Water Regulatory Reform 2021-23

This information paper provides a summary of the amendments to the Water Act 1992 that were passed on 12 August 2021 as the [Statute Law Amendment (Territory Economic Reconstruction) Act](https://legislation.nt.gov.au/LegislationPortal/Bills/~/link.aspx?_id=0049A11CD67F4E23A9FFE548CEECE05E&amp;_z=z) 2021 and are those that are proposed through future omnibus legislation focused on reforms to various Acts under the administration of the Department of Environment, Parks and Water Security.

Engagement and consultation on the proposed future reforms to the Water Act are ongoing. These reforms (as amended through consultation activities) are expected to be reflected in a draft Bill to be finalised in the second quarter of 2022.

The proposed issues for reform identified in this information paper have been informed by the [Water Reform Directions Paper 2018](https://haveyoursay.nt.gov.au/waterreform) and the [Report Card](https://haveyoursay.nt.gov.au/waterreform) against the Directions Paper released in January 2021. They also support Government’s agreed recommendations of [Territory Economic Recovery Commission Final Report](https://ntrebound.nt.gov.au/reports/final-report) which highlighted the need for greater certainty and timeliness in regulatory decision making.

The amendments will increase efficiencies, clarify the requirements of the Water Act and establish risk based, proportionate regulation.

The proposed amendments do not reduce water assessment or environmental impact obligations or change Government policy in regard to protections for environmental flows or ecosystems, drinking water, or the rights of existing water users.

All of the proposals in this information paper remain subject to further consultation and the final drafting of the legislation. Wording identified in this paper may therefore not fully reflect the final wording or the construction of the legislation.

The Statute Law Amendment (Territory Economic Reconstruction) Act 2021:

* clarifies water extraction licensing requirements associated with Sustainable Precinct Development
* clarifies the circumstances for longer licence tenure
* contemporises timeframes by specifying business days.

This Act is anticipated to commence on Wednesday 29 September 2021.

Proposed changes to the Water Act for a future omnibus Bill will:

* improve definitions for tidal water and interference with a waterway and include definitions for water resource and estimated sustainable yield
* clarify Aboriginal water reserve provisions
* clarify non-consumptive and consumptive beneficial uses
* clarify water allocation plan requirements and establish a hierarchy of water
* establish trade provisions across the Territory
* establish a power for the Controller to declare an area for which applications will not be accepted for a specified period
* streamline requirements for notices about licence decisions, reducing costs to licence applicants and recognising the transparency in information available on the Department’s web site
* clarify the relevant factors to consider in making licence and permitting decisions
* clarify licence renewal, transfer and surrender provisions
* extend the time period associated with a commencement of enforcement proceedings to provide sufficient time to investigate complex and difficult environmental offences.
* transfer function of reviewing decisions from the Minister to the Northern Territory Civil and Administration Tribunal (NTCAT)
* amalgamate provisions to declare exemptions to improve certainty and reduce the potential for administrative error.

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# Statute Law Amendment (Territory Economic Reconstruction) Act 2021

These amendments were introduced in the Legislative Assembly in May 2021 and passed on 12 August 2021. The Statute Law Amendment (Territory Economic Reconstruction) Act will commence on the day fixed by the Administrator by Gazette notice; it is anticipated that this will occur, for the Water Act, on 29 September 2021.

## Head water extraction licences for precincts

Sustainable Precinct Development is a concept championed in the Territory Economic Recovery Commission’s Final Report. This is intended to identify areas suitable for certain kinds of development and undertake the necessary environmental and development approvals to encourage and de-risk future development. It is a concept that marries land use capability, water availability and business development needs together early in the development process by obtaining the necessary licences and permits to undertake activities as a precinct level, rather than multiple individual applications.

For water licensing this means clarifying licensing requirements by providing for a head water extraction licence that can be managed at a precinct level, or readily transferred or traded between operators within the bounds of the precinct. This will be aligned to the water resource allowing the assessment process to be considered holistically for the precinct, rather than as individual water extraction licence applications are submitted.

An application for a head water extraction licence must specify:

* the volume of water required
* how the water is proposed to be used; i.e. the beneficial uses for the water
* how the water will be shared across land parcels within the precinct.

A head licence is subject to the same assessment protocols as any other application for a new water extraction licence. There is a public comment period and the Controller must consider the relevant factors as listed in the legislation.

When a head licence is granted, the water extraction licence allocation may be transferred or traded to operators within the precinct as a subsequent licence. The subsequent licences are granted through a reduction of the head licence. As the water assessment protocols have already been completed for the precinct there is no need to duplicate the notification and assessment rules for each subsequence licence.

Part 6A and s.90 of the Act will not to apply to a trade application within a precinct.

Mining activities and petroleum activities cannot be undertaken under a precinct water extraction licence.

## Clarifying the circumstances for longer licence tenure

The Controller is generally limited to granting licences for a 10 year term unless, in the Minister’s opinion, there are special circumstances that would justify a longer term licence. The Minister has published guidance about what could be considered special circumstances, which specifically relate to public water supply and water dependent enterprises with a strong record of compliance. The Minister is required to individually assess every application where special circumstances may apply.

Currently, both the Minister and the Controller have responsibilities in each licence that is granted for greater than 10 years. The Minister is required to express her opinion as to whether special circumstances support a longer licence. However, the Controller is not bound by the Minister’s opinion and considers this when making a final decision about the term of a licence.

The amendments to the Act will clarify the responsibilities by enabling the Minister to declare the criteria that justify a longer period. This will provide the Controller with improved guidance about where a longer licence period should be considered in general.

The amendments also give the Controller the authority to independently determine, on a case by case basis, if a longer licence period would be appropriate for a specific licence. This approach more appropriately reflects the role of the Controller to manage the water resources of the Territory. It will improve consistency and timeliness of decision making.

## Amendments to timeframes to reference business days

The Act includes various timeframes in which certain processes should be undertaken, and timeframes associated with making applications.

All timeframes in the Act have been converted from calendar days to business days. In undertaking these conversions, in the majority of instances there have been no changes to the substantive number of days identified. That is, where the Act currently provides for 30 calendar days, the TERC Bill provides for a period of 20 business days.

The only timeframe that has been extended by this process is in section 71E(2) which provides that the Controller must publish a notice of a review decision within 10 days of the decision being made. This has been converted to 10 business days which is considered the appropriate timeframe in which to enable the action to be taken.

## Streamlining notification requirements

A person that seeks to undertake water investigations or interfere with a waterway must obtain a permit to do so. Under the Water Regulations, permit applications must be published in a newspaper.

To streamline publication requirements, the amendments allow the Controller to determine the method of publication. This will provide the Controller with the flexibility to determine the most appropriate form of publication in the circumstances.

## Extending infringement notices to pollution offences

Infringement notices are a regulatory tool that is used to enforce compliance with legislation. While the Water Act contains a number of offences which can be the subject of an infringement notice, this does not currently extend to pollution related offences. The amendments will extend the infringement notice scheme to the following offences:

* causing pollution under section 16 of the Act
* breach of a waste discharge licence under section 74 of the Act.

The amendments have resulted in the repeal and replacement of the existing schedule of infringement notices. No other offences or the infringement notice penalties have been changed as a result of this process.

# Future Reforms to the Water Act

The following proposals were primarily identified in the Water Reform Directions Paper 2018 and through water allocation planning processes and reviews of decisions under administration of the Act.

## Beneficial uses of water

### Beneficial use categories

'Beneficial uses' are identified in s.4(3) of the Act and referred to in various provisions of the Act. Beneficial uses are a cornerstone of the Act and are used to apportion water for different uses, and to identify the water quality expectations to inform waste discharge licensing.

To improve the water management planning and allocation framework and public confidence in the framework, particularly licensing decisions associated with water extraction, amendments will differentiate between 'non-consumptive' and 'consumptive' beneficial uses.

Non-consumptive use categories are the beneficial uses of water that are required to protect and maintain the environment and its ecosystems, including cultural features of the environment. Non-consumptive uses remain in a water system and cannot be the subject of a water extraction licence.

Beneficial use categories will be expanded to include ‘ecological’ as a non-consumptive beneficial use relating to environmental values. The beneficial use ‘cultural’ will be redefined as a non-consumptive beneficial use relating to the protection of cultural values including Aboriginal cultural values.

Consumptive use categories are the beneficial uses of water that can be taken for various purposes. Consumptive uses will continue to include environment and a new consumptive beneficial use, ‘social’, will be added for water use related to taking water for aesthetic, Aboriginal cultural, recreational or social purposes. The remaining consumptive beneficial uses will be updated to reflect that water is taken for:

* Aboriginal economic development -taking water for Aboriginal economic development
* agriculture - taking water for growing plants including horticulture, hydroponics and forestry, and intensive animal keeping
* aquaculture - taking water to grow aquatic plants and animals
* environment - taking water to maintain the health of water dependent ecosystems
* industry - taking water for construction, manufacturing, processing and other industry uses not otherwise mentioned
* mining activity - taking water for a mining activity
* petroleum activity - taking water for a petroleum activity
* public water supply - taking water to be delivered through community water supply systems
* rural stock and domestic - taking water for the rural stock and domestic purposes permitted under sections 10, 11 and 14 of the Act.

The amendments will also recognise that there is a hierarchy for allocating water including that water must be allocated to non-consumptive uses before allocation to consumptive uses (refer Hierarchy of water).

### Beneficial use declarations

Section 22A of the Act provides for the declaration of 'beneficial uses' in a water control district.

Section 73(1) of the Act provides that the Administrator may declare 'beneficial uses, quality standards, criteria or objectives' that apply to waste, water and classes of waste or water.

The Administrator has made a number of declarations under section 22A and 73(1). These declarations vary with some declarations limited to beneficial uses, or water quality objectives, and other declarations providing for both beneficial uses and water quality objectives.

The identification of 'beneficial uses' provides guidance as to the types of activities that water can, or should, be made available for. Quality standards are used to identify the standard of water quality that must be retained in order to support the beneficial uses that have been declared.

Amendments to the Act will remove the potential for conflict between these declarations by providing general powers as follows:

* A power for the Administrator to declare beneficial uses - whether in a water control district, water management zone, or other area, or generally, and
* specify that the following are beneficial uses in a water control district:
  + non-consumptive uses, i.e. for ecological and cultural purposes
  + Aboriginal economic development.

The powers for the Administrator to declare water quality standards, criteria or objectives as currently provided bys.73 of the Act will be retained.

Amendments to the Act will also include a specific power to support the amendment and revocation of these types of declarations.

Existing declarations under both ss.22A and 73 will be saved and provide that, to the extent of any conflict between a declaration under s.73 and a water allocation plan declared and in effect under s.228, the water allocation plan is to take precedence.

### Transitional matters relating to water allocation plans and licences

Transitional matters will provide that a licence which has been granted under the former beneficial use categories remains valid and in force as though the beneficial use categories had not been amended.

However, the Controller will, at her discretion, have the power to identify the new categorisation system in any amendment or renewal of a licence.

Where a water allocation has been declared on the basis of the existing categorisation system the plan is to remain valid.

Further, in granting, amending or renewing a licence that is subject to a water allocation plan, the Controller will be able to grant the licence with reference to the beneficial use categories identified in the plan (i.e. as though the new categories had not been specified).

## Water allocation plans

### Declaration of plans

Section 228(1) of the Act provides that the Minister may declare a water allocation plan in respect of a water control district.

It may be relevant based on hydrogeology, surface water catchments and community needs that different management plans are required for different areas within a district.

This is not a change to the current arrangements; instead these amendments will clarify that multiple water allocation plans may be made within a single district consistent with the current interpretation of the Act.

### Water resource management

While 'water resource management' is not defined in the Act, it must (of necessity) include the process of granting licences and permits to take and interfere with water and its movement.

Section 22B(4) of the Act currently identifies that water resource management in a water control district is to be in accordance with the water allocation plan for the district.

Requiring water resource management to be in accordance with a plan may limit the Controller's ability to consider new scientific information, which has not been addressed in the plan and should be considered because it provides the most relevant and up to date information about the management of the water resource.

The amendments will also remove potential conflict with the Controller’s obligations under s.90(1) which require the Controller to consider relevant other factors that may contradict a plan such as the new scientific information.

### Hierarchy of water allocation

Contemporary and appropriate water resource management approaches acknowledge that there is a hierarchy in how water is allocated for use that prioritises water required for ecological and cultural purposes (i.e. non-consumptive purposes) and drinking water above water for commercial uses.

Government policy also establishes some specific goals in this regard, in particular the [Recovery of Unused Water Policy](https://depws.nt.gov.au/water/policy/water-licensing-policies).

Amendments to the Act will establish a hierarchy of water allocation independently of whether a water allocation plan or water control district is declared. Decisions by the Minister and Controller must consider the hierarchy and be consistent with it. This will assist in 'de-risking' water licensing decisions by ensuring the Controllers decisions reducing the risk of review and improving confidence in the decision making process.

The hierarchy for allocation will be:

1. Non-consumptive use
2. Consumptive use as follows:
3. Rural stock and domestic rights as provided under ss.10, 11 and 14 of the Act.
4. Public water supply
5. Aboriginal economic development (known as strategic Aboriginal water reserve)
6. All other beneficial uses.

While the hierarchy is to inform licensing decisions it will retain a level of flexibility. For example, if water is 'returned' to an over-allocated system, the Controller may still want or need to re-allocate that water to a consumptive use for example to public water supply. (In this context 'returned' means that it was removed from a licence holder under the [Recovery of unused licensed water entitlement policy](https://depws.nt.gov.au/data/assets/pdf%20file/0010/918442/recovery-unused-license-water­%20entitlements-policy.pd)).

The mandatory allocation of water to the environment in s.22B(6) becomes obsolete under a hierarchy framework (as this is addressed through non-consumptive uses).

## Establishing powers to trade water

Section 228(5)(c) of the Act provides that a water allocation plan is to ensure that rights to take water in accordance with licences granted under ss.45 and 60 of the Act can be traded, in part or full. This limits the trade of water to within a water allocation plan area. Therefore, trade cannot occur in areas outside of an area with a declared water allocation plan.

Amendments to the Act will allow the trade of water policy to be applied across the Territory providing for movement of water entitlements to support compliance and economic growth. The amendments will set overarching rules for trade in the Act for both temporary and permanent trade; and for water allocation planning purposes based on the Policy. Water allocation plans with specific trading rules will continue to apply.

It is not the intention that a licence holder be able to undertake long term temporary trades of water entitlements in order to profit from the entitlement and prevent a reassessment and reduction of the overall entitlement.

Amendments will clarify the rights for renewal relating to temporary trade such that:

* On renewal of the seller’s licence, the seller has the right to seek to renew any entitlement that has been temporarily traded.
* The holder of the temporarily traded entitlement (the buyer) does not have the right to seek any temporarily traded entitlement as part of its licence renewal.

Part 6A and s.90 of the Act will not to apply to a trade application.

#### Trading rules

The [Northern Territory Trading Water Policy](https://depws.nt.gov.au/water/policy/water-licensing-policies) is in effect and establishes the trading rules and requirements including:

* A licence cannot be granted for any entitlement for which the beneficial use is a non-consumptive use, and non-consumptive beneficial uses cannot be traded.
* A water entitlement that is for the beneficial use 'public water supply' cannot be permanently traded unless the trade is to a public utility (e.g. Power and Water Corporation) for the beneficial use purpose of public water supply.
* A water entitlement that is for the beneficial use 'Aboriginal economic development' cannot be permanently traded.
* Trading water does not result in a volumetric increase in the total amount taken from within a water management zone.
* Trade will be limited to within water resources (which will be defined with the amendments) and be subject to approval by the Controller.
* Water allocation plans with defined water management zones may establish trading rules appropriate to the plan area for example trade may only be permitted within defined water management zones.
* On-trading of entitlements is not permitted.

## Declarations to manage accepting (or not) licence applications

The Act establishes a licensing scheme to manage the extraction and use of surface and groundwater.

Part 6A of the Act identifies advertising and notification requirements that must be followed as part of the water extraction licensing process. Amongst other matters, these provisions require that applications be advertised in a newspaper, and notice of the application provided to certain landholders. Further advertising and notification requirements apply once the Controller has made a licensing decision.

The Act does not contain any provisions allowing the Controller to deviate from these requirements. Consequently, the Controller is required to accept and publish all water extraction licence applications (provided the applications contain all the required information) in accordance with Part 6A of the Act creating expectations for applicants and reducing the productivity of administrative efforts.

The amendments will allow the Controller, by Gazette notice, to prohibit the taking of water which means no application may be made or accepted for a water extraction licence (that is a new licence or an increase to an existing licence not resulting from a trade) in circumstances where a water allocation plan is being prepared or a system is ‘over-allocated’.

Over-allocated water resources are where the total maximum consumptive water allocation exceeds the estimated sustainable yield.

The total maximum consumptive allocation comprises:

* licence entitlements under granted water extraction licences
* the estimated required allocation for the beneficial use of rural stock and domestic and other purposes exempt from licensing requirements.

The notice may be for a period not exceeding 10 years and would not affect any entitlement to take water under a licence granted before the prohibition takes effect.

The notice may be in relation to, but not limited to:

* one or more water resources
* all or part of a water resource
* one or more types of applications or licences
* one or more water control districts.

The Controller may make a notice regarding the taking of water for a specified beneficial use, such as mining activity, while continuing to preclude a 'higher' beneficial use such as public water supply. Such a case may arise for example where a system is over allocated but existing mining activities are still transitioning into the licensing framework.

## Streamlining notification provisions under Part 6A

### Duplication in advertising for developments

A single development project may be subject to multiple advertising requirements associated with different authorisations - e.g. advertising under the Environment Protection Act 2019 if environmental impact assessment is required, advertising under the Planning Act 1999 or Pastoral Land Act 1992 if a land clearing permit is required and advertising under Part 6A of the Water Act 1992 if a water extraction licence is required.

While public advertising is valuable in informing the community about proposed developments, there is limited value in conducting multiple advertising processes for the same development. Advertising one part of a project (like its water requirements) the community may not see the development as a whole, and this may limit the community’s understanding of a project. Also, independently each process generally attracts similar commentators with similar comments and commentators rarely limit their comments to the subject matter of the application; for example, a water extraction licence advertising process will attract comments about land clearing, and land clearing applications will attract comments about water licensing.

The costs of each of the advertising obligations are met by the project developer, which can result in the develop incurring unnecessary costs.

Further, the prescriptive requirements of Part 6A in terms of advertising obligations are inconsistent with modern approaches to community engagement.

To reduce duplication in advertising requirements, amendments to Part 6A will:

* provide that the Controller may, in regards to a specific water extraction application, determine that public advertising of the application is not required where:
  + The development the subject of the application has been, or will be, advertised in accordance with the requirements of the Environment Protection Act 2019, Planning Act 1999 or Pastoral Land Act 1992 and
  + the information provided as part of that application included information about taking water.

The amendments will maintain flexibility to allow the Controller to advertise the application should she determine it is appropriate to do so.

### Notification and advertising requirements

The Act is highly prescriptive in the contents of notices, as well as the form of advertising that is required, including specification of newspaper advertising. These steps are outlined in Part 6A of the Act.

The prescriptive contents of these notices incurs advertising costs to applicants and may not always be the most effective way to communicate with affected parties or the public. Greater flexibility in notice provisions is required to meet changing trends in technology. To provide greater flexibility in the advertising of water extraction licences the amendments will:

* enable the Controller to determine the manner for publishing a notice of a water extraction licence application
* identify that a notice of a water extraction licence application must:
  + advise where information relevant to the application can be viewed; and
  + invite interested persons to comment on the application within the period specified in the notice. This period is to be 20 business days.
* provide that the applicant must meet the costs of advertising as determined by the Controller

Sections 718(6) and (7) require the Controller to give notice about the water extraction application to certain land holders and occupiers.

The requirement to notify owners and occupier of adjacent land will remain unchanged.

## Clarifying section 90 factors

Section 90(1) of the Act establishes the 'factors to be considered' when granting a licence or permit under the Act. Not all factors are relevant to every permitting or licensing decision.

Experience has demonstrated that certain factors are only relevant to certain decision. For example, the Department has been advised that decisions regarding bore work permits should only consider the undertaking of the work not matters relating to the water that may be extracted from the bore.

In making a decision the Controller must demonstrate why certain factors are relevant or not. Administrative efficiencies will be gained by removing obligations on the Controller to determine that certain factors are not relevant to the decision making process.

Further, amendments to the Act will clarify that licence amendments that do not have any material change on the entitlement are excluded from requiring consideration of s90(1) factors. These types of amendments address minor issues - typographical errors, a lack of clarity in conditions, change of licensee details (such as contact details) etc.

Amendments to the Act will provide clarity about the factors that are to be considered depending on the type of permit or licence to be granted and whether the application is for the original grant, amendment, renewal etc.

## Renewing licences

Regulation 15 of the Water Regulations 1992 provides that a person who holds a licence may renew the licence by lodging the appropriate form. It further provides timeframes in which the application for renewal must be lodged.

Notwithstanding 15 of the Regulations, there is no explicit power in the Act to renew a licence. The renewal of a licence is therefore the grant of a new licence or modification of an existing licence (where the modification is the extension of the timeframe).

Consequently, in determining to 'renew' a licence, the Controller is required to consider all of the factors contained in s.90 of the Act (the 's.90 factors'), and if relevant, comply with the notification and advertising requirements of Part 6A.

In many cases, the consideration of s.90 factors and providing notification under Part 6A during a renewal process is unnecessary. This is particularly the case when the circumstances that surrounded the grant of the licence have not changed, where the licensee has been operating in full compliance with the licence, and, for extraction licences, where the water that is the subject of the licence is fully developed.

The intention of 'renewal' provisions is to streamline processes for licence holders that are generally compliant with the terms and conditions of the licence and to provide a level of certainty to licensees that a licence will be reissued on the same (or substantially the same) terms and conditions of the original licence.

## Licence transfers

### Deeming transfer when lease surrendered

Section 92 of the Act 'deems' the transfer of licences when an interest in land is transferred.

The section does not currently account for the situation where a lease is surrendered and the licence can be transferred back to the underlying land title holder. Consequently, in such circumstances the Controller is required to assess an application for the grant of a licence to the land title holder.

Amendments to the Act will provide certainty for landholders, by clarifying that the deemed transfer provisions apply in these circumstances.

### Deeming transfer of compliance obligations

It is important that when licences are transferred the obligations under the licence also transfer.

To avoid doubt and provide certainty to licence holders that obtain licences under these deeming provisions, amendments will clarify that the new licence holder is subject to the conditions of the licence and must comply with any outstanding compliance requirements. For example, if there are outstanding bore readings required then the new licence holder will be responsible for providing the bore reading.

It is also proposed that in the event of a transfer where there has been significant underutilisation of water licence entitlements that the Controller is able to consider past use of entitlements and whether the allocation that was transferred to the new licence holder should be reduced and returned for reallocation under the arrangements outlined in the Recovery on Unused Licensed Water Entitlements.

Amendments will also provide for a right for the person who receives a licence as a consequence of these deemed transfer provisions to seek an amendment to the licence or to surrender the licence.

### Amendment of conditions

Section 93 of the Act provides that the Controller may amend or modify the terms and conditions of a licence.

Section 93(4) of the Act identifies that the Controller may not amend a licence if it will result in an increase in the total quantity of water permitted to be taken. This section is intended to support trade provisions by allowing the Controller to amend licences to give effect to a proposed trade of water while ensuring that there is no net impact on the volume of water that is taken under the licences. This is achieved by increasing volume in one licence and reducing volume under the other licence.

However, the drafting of this subsection unintentionally prevents the Controller from amending any other condition of the licence if one of the proposed amendments will result in an increase in the water entitlement; this will be corrected.

## Clarifying surrender obligations for licences and permits

Section 94 of the Act provides that a person may surrender a licence. This section is limited to licences and needs to be extended to also allow for the surrender of a permit.

There may be outstanding compliance or other matters when a licensee seeks to surrender a licence, for example monitoring data or other reports and information. These matters may need to be resolved before it is appropriate for the Controller to accept the surrender. The Act will therefore require amendment to provide for a formal acceptance of the surrender before it can take effect.

## Commencement of proceedings

Section 105 of the Act provides that proceedings for a breach of the Act are to be commenced within 12 months of the Controller discovering the offence.

Experience in investigating breaches of environmental offences, including those under the Act, identifies that this period is insufficient to properly complete investigations given the general complexities in proving environmental harms.

The period for bringing proceedings for offences under the Act will increase to 3 years. This will improve the enforcement of the Act while remaining consistent with other Territory environmental laws, such as the Environment Protection Act 2019.

## Review of decisions

Section 30 of the Act allows for a person aggrieved by an action or decision under the Act to apply to the Minister for review of the matter. This review may be advised by a Water Resources Review Panel.

Responsibility for conducting reviews under the Act will be transferred to the Northern Territory Civil and Administrative Tribunal (NTCAT) with the following decisions subject to review.

* grant or refusal of a licence or permit or consent under the Act
* an amendment of a licence or permit, where the amendment is an increase in the licence volume and subject to Part 6A of the Act.

NT CAT has the power to appoint an expert to provide advice on a matter which may be outside its expertise including a water resource expert.

Standing to seek a review of these decisions are the applicant, a directly affected person or a person that participated during the public consultation process associated with a decision. This is consistent with s.277 of the Environment Protection Act 2019.

For all compliance related decisions under the Act, standing will be limited to the person directly affected by the decision. In this regard, 'compliance' refers to the issue of a remediation notice (s.33A) and similar compliance tools. It does not include decisions to commence prosecutions or issue infringement notices.

For certainty, a review of an amendment to a licence or permit, where the amendment does not relate to an increase in the licence volume and is not subject to Part 6A of the Act, may only be sought by the applicant (i.e. existing licence holder).

A person to whom a direction or other enforcement notice (other than an infringement notice) will also be able to seek review of the decision.

There will be no requirement to maintain the water resources review panel with this transfer so provisions relating to the panel, the appointment of members and its operations will be removed from the Act.

## Improving interpretation and definitions

The Water Act contains a range of terms that are not defined, or would benefit from a review of the definition. These terms include:

**Estimated sustainable yield** is used in ss.22B(S) and 71B however the term is not defined. Estimated sustainable yield is the amount of water that can be taken from a water resource without compromising: key environmental values, Aboriginal cultural values, ecosystem functions, the productive base of the resource, or declared water quality standards, criteria or objectives.

**Water resource** is currently not defined in the Act. Water resource is defined as surface water or groundwater; or a watercourse, lake, wetland or aquifer (whether or not it has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical stage and environmental value of the water resource).

**Tidal water** definition is complex and has proven difficult to interpret resulting in a lack of clarity about the application of the Act. Proposed amendments will define tidal water to mean any water of a waterway within the ebb and flow of the tide; and any water in the intertidal zone in the Territory.

**Interference with a waterway** requires definition to include ‘material’ change to the alteration of bed or bank consistent with the other parts of the definition. This will ensure that the regulation of ‘interference’ clearly relates to a level of impact that is above insignificant or negligible.

## Aboriginal water reserve (AWR)

Section 4B of the Act defines 'eligible land'. This term is used in s.22C for the purposes of identifying land to which the Aboriginal water reserve applies.

Under s.22C(3) it is necessary to limit this to leases those granted by the Crown aligning with similar provisions under the Pastoral Land Act 1992 or Crown Lands Act 1992.

Section 71BA will also be clarified to ensure consent required in relation to an AWR applies to AWR associated with all water extraction licence decisions as defined under s. 71A.

## Exemptions

The Act contains a number of provisions allowing the Minister to grant an exemption from the requirements of the Act. These include ss.40(10), 44(8) and 47. To support the administration of the Act, these provisions will be consolidated into a single section of the Act.