



YourSAy Consultation Report

Landscape South Australia (Water Register) Regulations 2020

*Prepared by the Water Licensing Branch of the Department for Environment and Water
– February 2021*

Summary

Public consultation on the draft Landscape South Australia (Water Register) Regulations (the Regulations) was held between 27 July and 4 September 2020 by utilising the State Government's online consultation hub YourSAy. To provide a complete summary of the consultation, this report covers all consultation undertaken during that time (both within Government and external to Government) using the YourSAy platform and information sessions.

The Regulations provide guidance on how Schedule 4 of the *Landscape South Australia Act 2019* is to operate. This schedule establishes the State's Water Register, which is used to record water licences, permitting and well drilling information, transactions (such as trade), water use, and assessment and compliance.

The consultation led to two changes being made to the Regulations:

1. To lengthen the duration of security interests to be registered from 7 to 15 years (to coincide with the length of time financial institutions lend against water licences); and
2. To provide clarity in the types of dealings that will need the consent of the security interest holder.

Parties engaged during the consultation were supportive of the Regulations, including:

- Representatives of the financial services industry, who appreciated the clear pathway provided for the registration of security interests and caveats against water licences;
- Conveyancers, who were supportive of the automatic notification feature and the ability to check for debt owing before settling a transaction;
- Water Brokers who were supportive of the broker portal feature and the ability to lodge documents electronically; and
- Peak water licence representative bodies, who valued the outcome of increased certainty to lending against water licences that will be delivered through the Regulations.

The Regulations were made by the Governor on 26 November 2020. The new software for the new Water Register will continue to be built to enable the features contained in the Regulations to be accessible to water licence holders and their representatives within the new Water Register.

The Water Licensing Branch within the Department for Environment and Water (DEW) wish to take this opportunity to thank people who took the time to help develop the Regulations. This process first began in early 2018, when DEW facilitated a series of round table consultation sessions to better understand the Water Register requirements of its water licensing customers. The thinking from these sessions led to new business requirements for the Water Register, which are enabled in the Regulations.

General Information

DEW manages approximately 14,000 water licences, with an estimated \$7.5 billion worth of water entitlements. These licences (underpinned by the monitoring of the water resources they are related to), DEW's monitoring of the water resources and the application of the rules in water allocation plans, provide a water security foundation that enables South Australian farming communities who are reliant on licensed water resources to undertake their business with the confidence that the water input is secure.

The Regulations support the implementation of the *Landscape South Australia Act 2019* (the Act) by providing guidance on how certain parts are interpreted and to establish further requirements, functions and powers related to the Act. In particular, the Regulations facilitate the operation of Schedule 4 of the Act, which establishes the State's Water Register.

In 2009, amendments were made to the (now repealed) *Natural Resources Management Act 2004*, to make provision to enable registration of security interests against water licences. At that time, these provisions were not brought into operation due to deficiencies in DEW's Water Register computer system. These provisions were carried over into Schedule 4 of the Act in anticipation of a new computer system being developed at a later stage. Development of the new \$14.7 million computer system, including a new Water Register for South Australia, began in early 2019 through the Water Management Solutions (WMS) Program. The Program is co-funded by the Australian and South Australian Governments.

The Regulations align with the Government's landscape reform policy directions, such as red tape reduction, streamlining business processes and creating a simpler and more accessible Water Register system. The Regulations will deliver enhancements to the State's Water Register, to:

- Deliver increased lending opportunities for water licence holders by putting in place a scheme to register security interests and caveats against water licences;
- Modernise the Water Register by allowing for joint ownership options, subdivision and consolidation of water licences and a notification scheme;
- Create greater security through the establishment of a verification of identity and authority scheme; and
- Deliver business efficiency through increasing search functions and the ability to electronically lodge documents either by water licence holders individually or by third parties through a trusted party's portal.

In order to enable these new features and transition information from the existing Water Register to the new Water Register, the Regulations have commenced before the launch of the new Water Register (planned for late 2021). The introductory and transitional clauses of the Regulations commenced on the day they were made (26 November 2020) and the remaining operational clauses are intended to commence in late 2021, in alignment with the

corresponding WMS computer system capability being activated. The outcomes of the Regulations will transform South Australia's current Water Register from a record-keeping system to one more closely aligned with a title-based registration system such as those provided by other state water registers.

Consultation

The Regulations were developed in close consultation with industry stakeholders. In 2018, DEW held a series of 'round table' sessions with businesses who use the Water Register (water brokers, bankers, lawyers and conveyancers), as well as peak bodies representing licence holders (Primary Producers South Australia, Dairy Farmers South Australia and Livestock SA). These sessions were used to inform the drafting of the Regulations.

Public consultation on the draft Regulations was held from 27 July – 4 September 2020 by utilising YourSAY and hosting information sessions. All attendees from the original round tables, including relevant government agencies were notified that the draft Regulations were available for review and invited to register their interest in attending information sessions on the Regulations.

Information sessions were held, with parties that registered an interest as well as identified key stakeholders including Primary Producers South Australia, Livestock SA, Dairy Farmers South Australia, Central Irrigation Trust, Renmark Irrigation Trust, Mellor Ollson Lawyers, HWL Ebsworth Lawyers, National Water Brokers, Elders Water Brokers, Waterfind, PIRSA, Department of Education, Rabobank, the National Australia Bank and Department of Treasury and Finance. Internal comments were also received from within DEW.

All parties spoken to during the public consultation period were supportive of the Regulations and welcomed the improvements to the Water Register.

During the consultation period (including some pre-consultation meetings), 78 queries or comments were raised, documented and addressed during consultation information sessions. Through YourSAY a further three written submissions were received which sought minor adjustments to the Regulations to increase legal clarity. These submissions led to two changes being made to the draft Regulations:

- Regulation 14(c) - clarify that the types of dealings requiring the consent of the security interest holder are those where *'if so provided by a specific provision of the Act or these Regulations—gives rise to the requirement that certain dealings relating to the water licence or water access entitlement to which the security interest relates requires the consent of the holder of the security interest.'*
- Regulation 19(1) - extend the time that security interests remain on the register from 7 to 15 years, to align with the terms that financiers lend to.

Other queries/comments raised during consultation did not require a change to the Regulations and were addressed by either:



- Providing further clarification on the intended operation of a Regulation;
- Making a change to the design of the WMS computer system; or
- As part of a separate project.

All consultation queries/comment (and DEW responses) that shared a common theme, were grouped together (see Table 1).

Broad communication activities will be planned ahead of the launch date for the new Water Register (WMS), in order to promote the commencement of the features that the Regulations bring and to ensure that stakeholders are familiar with the functions of the Water Register.

Effect of provisions of the Regulations

Please refer Attachment 1 – Summary of effect of provisions.

Table 1 – Summary of consultation comments received

Item	Industry	Comments/questions	Action taken in response to comments/questions
1. Comments made in relation to a specific clause			
Reg 4 – Information to be recorded on the register	Conveyancer	Will the Water Register recognise (Trust) type of ownership arrangement – licences held in Trust.	No change to the Regulations required. WMS design currently requires persons registering for online access to the register to be a legal person, not as a 'trust' as such. This position is consistent with the Victorian Water Register determination on Trustee Capacity - <i>the Water Registrar has determined that a trustee capacity cannot be recorded on water shares. Water shares must only be held in the name of a legal person. Thus the words 'as trustee for', 'as custodian for', or the abbreviations 'ATF' or 'ACF' together with any following words cannot be recorded on water shares. This determination does not preclude the maintenance of 'off register' trusts, and does not affect the legal or accounting status of such trusts or their assets.</i> As licences are migrated from the existing Water Register to the new Water Register, references to 'trusts' will be removed. An engagement process will be undertaken with any affected licence holders.
Reg 5 – Priority of registration	Internal Government	The main concern is that there are numerous financiers who believe they have an interest in the water (and which can be in various forms). However given there was no formal recording like PPSR, each financier is not aware of others interest. This is likely to create issues into the future, and may see lengthy legal battles as to who has first ranking to recoup funds in the event of sale.	No change to the Regulations required. Regulation 5 addresses this concern. It allows first date and time priority recording. It also allows all parties (all Security Interest holders and Water Licence holders) to apply to have a priority order changed. They must agree on the order of priority. If the order is not agreed, this needs to be resolved by the parties outside of the Water Register. Also the Security Interests are searchable. See Reg 15.

Reg 7 – Registration of transfers	Internal Government	One of the issues that has come up about registration is the time taken between transfers, so that two people can be using the water at the same time. So there is concern about transferring the licence but until it has gone through, the person that holds the licence might be still using it, and the person expecting to get it might start using it. Is that an issue, does this address that in any way? It needs to be clear to both parties when the transfer has occurred, when the transfer occurs so that they know when they can use it and when they can't use it.	No change to the Regulations required. Transaction undertaken via the Water Register will be more automated and quicker when compared to paper based application processing. The faster processing times will mean that the licence holder will be able to see when transfers take effect and appear in their water accounts. This will reduce misunderstandings about who is holding the water entitlement or allocation at any given time. This will also be supported by a notifications system.
Reg 7 (1) (b) - Registration of transfers	Bank	Two stage transfer - if there is an interest on water entitlement being transferred, not with land, need documentation to say it is being transferred and coming off the security.	No change to the Regulations required. See Regulation 27 which covers this request. Security interest holders will be notified of any application lodged to vary or transfer an entitlement – consent will be required from security interest holder in order for the transfer to be approved. This is the case regardless of whether entitlement is being transferred with land or not.
Reg 7 (1) (b) - Registration of transfers	Conveyancer	For two stage transfer - query who is providing the notification to DEW that settlement has occurred? Seller or purchaser. Usually, the purchaser or conveyancer acting for purchaser or bank processing the mortgage will notify Land Services of settlement being finalised.	No change to the Regulations required. The notification of settlement having occurred will actually happen when the seller and purchaser apply to 'register' the transfer. This application to 'register' the transfer is required to be consented to by both seller and purchaser. The seller and the purchaser will be able to do this by providing their consent online (by logging into their Water Register accounts).
Reg 7 (1) (b) - Registration of transfers	Conveyancer	We note your advice that as part of the "two stage transfer process" "The notification of settlement having occurred will actually happen when the seller and purchaser apply to 'register' the transfer. This application to 'register' the transfer is required to be consented to by both seller and purchaser. The seller and the purchaser will be able to do this by providing	The transfer of personal property under the LSA Act 2019 does not provide for a settlement facility. The separate Approval and Registration process provides certainty to the parties that an Approved transfer will be Registered if an application for registration is submitted within the 60 day period.

		their consent online (by logging into their water register accounts).” We believe that the department needs to carefully consider how this process will occur when water is being sold/purchased for consideration to ensure confidence in the process. If funds are changing hands between the Vendor and Purchaser in respect of the Water but the funds cannot be transferred online through the Department’s register then there is likely to be issues around the time of providing the necessary consents for the transfer to take place. The Vendor (or any outgoing interested party) will not want to provide their consent until they have received their funds and the Purchaser (or any incoming interested party) will want the Vendor to provide their consent prior to settlement (otherwise there is no guarantee the Vendor will provide their consent after settlement).	The intent is that settlement will occur outside of the Water Register and that the application to ‘Register a transfer’ as part of the two stage transfer option is when the vendor and purchaser will both be required to provide their consent prior to the transfer being registered. The Minister will not register the transfer until both parties have provided their consent to the registration of the transfer. Establishing a settlement facility within the Water Register would constitute a sizeable change to the current design of the Water Register, which is currently not funded.
Reg 7 (1) (b) - Registration of transfers	Water Broker	In relation to the two-step process. So for example in New South Wales you need to get approval then they also submit then registration documents. Is that something in that sort of nature that I guess you guys are considering? Or would it be something that you could provide all of the relevant information? At a particular point in time, for that two-step process.	No change to the Regulations required. The current design allows for Registration to occur on Approval, without the provision of any other documentation OR within 60 days of Approval submission of an application seeking Registration. Bundling up of applications to be submitted as part of a transfer application is not currently in design scope for the WMS. It has been noted as a desirable feature and may result in a change to the WMS design and build.
Reg 7 (1) (b) - Registration of transfers	Water Broker	The benefit of having a two-step process brings us very much more into conformity with what the other states have been doing for some time and in terms of, putting particularly large transactional deals together where parties don't particularly release the money until at least the first step, is beneficial.	Noted. No change to the Regulations required.

Reg 12 – Certain dealings not to be registered	Conveyancer Banker	Reg 12 – Concerns about not being able to register a security interest over a limited term transfer. Need to avoid situations where entitlement has been temp transferred, but licence holder has tried to sell the entitlement off to someone else. Can you place a caveat over water that has come in (incoming) on a temp (lease) allocation (outside of their entitlement)? Long term lease agreements - if it gets leased, it useless to us. Issues with products on the market for long term leases - restrictions on selling the entitlement if it's under a lease arrangement e.g. Leasing your property, agreement to use the water, how can lessee ensure it's not traded off by entitlement holder during term of agreement.	To clarify, the intent of Regulation 12 is that a security interest cannot be registered for a water access entitlement that has been transferred for a limited period. This is because a person holding a limited term transfer, only holds it for a limited period and this creates complexity or potential liability to the primary holder when the transfer ceases and could impact a security interest holder's (in relation to the primary holder's entitlement) ability to exercise their rights in accordance with clause 18 (power of sale). In the circumstance where a primary water access entitlement holder applies to transfer their entitlement for a limited period and the entitlement is subject to a security interest, the security interest must be discharged prior to the transfer being registered. A security interest holder would be required to provide consent to an application by a primary water access entitlement holder to transfer their entitlement for a limited period transfer of (see Regulation 14(d)) and so would be aware of any application to do so and in accordance with Clause 12 and as an additional precaution, Regulation 12 provides that the Minister must not register an approved transfer for a limited period, unless the security interest has first been discharged. Additionally, to note - Long term lease arrangements of any Schedule 4 entitlement are not recorded on the Water Register. Commercial leasing arrangements ('products on the market') which people choose to put in place to manage their business operations are not currently catered for in the Act. Given that the Act does not cater for lease of Schedule 4 entitlements it is not possible to provide support in the Regulations.
---	-------------------------------	--	--

Reg 13 – Registration not to impact certain matters	Banker (Lawyer)	Subclause (d) states that the registration of a security interest does not affect the transfer or variation of any water licence or water access entitlement required by law or by an order of a court or tribunal constituted by law. Comments – Whilst the security interest holder may not have much control over these type of transfers and variations as required by law, however, the security interest holder should be given prior notice to this type of changes or variations. This is to acknowledge that the security interest holder has provided value to their security interest and should be made aware of the changes by a prior notice and at least have an opportunity to manage the impact before it occurs.	No change to the Regulations required. See Regulation 27. A transfer or variation of any water licence or water access entitlement required by law or by an order of a court or tribunal constituted by law would still be required to have an application lodged to process the Court Order. The security interest holder would be notified at the time the application is registered.
Reg 14 – Effect of security interest	Banker (Lawyer)	Effect of security interest should specify what type of 'dealings' requires consent of the holder of security interest holder.	A change was made to the Regulations based on this feedback. Regulation 14(c) was changed to clarify that the types of dealings requiring the consent of the security interest holder are those where <i>'if so provided by a specific provision of the Act or these regulations— gives rise to the requirement that certain dealings relating to the water licence or water access entitlement to which the security interest relates requires the consent of the holder of the security interest'</i> .

Reg 14 – Effect of security interest	Banker (Lawyer)	Subclause (d) states that a transfer of the interest subject to the security interest will take affect subject to the security interest is discharged before the transfer occurs. Comments - With land transactions, a transfer does not occur unless the mortgagee provides consents (via production of title or consent via the e-conveyancing system). The water register should have similar mechanics in place to ensure the security interest is protected the same way as a security holder of land securities.	No change to the Regulations required. The intent of Regulation 14(d) is that a security interest holder would be required to provide consent to an application by a water access entitlement holder to transfer their entitlement.
Reg 19 – Expiry of security interests	Banks Conveyancers	7 Year expiry for registered security interests does not align with agribusiness loan term which is 15 years	A change was made to the Regulations based on this feedback. Regulation 19 was changed to say <i>‘the registration of a security interest under Schedule 4 of the Act expires at the end of the period of 15 years from the date of its registration’</i> .
Reg 19 - Expiry of security interests	Internal Government	19(2) Who are the parties, and what if the licence holder says no?	No change to the Regulations required. The intent of Regulation 19 is that parties are the licence holder/s and the mortgage holder. Applications to extend are always expected to be from both.
Reg 20 – Registration of caveat on registration	Lawyers Conveyancers	When acting for banks - would the process be that the bank is appointed by incoming licence holder (the purchaser)? If bank is lodging a caveat - Banks trying to lodge a caveat may not have authorisation to do so from a purchaser. Would be difficult for bank to get this from a purchaser.	No change to the Regulations required. The system and Regulations have been designed so that a bank will be able to be appointed by a water licence holder (once a person holds entitlement/transfer has been registered). A water licence holder could nominate more than one ‘Agent’ to act on their behalf. A bank (acting for a purchaser) will be able to register a security interest once a transfer has been registered. A bank acting for a purchaser will be able to apply to register a caveat against the sellers entitlement to prevent other transfers, while waiting for the transfer

			(that the bank is a party to) to be registered. A caveat for this purpose can be can be registered with or without the consent of the selling water licence holder. (see Regulation 20). Note caveats lodged without consent are subject to Regulations 20(6) and (7): See also Regulation 23(2) - If— (a) a caveat is registered without the express consent of the holder of the relevant water licence; and (b) the holder of the relevant water licence, within 28 days after receiving the notification required under Regulation 20(6), applies to the Minister for the lapsing of the caveat under this subregulation, then— (c) the Minister must give notice of the application to the caveator; and (d) the caveat will lapse at the expiry of 21 days after service of the notice on the caveator unless the caveator, within that period— (i) obtains an order of the ERD Court under Regulation 25 that provides that the caveat should continue to be registered; and (ii) provides the order to the Minister in accordance with any requirements determined by the Minister for the purposes of this Regulation.
Reg 24 - Application to ERD Court to lapse caveat or obtain compensation	Lawyer	Applications to Court to get caveat removed - can third party apply? Does request to remove have to come from licence holder - or can it come from security interest holder?	No change to the Regulations required. Security interest holders may apply to the Court to have a caveat removed – see Regulation 24: <i>24—Application to ERD Court to lapse caveat or obtain compensation</i> (1) A person who— (a) has an interest in a relevant entitlement that is subject to a caveat registered under this Part; or (b) has an interest that is directly affected by a caveat registered under this Part, may apply to the ERD Court under this Regulation.

			(2) An application may be made for 1 or more of the following: (a) a declaration that— (i) an interest claimed by the caveator is not a valid interest for the registration of a caveat; or (ii) a caveat should not have been registered under this Part for any other reason; (b) an order that a caveat lapse; (c) an order that a transfer, variation or surrender relating to a relevant entitlement be registered despite the registration of a caveat under this Part; (d) an order that a security interest relating to a relevant entitlement be registered despite the registration of a caveat under this Part; (e) an order that a caveator pay compensation for any loss or damage suffered because a caveat registered under this Part does not relate to a valid interest for the registration of a caveat. (3) Any compensation payable under an order under subregulation (2)(e) may be recovered as if it were a debt due to the person in whose favour the order is made in a court of competent jurisdiction.
Reg 27 - Notice of prescribed events	Internal Government	It would be beneficial for when transfers are approved to receive automated notification.	No change to the Regulations required. See Regulation 27 and 29. Additionally, the WMS system design includes application tracking, DEW will notify holders via preferred channel, notification when applications for Security Interest and Caveat are received.
Reg 34 - Verification information	Water Broker Banker	Vol requirements should fully align with that for land securities. When discussing a verification of identity system to be put in place to provide additional security measures to safeguard against fraud, and establish that the person interacting with the Register is who they say they are*	No change to the Regulations required. Verification of identity (Vol) requirements for the Water Register will be similar to those required for land securities. DEW seeks to utilise the SA Government Identity Service Provider which undertakes the functions of identity management. Creating, maintaining and managing identity information of individuals. DPC will develop TDIF-compliant Identity Service Providers for the existing digital identities in use across Government such as MyPIRSA, MySAGov, etc. To be addressed

		Would that be like a multi factor identification like you get a request to put in a pin number that sent to your phone to identify yourself is that is that where you considering?	through development of stand-alone Vol specifications document and ICT.
Reg 36 – Joint ownership	Internal Government	How tenants in common/joint ownership are they all going to be transferred over as one or the other as a default or is it planned that people will be going through previous records where there may have been indications in the past that licensees have indicated their wish to be held as joint tenants at some point in the past.	No change to the Regulations required. See Regulation 36 – to clarify, licences held by multiple holders will be transferred as joint owners initially and they will be communicated with to advise that they may nominate that they wish to hold the licence as tenants in common and will have a two year period to be able to do that without being charged a fee.
Reg 36 (5) – Joint ownership	Internal Government	If a water licence was held as tenants in common say on a 50/50 split, that I could as the holder of one of a 50% portion sell under 8(2) that portion without the consent of the holder of the other 50%, but under 36(5) I would have to get the consent of the other 50% holder to trade any of the water allocation arising from my 50% share? Just wondering why one would be allowed and not the other.	No change to the Regulations required. It is intended that the transfer of a water allocation should only be permitted with the consent of all co owners (or with express authorisation for one or more holders to transfer water allocation on behalf of other holders), whether the water licence that has given rise to the allocation is held as joint tenants or tenants in common. This is to avoid complexity in defining separate interests held due to the high frequency of water allocation that is traded, held and used from time to time.
Reg 44 - Transition of bills of sale	Bank	Regulation 44 – Transition bill of sale It states that a bill of sale over a water licence that is registered on the bills of sale register is current at the time the new Water Register is launched, will be transitioned to the new Water Register for the remainder of its term under the Bills of Sale Act 1886. It appears to anticipate that after the original term of the bill of sale (the 5 years) expires, then there will be a need to re-register a new water mortgage.	No change to the Regulations required. Bills of sale migrated to the new Water Register must expire at the end of their 5 year period – after that, and if still current, they are required to be renewed through the Water Register so that the security interest holder and the water licence holder are aware and agree to the security interest being registered against the water licence for a longer term than what would have otherwise applied if the security interest had been renewed as a Bill of Sale i.e. Bills of Sale expire after 5 years from date of registration - security interests registered under the LSA Act 2019 will have a longer term before they are expired. This goes beyond the original commitment of the Bills of Sale 5 year term.

		Suggest to allow any current (not expired) bill of sale that are transitioned to the new register to continue without the need to re-register, similar to land mortgages.	
Reg 45 - Transition of interests recorded under repealed Act	Bank	Regulation 45 – Transition existing registration It provides that an interest noted on the Water Register against a water licence will, on the designated date, be taken to be a security interest registered under the Schedule 4 clause 8 of the Act. Comments This appears to be referring to existing interest noted on the current register. - What may be the expiration date of such existing registration? Would that be 7 years from the designated date? - If the final position after consultation that the expiration period will not apply, then will such existing interest also has no expiration until discharged. - Suggest to make this transition automatic, without the need for the confirmation. - The requirement to provide confirmation under Regulation 45 may not be practical, as it requires administrative steps to capture all the existing registrations and to provide the required confirmation for each.	No change to the Regulations required. Expiry period will be the same as all other security interests – see Regulation 19 and note that a change has been made to Regulation 19 to require expiry at 15 years. Cannot make transition automatic – this will potentially cause erroneous data to be migrated to the Water Register. Confirmation of currency process is necessary, because the existing notations of interest have no particular status under the legislative scheme and it also ensures that security interest holders and water licence holder are aware and agree to the effect given to a security interest under the Act and the Water Register Regulations and the powers given to security interest holders that were not previously provided under the <i>Natural Resources Management Act 2004</i> (replaced by the Act) i.e. that security interest holders are required to consent to dealings with the water licence/entitlement and that they may initiate a power of sale in the case of a default.
2. Comments made in support of Regulations			
Support 1	Dairy Representative	Highlighted benefits of transparency of the lands titles register and the similarities with what is being proposed for the Water Register - traceability and transparency important.	Noted.

		From dairies perspective, we welcome anything that increasing transparency and reduces red tape, and that's what all of this does and does not have an effect on the price of water, it's just a system for registering, so from our perspective it makes life easier for farmers and so we welcome and embrace.	
Support 2	Internal Government	Thank you for the opportunity to provide feedback regarding the Draft Landscape South Australia (Water Register) Regulations 2020. The South Australian Tourism Commission (SATC) has reviewed the Draft Regulations in consideration of tourism impact in South Australia and does not have specific comment relating to the content of these Draft Regulations. The SATC is supportive of the proposed principles which are underpinned by an enhanced South Australian Water Register, and appreciates that this enables improved usability for water-licence management in South Australia.	Noted
3. Comments made in regards to searching the Water Register			
Search register 1	Internal Government Water Brokers	What information can be searched?	No change to the Regulations required. Clarified that some additional information may be searched and potential small fee similar to fees charged for like searches of interstate water registers (proposed to apply at a later date, after fees review process): - Details of registered security interests - Details of caveats - The nature of ownership (if there are 2 or more holders of the water licence as tenants in common, the proportions of their respective interests) - Subdivisions or consolidations of water licences

			- The nature and effect of any variation to a water licence or water access entitlement - The licence to which or from which a water access entitlement is transferred - Surrenders of water licences - The exercise of a power of sale - Information on outstanding levy or penalty charges owing (limited access). The public will be able to search the Water Register in the same way that a licence holder or security interest holder can. A search will bring up the record and it will give an option to download or print a copy of the record.
Search register 2	Internal Government Conveyancers Banks Water Brokers Lawyers	There was a strong desire for debt owing information to be publically available so that outstanding penalties/levies are visible and can be paid out before the licence is transferred, so that transfer is not delayed due to having to wait for the seller to pay them out. It was considered by industry representatives (lawyers, conveyancers, brokers and banks) that this information should be transparent (similar to land titles) to speed up transactions and reduce red tape.	No change to the Regulations required. Change to WMS computer system supported – search record to state that there is an encumbrance (of penalty of levy debt) but not amount outstanding.
Search register 3	Water Brokers	Will there be information around so the date of contract along with the date of approval and then the date of registration of transfer to improve the timeliness of that information.	No change to the Regulations required. The current WMS design records the times that the application is lodged, and then when the approval is given and then when the transfer is registered. Capturing date of commencement of mortgage (where there is security interest).
Search register 4	Conveyancers	Once a Security Interest is registered over a water licence - will the SI registration include Terms Conditions of the security interest and will the T and Cs be publically available on the search record?	No change to the Regulations required. Not considered to date, has not been raised previously. Not currently in scope. It is not intended that other details relating to the security interest e.g. the terms and conditions of the mortgage agreement will be recorded on the register. This feature will be logged as a desirable future feature.

		Terms and conditions of SIs on land are usually attached to the mortgage and publically searchable. When conveyancers doing search, transparency is beneficial.	Information about the relevant legislative provisions applying to security interests over water licences will be made clear on the application form for the registration of a security interest (to which both the security interest applicant and water licence holder must consent) and in published FAQ documents.
Search register 5	Water Broker	Will the search of the Register show where there is a current/pending transfer within two months application approved against that?	No change to the Regulations required. The water licence holder or their authorised agent will be able to track the status and check the history of all their applications.
4. Comments made regarding naming conventions			
Naming conventions 1	Dairy Representative Water Broker	Query changing naming conventions for classes of water access entitlements - there are high and low risk water in cases like NSW and Victoria (naming water). Has there been any sort of consultation with Interstate registers to have the naming of different things more standardized instead of every sort of state doing their own thing with regard to this, or is are we going to maintain our own little dictionary?	No change to the Regulations required. DEW is moving towards changing the naming of the nature of our water naming conventions to align with other basin states e.g. high and low security – however this work is still in progress. Issue will be addressed outside of the Water Register Regulations. Separate project underway.
5. Comments made regarding transactional processes			
Transactional processes 1	Water Brokers	Will trade processing time be quicker due to new system?	No change to the Regulations required. Some trade processing will be instantaneous e.g. in areas like the River Murray, where licences are unbundled, trade will be instantaneous in most cases. Interstate may take a few days. Through the development the agent trading portal we expect trade times to be decreased where there are efficiency gains to be made through the WMS system.

Transactional processes 2	Lawyer	In the electronic lodgment network, are the different transactions for transferring and registering security interest (and lodging caveat if required) bundled up as needing to occur together or are they separate. In the lands title example you can lodge security interest application before the transfer is registered and in PEXA, you know what order of transactions will be.	No change to the Regulations required. This feature has been noted as desirable. Transactions are separate at the moment and sequential - transfer application approved and registered before security interest can be registered. Lodging parties will not be able to lodge multiple applications to complete a transfer for example in a bundle. This is currently not in scope for the WMS system design and would require a customised change to the system design. However, the point raised is a valid one and will be further investigated.
Transactional processes 3	Water Broker	Wet transactions and dry transactions, does the system recognise these? Are you considering having two separate trade systems?	No change to the Regulations required. To clarify, the WMS system will identify 'nature' of transfer. The 'Nature of transfer' will be recorded on the licence / entitlement / allocation transfer form which will cover 'Wet-trade and Dry-trade'. The 'forward supply commitment' is catered for in the water allocation transfer with a 'Nature of transfer' value of 'Market sale - forward contract'.
6. Comments made regarding Irrigation Trusts			
Irrigation Trusts 1	Irrigation Trust Conveyancer	Trusts have overarching licence, do we change our practices to accommodate these new registration functions. With the separation of water rights, we encouraged banks to record their mortgages over the licence, but have found that the banks are reluctant to do that with the Trusts.	No change to the Regulations required. Trusts operate distinctively from other operators. There is a separate project in development to investigate what is possible with the Trusts to align their members with the benefits that will come to normal licence holders through this work – solutions may be modelled off DEW Water Register solutions.

		There is a desire for members to use irrigation rights for borrowing. Trust do not have the legislative basis for security interests, banks accept as is, but financial institutions will ask for more from Trusts, some Trusts have entered into arrangement with other registers.	
Irrigation Trusts 2	Irrigation Trust	Often dealing with customers around identity and trusted parties, as a licensee. Would be good to have tighter controls on that.	No change to the Regulations required. There is a separate project in development to investigate what is possible with the Trusts to align their members with the benefits that will come to normal licence holders through this work – solutions may be modelled off DEW Water Register solutions.
Irrigation Trusts 3	Irrigation Trust	Trusts can be a third party to a transaction, may involve lodgment by broker, we do not know if it's been lodged, but we need to approve and we often do not know where it is at.	No change to the Regulations required. This is referring to transactions that occur outside of the Water Register. There is a separate project in development to investigate what is possible with the Trusts to align their members with the benefits that will come to normal licence holders through this work – solutions may be modelled off DEW Water Register solutions.
Irrigation Trusts 4	Internal Government	Currently when somebody holds an interest in water for an irrigation trust - you can't search that information. That information is not publicly searchable. You actually have to go to the irrigation trust. Is there going to be any change to that?	No change to the Regulations required. A separate project is underway to see where the DEW Water Register and the Irrigation Trusts register can be aligned. To be dealt with outside of the Water Register Regulation making process.

Irrigation Trusts 5	Irrigation Trust	Could a bank register a caveat against the trust's head licence?	No change to the Regulations required. To clarify, if the bank's interest (e.g. a mortgage over an irrigation account) only relates to an individual irrigation account, and not the Trust's full head licence entitlement, then they would not be able to demonstrate their caveatable interest in the head licence entitlement and therefore would not be able to register a caveat against the Trusts head licence.
7. Miscellaneous			
Misc 1	Water Broker	One question how will the Register be linking in with the water flow application? That's that the one government spent millions of dollars on creating.	No change to the Regulations required. The context of that project has been considered in the development of WMS.
Misc 2	Water Broker	Are funds available to put remote metering in place? That would really increase efficiencies.	No change to the Regulations required. To be addressed outside of Water Register Regulations making process. DEW has been actively pursuing funding opportunities to explore the potential benefits of telemetry.
Misc 3	Irrigation Trust	Is the new Water Register for the approval of entitlement and allocation trades?	No change to the Regulations required. Most of the Regulations proposed relate to entitlements/licence

			only. Current WMS system design allows for entitlement and allocation transfer.
Misc 4	Irrigation Trust	Query whether it's going to be a portal type arrangement?	No change to the Regulations required. The customer portal similar portal to interstate water registers and mobile phone accessible. Licensing for entitlement sales, will all happen through portal, allocation accounts will happen automatically. Quicker response times for your customers.
Misc 5	Irrigation Trust	If there is a portion of carryover, how will that be recorded and calculated?	No change to the Regulations required. Private carryover will be announced (for River Murray) when minimum opening irrigation allocation in April is 50 percent or less. If carryover has been announced in April, you will be eligible for private carryover if: • You have Class 3 (High Security) water access entitlements, and • You have water left on your account on 30 June, and • You provide DEW with your final water meter ready by 31 July. When carryover is granted you can carryover any unused water on your account, up to 20 percent of the volume of Class 3 (High Security) water access entitlements you hold. Private carryover allocations plus allocations against your entitlement cannot exceed 100 percent. If conditions improve after carryover has been announced and allocations increase to 100 percent, your total allocation (against your entitlements plus carryover allocation) cannot exceed 100 percent. If allocations plus carryover increase to 100 percent during the water year, the volume of your allocation above 100 percent will spill into a 'rollover' account. Should the next water year open in April at 50 percent

			or less, then the rollover volume can be accessed as carryover. It is important to note that once a minimum opening allocation announced in April is greater than 50 percent, carryover will no longer apply and any volumes rolled over from a previous year will no longer be available. <u>Carryover volumes are automatically endorsed on your water account prior to the end of the first quarter of the water year.</u> The owner of the water licence will be notified of any carry-over of their water allocation via their preferred communication channel.
Misc 6	Irrigation Trust	Will the costs for our clients to do a trade be more in line with those in Victoria and NSW?	No change to the Regulations required. Initially all the application fees will stay the same, a fees review is planned at a later stage once the new system has been launched and efficiency gains from the new system are understood. The Landscapes Fees Notice will be amended as a result of that review.
Misc 7	Internal Government	Minor concern about land e.g. in the Riverland, where land is valued less than water and potential for stranded land assets where banks choose to liquidate the water asset and perhaps not bother selling the land.	No change to the Regulations required. This scenario would not be caused by the Water Register Regulations, it could potentially happen now. This is considered to be a low risk, low likelihood scenario - can be managed through education and training associated with the implementation of the Regulations - planned as part of the implementation of the Enhanced Water Register Project to provide training or information sessions with conveyances to increase their understanding of what they need to do when there's a land and water transfer or a land without water transfer to raise awareness with purchasers of land to ensure that the water licence is being transferred as well as the land – or that they have or can obtain allocation secured on the market. To be addressed through FAQs and awareness raising.

Misc 8	Dairy Representative	Is there progress towards agreement (IGA) between MDBA and states resulting from Mick Keelty's (Northern Basin Commissioner) observations and report and how state governments do their watering systems? There was agreement to develop a national system, which would cover requirements of Commonwealth and state's and operation of MDB.	No change to the Regulations required. The ability to share South Australian data with interstate jurisdictions has been considered in the design of the WMS. South Australia will continue to work with other Basin States to identify further opportunities for data sharing – to be addressed outside of the Water Register Regulations.
Misc 9	Dairy Representative	Query if there will be an insurance, fund available for contingency, if register that is the source of truth it needs contingency for errors/mistakes.	No change to the Regulations required. There is no need to develop a separate insurance scheme as the agency's activities are already insured.

Attachment 1 – Summary of effect of provisions

Information on the register

Regulation 2 sets out the order for when the clauses of the Regulations will come into effect. This is required to allow the transition of data and the establishment of the new Water Register and its features to align with business requirements.

Regulation 3 sets out the definitions.

Regulation 4 sets out the information to be recorded on the register, including water access entitlements, allocations, water resource works approvals, site use approvals, security interests, levies and other fees and charges, water affecting activity permits and caveats.

Regulation 5 says that a date and time of registration is to be recorded in the Register. Where more than one document (application) relating to the same entitlement or interest is lodged then the documents will be registered in the order in which they are lodged unless a different intention is indicated by the registering parties. It also states that a registration comes into effect at the time and date that a registration is made.

Regulation 6 sets out how a registration can be altered in the register.

Transfers

Regulation 7 and 8 set out how transfers are given effect. The intent of the Regulations is to allow the seller of a water access entitlement to choose which stage they would like a transfer of their entitlement to take effect on the register, either:

1. at the same time the Minister has approved a transfer without waiting for settlement to first occur, or
2. within 2 months, when the Minister has approved a transfer and settlement has occurred and the Minister has been notified that settlement has occurred and the registration of the transfer can now take effect (i.e. the seller of the water entitlement has received payment for the sale of their entitlement).

These Regulations also clarify that if an entitlement is held by joint tenants, then consent from all parties is needed for transfers of entitlement. However, if the owners are tenants in common, then consent is only required from one tenant, in relation to a transfer that relates to their interest.

Security Interests

Regulation 9 and 10 say that a tenant in common may create a security interest over their interest (their part of a water licence or entitlement) without the consent of the other tenants in common. This reflects the standing in law of a tenant in common when compared to joint tenants. Joint tenants have an equal interest in the whole of the entitlement unlike tenants in common who have distinct shares in an entitlement.

Regulation 11 says that the Minister is not required to consider the legal effect of the registration of the security interest; he or she must simply register it. The legal effect of the security interest is created by an agreement between the parties (the owner of the water licence and the financier). It is also possible for a security interest to arise by operation of law.

Regulation 12 says the Minister must not register a security interest if the application is being made in relation to a water licence or a water access entitlement that is being, or has been, transferred for a limited period. It also says that the Minister must not register an approved transfer of a water licence or water access entitlement if it is subject to a registered security interest and the security interest is not being discharged before the registration of the transfer.

Regulation 13 says that the registration of a security interest does not affect the ability of the Minister to administer the related water licence as he or she normally would. It also says that the registration of a security interest over a water licence or water access entitlement does not allow a security interest holder to prevent a transfer of a water allocation and it does not require the holder of the security interest to consent to any transfer of a water allocation during a particular water use year.

Regulation 14 and 15 set out the effect and priority of a security interest and clarifies that the consent of the security interest holder is required for certain dealings relating to the water licence or water access entitlement to which the security interest relates and where the provisions of the Act or these Regulations requires it. It allows for the water licence or entitlement to be used as security for the payment of a debt under a contract, and provides the holder of the security interest with a scheme for the enforcement of the security interest in the case of default by the water licence or entitlement holder. If there are multiple security interests registered, a priority scheme is also established.

Regulation 16 clarifies that the holder of an interest in a security interest, or of a part interest in a security interest, may apply to the Minister for a transfer of the security interest to another person. For example, where a mortgage is refinanced a lender may wish to transfer its interest in the security interest to another lender.

Regulation 17 sets out how a discharge of a security interest may be made. It can be done through the application by the security interest holder, or the owner of the water licence or entitlement (where the Minister is satisfied that the security interest has been extinguished), power of sale, court order or under any other Act or law.

Regulation 18 sets out how security interests are enforced, using the concepts of defaulter of debt (generally the owner of the licence) and a claimant (generally the lender of the finance). It sets out the procedure that the claimant must follow to serve notice and then the process and timeframe which the person in default must follow to rectify the debt, and if that does not occur, the provisions then require the claimant to notify the defaulter that they will proceed to offer the interest in the relevant water licence or water access entitlement for sale, before proceeding to sell the water licence or water access entitlement and then to apply to the Minister for the transfer of the interest to fulfil the debt. It also provides for the priority of payments against that debt.

Should a defaulter not agree with the proceedings made against him/her, this Regulation allows for an application to be made to the Environment, Resources and Development Court (the ERD Court) that a sale or transfer should not proceed. Rights of compensation are also provided in appropriate circumstances.

Regulation 19 says that security interests will expire after seven (7) years, however this timeframe may be extended by successful application to the Minister.

Caveats

Regulation 20 and 21 set out how a person may apply to the Minister, to claim that they have a caveatable interest and why the Minister may register a caveat.

Regulation 22 sets out the effect of the registration of a caveat. It prevents certain registrations such as transfers, variations or surrenders of a water licence or a registration of security interest against a water licence, unless the caveator consents. It also allows for the Minister to go about their normal undertaking with the water licence to allow for the administration of the water resource in accordance with the Act.

Regulation 23, 24, 25 and 26 set out how a caveat will lapse or expire and allow for a person who has an interest in the relevant entitlement that is subject to a registered caveat, to apply to the ERD Court for an order that the caveat is not valid, and the caveator to apply to the ERD Court to continue the caveat. The ERD Court is then allowed to make orders, which can be provided to the Minister. If a caveat lapses whilst subject to ERD court matters, it cannot be reinstated without the permission of the ERD court and the consent of the holder of the entitlement.

Notice of prescribed events

Regulation 27 says that a person with a registered interest in a water licence/water access entitlement (such a security interest or a caveat) may apply to the Minister to be notified of events (with the permission of the water licence holder) that may be placed on the water licence holder under the relevant sections of the Act.

Electronic lodgement network

Regulations 28 and 29 say that the Minister may establish a scheme to allow for the electronic lodgement of documents and other material. The electronic lodgement scheme would allow a person with an interest in a water licence, or water access entitlement, or an agent or other person nominated by the person with the interest to apply to the Minister to participate in the electronic lodgement scheme. An agent or other person nominated by the person with the interest for example would be a conveyancer, lawyer or broker who has been engaged by a water licence holder to lodge applications for dealings with their water licence on their behalf. An electronic notification scheme may also be established to notify water licence holders that a lodgement has been made on their behalf.

Regulations 30 and 31 say that the Minister may provide evidence of a transaction or lodgement of an application that has been made by a trusted party or authorised representative using the electronic lodgement network and that this may be in the form of an electronic representation of the document/application.

Facilitation of the administration of the register

Subdivision and consolidation of water licences

Regulation 32 allows for water licence to be subdivided, upon the application of the holder(s). Should there be more than one holder, and one holder is unwilling, then an application may be made to the ERD Court for the application to proceed.

Regulation 33 allows for water licence to be consolidated (2 or more) upon application to the Minister. Rules are established for such action to ensure that water licences are from the same prescribed water resource and consumptive pool and that there is compatibility between classes, if relevant and that a water licence arising from a consolidation will be consistent with the relevant water allocation plan. Security interests and caveats are also considered.

Verification information

Regulation 34 establishes proof of identity requirements and the verification of identity of a person in a manner and to an extent determined by the Minister. It also says that the Minister may allow another person to undertake the proof of identity and/or verification of identity.

Agent trading

Regulation 35 allows for the holder of a water licence to appoint another person (an agent) to act on their behalf in relation to the trading of a water access entitlement, part of a water access entitlement or a water allocation; in a manner determined by the Minister. The period of this appointment is up to the water licence holder, and whilst in place, does not prevent the holder of the water licence from acting in any matter with relation to the water licence.

Miscellaneous

Regulation 36 says that joint owners must declare in relevant applications to the Minister whether they are joint owners or tenants in common. Licence holders for licences in existence before this scheme commences will be able to declare whether they are joint tenants or tenants in common. Tenants in common must specify the portion of the licence held by each party. Regardless of being joint tenants or tenants in common, such holders are able to appoint a nominee to act on their behalf.

Regulation 37 allows for alterations to be made to tenancy arrangements between joint owners i.e. joint owners of a water licence may apply to the Minister to record an alteration in a way in which the licence is held by those persons. This may include a change from a joint tenancy to tenant in common arrangement and vice versa. Where the change in tenancy arrangement is from joint tenants to tenants in common, the application must specify the proportions to be held by each person.

Regulation 38 establishes a scheme for the recording of names and addresses for the purposes of serving notices in connection with the operation or administration of the register.

Regulation 39 sets out how that a person to whom an interest in a water licence has devolved by operation of the law (the survivor or beneficiary) may apply to the Minister to be recorded on the Register as the holder of the water licence.

The Regulations clarify that the transmission of ownership in the event of the death of a water licence holder is to be recorded on the Register for the transmission to have effect. It also clarifies that a legal personal representative water licence holder may apply to the Minister for the recording of transmission of ownership to the legal personal representative of the water licence holder or the beneficiary of the relevant estate of the water licence holder for the purpose of dealing with the water licence. The Regulations intend to facilitate streamlined transmission of ownership for survivors and beneficiaries and facilitate the administration of a deceased persons affairs, where they have been appointed to do so.

Regulation 40 says that in the case of bankruptcy, the trustee in bankruptcy of either a prescribed entitlement or an interest in a prescribed entitlement may apply to the Minister for the transfer of the prescribed entitlement or interest. This makes the trustee in bankruptcy the owner of the entitlement and interest.

Regulations 41 says that in the case of company insolvency (administration), the administrator of a body corporate of either a prescribed entitlement or an interest in a prescribed entitlement may apply to the Minister for the transfer of the prescribed entitlement or interest. This makes the administrator of the body corporate the owner of the entitlement and interest.

Regulation 42 and 43 allow the Minister to require any information (as a statutory declaration) or correct the register as required by a court or constituted by law and consequently correct the register.

Regulation 44 says that a bill of sale over a water licence that is registered on the bills of sale register at the time the new Water Register is launched, will be transitioned to the new Water Register for the remainder of its term under the *Bills of Sale Act 1886*. It also maintains the priority of order of a registered bill of sale, as the time and date it was registered on the Bills of Sale register, when it is transitioned to the new Register.

Regulation 45 establishes a scheme to allow for the transfer of existing security interests from the current Water Register to the new Water Register. This Regulation says that where an interest is noted against a water licence on the Water Register under the repealed Act, upon application to the Minister, the noted interest may be registered as a security interest on the new Water Register. However, these interests will be registered behind any bill(s) of sale to be registered under Regulation 44 in relation to the same water licence.