



New South Wales

# Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2021

under the

Water Management Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Management Act 2000*.

MELINDA PAVEY, MP  
Minister for Water, Property and Housing

## Explanatory note

The object of this Regulation is to provide for replacement floodplain harvesting access licences, including by—

- (a) setting out the circumstances in which a landholder may be eligible for a replacement floodplain harvesting access licence, and
- (b) providing for the determination by the Minister for Water, Property and Housing of the share components of replacement floodplain harvesting access licences, and
- (c) providing for other machinery matters.

This Regulation is made under the *Water Management Act 2000*, including sections 57A and 400 (the general regulation-making power).

**Note.** This Regulation was tabled in the Legislative Council on 4 May 2021 (sitting day of 24 March 2021). The Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2021 was published on the NSW legislation website on 30 April 2021 and was disallowed in the Legislative Council on 6 May 2021.

## **Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2021**

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### **1 Name of Regulation**

This Regulation is the *Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2021*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Water Management (General) Regulation 2018

### Part 2A

Insert after Part 2—

## Part 2A Replacement floodplain harvesting access licences

### Division 1 Preliminary

#### 23A Definitions

In this Part—

**bore licence** means a bore licence under the *Water Act 1912*, Part 5.

**crop conversion rate** means the conversion rate—

- (a) specified in Appendix 2 to the *Volumetric Conversion—the next stage*, as in force from time to time, and available on the Department's website, and
- (b) expressed in units of a share component per hectare.

**eligible landholder** means a landowner eligible for a replacement floodplain harvesting access licence under clause 23B.

**eligible water supply work** means a water supply work specified in clause 23B(2).

**landholder** means a landowner of land located on a floodplain who uses or used, or proposed to use, water from the floodplain.

**long-term average annual extraction limit** means the long-term average annual extraction limit specified in a water sharing plan for a water source.

**maximum crop area** means the maximum area of a landowner's land in hectares that is used for the growing of crops using irrigation.

**relevant year** means the water year between 1993 and 1999, inclusive, in which the greatest maximum crop area occurred on a landholder's land.

#### 23B Eligibility for replacement floodplain harvesting access licences

- (1) The Minister is to determine if a landholder is eligible for a replacement floodplain harvesting access licence.
- (2) A landholder is eligible if the Minister is satisfied that, on 3 July 2008 a water supply work capable of floodplain harvesting—
  - (a) was fully constructed on the landholder's land and a relevant approval was in force that specified the work, or
  - (b) was fully constructed on the landholder's land without a relevant approval because a relevant approval was not required to use the work, or
  - (c) was fully or partially constructed, or proposed to be constructed, on the landholder's land and an application for a relevant approval that specified the work was made but not determined.
- (3) In determining whether or not a landholder is eligible, the Minister must consider relevant information provided by the landholder in relation to the water supply work.
- (4) The Minister may determine that a landholder is not eligible only if—

- (a) the landholder is given, whether under this clause or otherwise, written notice and 28 days in which to make submissions about the proposed determination of eligibility, and
  - (b) the Minister has considered submissions received from the landholder within the 28 days.
- (5) If the Minister determines that a landholder is eligible for a replacement floodplain harvesting access licence under this clause, the Minister must determine the share component of the licence in accordance with Division 2.
- (6) In this clause—
- relevant approval** means—
- (a) an approval under Chapter 3, Part 3 of the Act, or
  - (b) a licence or permit within the meaning of the *Water Act 1912*, Part 2, or Part 8 as in force immediately before the repeal of that Part.

## **Division 2 Determination of share component**

### **23C Licences based on existing regulated and unregulated river access licences**

- (1) This clause applies to an eligible landholder if, on 3 July 2008, one of the following licences was in force in relation to the land on which the landholder's eligible water supply work is located—
- (a) a regulated river access licence without an unregulated river access licence,
  - (b) a regulated river access licence with an unregulated river access licence,
  - (c) a Barwon-Darling unregulated river access licence.
- (2) The Minister must determine the share component of a replacement floodplain harvesting access licence by using the 3 models referred to in Division 3 that apply to the regulated river water source or the Barwon-Darling water source, as the case requires.
- (3) In determining the share component of a replacement floodplain harvesting access licence for a landholder eligible under subclause (1)(b), the Minister must deduct the share component of the unregulated river access licence from the proposed share component of the replacement floodplain harvesting access licence.
- (4) Despite subclause (3), the Minister—
- (a) is not required to deduct the share component of the unregulated river access licence if satisfied that there were no water supply works used in connection with the unregulated river access licence, or
  - (b) may deduct a proportion of the share component of the unregulated river access licence that corresponds with the amount by which the volume of water taken under the unregulated river access licence is less than the maximum volume specified for the licence.
- (5) In this clause—
- Barwon-Darling unregulated river access licence** means an unregulated river access licence with a share component that specifies the Barwon-Darling water source.
- Barwon-Darling water source** means the Barwon-Darling Unregulated River Water Source to which the *Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012* applies.

***unregulated river access licence*** means—

- (a) an unregulated river access licence, or
- (b) an entitlement that was replaced, on or after 3 July 2008, by an unregulated river access licence under the Act, Schedule 10.

**23D Licences based on existing unregulated river access licences**

- (1) This clause applies to an eligible landholder if—
  - (a) an entitlement or an entitlement and 1 or more bore licences was, on or after 1 July 1993 and on or before 30 June 1999, in force in relation to the land on which the landholder's eligible water supply work is located, and
  - (b) the entitlement was replaced by an unregulated river access licence under the Act, Schedule 10, and
  - (c) the bore licences, if any, were replaced by aquifer access licences under the Act, Schedule 10, and
  - (d) clause 23C does not apply to the landholder.
- (2) The Minister must determine the share component of a replacement floodplain harvesting access licence for the eligible landholder by—
  - (a) deducting the authorised area from the maximum crop area, and
  - (b) multiplying the result by the crop conversion rate for the crop grown in the relevant year, and
  - (c) deducting the metered groundwater usage in megalitres for the relevant year under the bore licences, if any, where 1 megalitre is taken to be 1 unit of a share component.
- (3) The share component of the replacement floodplain harvesting access licence is zero if the result under subclause (2) is less than or equal to zero.
- (4) In this clause—

***authorised area*** means the area in hectares of the eligible landholder's land authorised to be irrigated under the entitlement referred to in subclause (1), immediately before the entitlement was replaced with an unregulated river access licence.

**23E Licences related to existing aquifer access licences**

- (1) This clause applies to an eligible landholder if—
  - (a) a bore licence was, on or after 1 July 1993 and on or before 30 June 1999, in force in relation to the land on which the landholder's eligible water supply work is located, and
  - (b) the bore licence was replaced by an aquifer access licence under the Act, Schedule 10, and
  - (c) clause 23D does not apply to the landholder.
- (2) The Minister must determine the share component of a replacement floodplain harvesting access licence by—
  - (a) multiplying the maximum crop area for the relevant year by the crop conversion rate for cotton, and
  - (b) deducting the existing share component.
- (3) The share component of the replacement floodplain harvesting access licence is zero if the result under subclause (2) is less than or equal to zero.

- (4) In this clause—  
*existing share component* means the metered groundwater usage in megalitres for the relevant year under the bore licence referred to in subclause (1), where 1 megalitre is 1 unit of a share component.

#### **23F Final determination of share components**

The Minister may determine the share component for a replacement floodplain harvesting access licence for an eligible landholder only if—

- (a) the landholder is given, whether under this clause or otherwise, written notice and 28 days in which to make submissions about the proposed share component, and
- (b) the Minister has considered submissions received from the landholder within the 28 days.

### **Division 3 Models for determination of share components**

#### **23G Models for determination of share components**

- (1) The Minister must adopt the following models for a water source for the purposes of determining the share component of a replacement floodplain harvesting access licence under clause 23C for the water source—
  - (a) the current conditions model,
  - (b) the eligible water supply works scenario model,
  - (c) the plan limit compliance scenario model.
- (2) The Minister must publish on the Department's website the following information in relation to the models—
  - (a) a description of the model,
  - (b) the objectives for the model,
  - (c) the matters that the model represents,
  - (d) the data that the model relies upon.

#### **23H Current conditions model**

- (1) The current conditions model represents—
  - (a) the total number of water supply works, whether or not eligible water supply works, for the water source, and
  - (b) the estimated volume of water that is used by the water supply works for the water source.
- (2) The current conditions model is used to determine the percentage, if any, by which the estimated volume of water used by all water supply works for the water source—
  - (a) exceeds the long-term average annual extraction limit, and
  - (b) must be reduced to comply with the long-term average annual extraction limit.

#### **23I Eligible water supply works scenario model**

- (1) The eligible water supply works scenario model represents—
  - (a) the total number of eligible water supply works, and
  - (b) the estimated volume of water that is used by the eligible water supply works for the water source.

- (2) The eligible water supply works scenario model is used to determine the estimated volume of water that is capable of being used by—
  - (a) a landholder's eligible water supply work for the water source, and
  - (b) all eligible water supply works for the water source.

**23J Plan limit compliance scenario model**

- (1) The plan limit compliance scenario model is based on—
  - (a) the proposed share components of the replacement floodplain harvesting access licences for the water source, and
  - (b) the existing or proposed bulk access regime for the water source in relation to floodplain harvesting, and
  - (c) existing or proposed water sharing provisions of a management plan for the water source that deal with the matters specified in the Act, section 21(a) and (c) in relation to floodplain harvesting.
- (2) The plan limit compliance scenario model is used to ensure that if an adjustment is required to ensure the long-term average annual extraction limit, or the floodplain harvesting part of the limit, is not exceeded, the adjustment is proportionately allocated to each landholder who has an eligible water supply work for the water source.

**Division 4 Miscellaneous**

**23K Issue of replacement floodplain harvesting access licences**

- (1) A replacement floodplain harvesting access licence takes effect, and the eligible landholder is taken to hold the licence, only after the Minister gives written notice to the landholder of—
  - (a) the category of the replacement floodplain harvesting access licence, and
  - (b) the final share component of the licence determined in accordance with Division 2.
- (2) The categories of replacement floodplain harvesting access licence are—
  - (a) a floodplain harvesting (regulated river) access licence—for an eligible landholder if, on 3 July 2008, a regulated river access licence was in force in relation to the land on which the landholder's eligible water supply work is located, and
  - (b) a floodplain harvesting (unregulated river) access licence—for all other eligible landholders.
- (3) A water supply work capable of floodplain harvesting that is located on an eligible landholder's land is taken to have been nominated under the Act, section 71W in relation to the eligible landholder's replacement floodplain harvesting access licence if the work is specified in a water supply work approval on the date the access licence takes effect.

**23L Circumstances in which replacement floodplain harvesting access licences are not issued**

Despite any other provision of this Part, a landholder is not eligible for a replacement floodplain harvesting access licence and does not hold a licence if—

- (a) the final share component for the licence is determined to be zero or less, or

- (b) the Minister, by notice published on the Department's website, declares that the process under this Part for issuing replacement floodplain harvesting access licences for which the landholder may have been eligible is completed in relation to the relevant floodplain.