical scientific matters arise, NTCAT is able to call upon subject matter experts to assist in its review function.

Streamlined licensing process

What will change: Provisions streamlining the transition or previously exempt water users into the water-licensing framework are made clear.

Section 71M, introduced in 2023 as part of a range of amendments to deliver improved water resource management across the Northern Territory and support the transition of existing water users into licensing frameworks where exemptions from licensing were revoked or otherwise cease to be of effect.

¹ [History | NTCAT | Northern Territory Civil and Administrative Tribunal](#)

Section 71M is now clear that it applies in these two circumstances:

- (a) Where an exemption from licensing is specifically revoked – as occurred in 2016 with the removal of an exemption from licensing for commercial water users in the Darwin Rural area.
- (b) Where an exemption ceases to have effect. For example, there is an existing exemption from licensing for a person who is located outside of a water control district and is taking water at a rate of less than 15 litres per second. If a water control district was declared over that person's property, the exemption would no longer apply to that person and a license would be required.

This will ensure that when existing water users need to be transitioned into a licensing framework, the process is easier and that these water users are not adversely impacted by the requirement to obtain a licence.

Transitional arrangements

As these changes come into effect there will be no impact on existing licenses, approvals or appointments under the Water Act. They will remain in force as though they were issued under the new provisions to provide certainty and continuity.

Any reviews of decisions that have commenced will be conducted under the current process, with the Minister making a review decision.

However, if a person has not yet made an application for a review when the Act commences, then that application is to be made to NTCAT and NTCAT will conduct the review.