



## Fact sheet

### The Gunner Government wants to wind back our water protections: here's why Territorians should be worried

Water is vitally important to all Territorians, and the nature we love. Territorians understand this, are willing to stand up for it, and want their Government to do much more to safeguard our water futures.

The Gunner Government was elected in 2016 on a promise to overhaul our shoddy water laws, which were vulnerable to corruption and mismanagement. However, the NT's water laws still fall far short of best practice, and do not comply with the National Water Initiative (which all states and territories signed up to nearly 20 years ago). While the Territory gives water away to irrigators for free, who can then trade it at a profit, Indigenous communities don't have the most basic of protections for their drinking water. You can read more about what how our water laws are failing Territorians [here](#).

Instead of fixing our laws, the Gunner Government is rolling out the red carpet for water intensive industries such as fracking and industrial-scale agriculture, by rushing to weaken the *Water Act* in response to the Territory Economic Reconstruction Commission report.

The first of these laws, the *Statute Law Amendment (Territory Economic Reconstruction) Bill 2021 (TERC Bill)* was introduced in May 2021. Two *Environmental Laws Omnibus Bills (Omnibus Bills)* are scheduled for introduction into the Legislative Assembly as early as August 2021.

The Gunner Government's proposed changes will take the Territory's water laws backwards. The changes wind back already weak protections and remove scrutiny over management of our most precious resource. Not only that, they're being pushed through urgently without public consultation or the scrutiny of any parliamentary committee, and may be passed as early as August 2021. We know how deeply Territorians care about water and yet the Government is rushing through these attempts to weaken our water laws.

Territorians want their Government to strengthen our water laws, not weaken them. ECNT is calling for any amendments to the *Water Act* to be put on hold until the Gunner Government's promised water security strategy is finalised after Territorians have been properly heard, and the Gunner Government has legislated for safe drinking water protections for all Territorians.

In the attached table we explain the top 5 things that are wrong with the proposed amendments:<sup>1</sup>

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<sup>1</sup> The Omnibus Bills have not yet been introduced, so this summary has been prepared using this document: <https://depws.nt.gov.au/water/legislation/water-act>. It will be updated if and when the Omnibus Bills are introduced.

The issue	What should happen	What the Gunner Government wants to do
<p>Removing public transparency, scrutiny and public participation</p>	<p>Better transparency of and public participation in water management underpins best practice water management.</p> <p>Currently, the Water Act requires that water licence applications and dam proposals be advertised in local papers, and that decisions and licences are publicly available. There are also strong rights of review with respect to water licence decisions.</p> <p>However, the Territory does not publicly report on compliance and monitoring against water licences or water allocation plans (as required by the National Water Initiative). Nor is there any public consultation about announced annual allocations. There are very few water advisory committees (meant to advise on the development of water allocation plans) currently in place.</p>	<p>Instead of improving transparency, the Gunner Government is winding back transparency, scrutiny and public participation in water management decisions by:</p> <ul style="list-style-type: none"> <li>(a) allowing the Water Controller to determine if and how water licence applications are published (Omnibus Bills).</li> <li>(b) narrowing the standing for review to those who will be directly affected or participated during the public consultation process associated with the licence (Omnibus Bills).</li> <li>(c) removing the requirement for notices for dam permits to be advertised in the newspaper, instead placing public notification requirements within the complete discretion of the Water Controller (TERC Bill).</li> </ul>
<p>Undermining water allocation plans</p>	<p>Water allocation plans are the foundation of good water management. Along with other community led, catchment level solutions, they provide for the strategic management of water resources using the best available science, and embed extensive public and stakeholder engagement into planning processes. The National Water Initiative requires that water allocation plans must be strictly complied with, with legally mandated public reporting of compliance and monitoring activities.</p>	<p>Instead of strengthening water allocation plans, the Gunner Government is removing the only provision in the Water Act that requires some level of compliance with them.</p> <p>Section 22B(4) of the Water Act requires that water resource management must be in accordance with a water allocation plan (if one is declared).</p> <p>The Gunner Government is proposing to change this requirement, meaning that water allocation plans become no more than aspirational documents (Omnibus Bills). If the Water Controller is not required to make water resource management decisions in compliance with water allocation plans, then it raises questions about whether these plans have any utility at all. The lengthy and</p>

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	<p>The Territory's water allocation planning process needs a complete overhaul, including by making water allocation plans legally enforceable, declaring more plans across the Territory, stopping the entrenched practice of fully or overallocating licences before a water allocation plan is declared, and making sure that there is public reporting of compliance, reporting and accountability with respect to water allocation plans and licences.</p>	<p>resource-intensive water planning processes undertaken by water advisory committees would largely become a waste of time.</p> <p>Not only that, the amendments seem designed to defeat a current review of the controversial decision to grant 40 billion litres of water for free to Fortune Agribusiness for a development at Singleton Station south of Tennant Creek. The key ground of review put forward by ECNT is that s22B(4) requires the grant of the Singleton Station water licence to comply with the relevant water allocation plan. The amendment may effectively remove this ground of review.</p>
<p>Expanding the discretionary power of the Water Controller</p>	<p>To avoid conflicts of interest and possible corruption, there should be clear separation between service delivery, policy-making and regulation of water (the National Water Initiative).</p> <p>In the Northern Territory, all these roles are performed by the one individual. The Water Controller (who issues licences), is also the CEO of the Department of Environment, Parks and Water Security (who signs off on environmental policy, is answerable to the Minister, and signs off on regulatory reform proposals).</p> <p>The water regulatory reform directions paper released by the Department in 2018 for comment identified this as a significant problem, specifying options for ensuring regulatory separation.</p>	<p>Instead of removing the potential for conflicts of interest, the proposed amendments give even more discretionary power to the Water Controller, by:</p> <ul style="list-style-type: none"> <li>(a) giving the Water Controller the power to extend the term of water licences from 10 years (TERC Bill). No criteria are given for what circumstances would justify this, and no time limit is given on how long licences can be extended for;</li> <li>(b) removing the requirement for notices for dam permits to be advertised in the newspaper, instead placing public notification requirements within the complete discretion of the Water Controller (TERC Bill);</li> <li>(c) allowing the Water Controller to determine if and how water licence applications are published (Omnibus Bills);</li> </ul>
<p>Permitting water speculation for profit, with no return to Territory</p>	<p>The Northern Territory is the only jurisdiction (apart from WA) that does not charge for water. This is the key</p>	<p>Instead of introducing a charge of water to ensure compliance, management and enforcement functions can be properly undertaken, the Gunner Government is</p>

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taxpayers	<p>mechanism by which water resource management, including regulatory, compliance and enforcement functions, is funded across Australia.</p> <p>However, irrigators can trade water within a water allocation plan area for profit.</p> <p>There are important safeguards in the legislation to stop water speculation. In particular, water licences in the Territory must be granted for actual irrigation developments, and require precision about the bore points where extraction is to occur. They are also subject to a “use it or lose it policy”. While imperfect, this is to prevent water hoarding for profit whereby the available water in a particular resource is taken by a particular irrigator for some unspecified future development or purpose.</p>	<p>making it easier for developers to make money from a public resource with no return to Territory taxpayers.</p> <p>The Gunner Government is proposing to make it possible for a developer to obtain water licences on a speculative basis – that is, without the need to specify extraction points or submit detailed development plans (TERC Bill). The developer will then be able to subdivide or sub-lease the land and transfer the water licence to others with very little scrutiny of the environmental impacts of those sub-licences. This means that a developer can “hoard” water with very little justification, locking the resource away from other prospective users. Again, the water would be given to the developer for free, but can then be used by that developer for profit-making purposes. This is a massive transfer of a public good to private interests, without appropriate compensation. It may take us down the path that has ruined the Murray Darling Basin.</p> <p>A recent licence granted to NT Land Corporation at Larrimah was overturned after a review because the Water Act does not currently permit water speculation of this nature. The Gunner Government is now amending the legislation so NT Land Corporation can get its water at Larrimah and its other developments.</p> <p>The Gunner Government is also proposing to expand the areas within which water can be traded to new “water management zones” which may include areas not subject to a water allocation plan at all (Omnibus Bills). This is inconsistent with the National Water Initiative, may have serious ecological impacts, and again allows irrigators to profit from a public resource with no return to the Territory.</p>
Removal of a key sustainable management tool	While the National Water Initiative recommends that water extraction licences be granted for an unlimited term (ie are permanent) and be unbundled, this path has not been taken in the Territory.	<p>Instead of improving the knowledge base to inform water management across the Territory first, the Gunner Government is proposing to remove a key sustainable management tool by:</p> <p>(d) giving the Water Controller the power to extend the term of water licences</p>

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	<p>The 2018 Water Regulatory Reform Directions Paper identified that the current standard 10-year licence period is designed to “accommodate uncertainties about the water resource and provides flexibility in responding to changing circumstances (eg. Climate Change, or increased knowledge of the resource)”. There is still considerable uncertainty about water resources across the Territory, little understanding of the impacts of climate change, and a growing awareness that some systems are overallocated (for example in the Katherine Tindall system). The limited licence term is therefore a necessary management tool given the shortcomings of the knowledge base.</p>	<p>from 10 years (TERC Bill). No criteria are given for what circumstances would justify this, and no time limit is given on how long licences can be extended for;</p> <p>(e) removing the requirement for licence renewals to be publicly notified and to satisfy the requirements of s90 of the Water Act (which require the Water Controller to consider the availability of the water) (Omnibus Bills). Renewals would therefore occur as of right.</p>