

# Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002

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New South Wales

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New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	7
1 Name of Regulation .....	7
2 Commencement .....	7
3 Establishment of scheme and objects .....	7
4 Definitions .....	8
5 Participants in scheme.....	8
6 Discharge licence and discharge licence holder .....	8
7 Hunter River catchment .....	9
8 Notes .....	9
<b>Part 2 General workings of scheme</b> .....	9
<b>Division 1 River blocks, flow ranges and site discharge periods</b> .....	9
9 Division of Hunter River flow into blocks .....	9
10 Classification of river blocks .....	9
11 Flow ranges .....	10
12 Classification of block—upper sector.....	10
13 Classification of block—middle sector .....	11
14 Classification of block—lower sector .....	12
14A Link between classifications and authorised discharge points .....	12
14B Services Co-ordinator to determine site discharge periods.....	12

<b>Division 2 River Register</b> .....	13
15 River Register .....	13
16 Entry of information in River Register.....	14
<b>Part 3 Discharge rules</b> .....	14
Note.....	14
<b>Division 1 Preliminary</b> .....	14
17 Salinity targets .....	14
18 Definition.....	15
<b>Division 2 Principal rules about discharges</b> .....	15
19 No discharges except from authorised discharge point.....	15
20 No discharges except during site discharge period .....	15
21 (Repealed) .....	15
22 No discharge in contravention of maximum discharge volume.....	16
<b>Division 3 Maximum discharge volume—high flow block</b> .....	16
22A Maximum discharge volume .....	16
23 High flow block—determination of volume discharge limit.....	16
24 Sector credit discount factor—high flow block.....	18
25 Total allowable discharge of salt.....	18
<b>Division 4 Maximum discharge volume—flood flow blocks</b> .....	18
26 Maximum discharge volume.....	18
<b>Division 5</b> .....	19
27 Imposition of trading rules by EPA.....	19
28 Effect of trading rules order.....	19
29–31 (Repealed) .....	19
<b>Division 6 Other rules relating to discharges</b> .....	20
32 Saline water to be discharged at a regular rate .....	20
33 Record keeping requirements.....	20
34 Reporting requirements.....	21

<b>Division 7 Emergency dilution arrangements</b> .....	21
35 Defence—emergency dilution arrangements .....	21
<b>Part 4 Credits in scheme</b> .....	22
<b>Division 1 General</b> .....	22
36 Creation of credits .....	22
37 Authority conferred by credit .....	22
37A Use of credit .....	23
38 Lifespan of credit .....	23
39 Who may hold credit .....	23
<b>Divisions 2, 3 (Repealed)</b> .....	23
<b>Division 4 Creation and sale of new credits</b> .....	23
46 New credits to be created every 2 years .....	23
47 Sale of new credits by auction .....	24
48 Sale of new credits by private treaty .....	24
49 (Repealed) .....	24
<b>Part 4A Assignment of credits to authorised discharge point</b> .....	24
Note .....	24
49A Authorised discharge point to be nominated .....	24
49B How a credit may be assigned .....	25
49C Rules about assignment of credits .....	25
49D Effect of contravention of assignment rules on volume discharge limit .....	26
<b>Part 5 Trading in credits</b> .....	26
<b>Division 1 Trading in credits</b> .....	26
50 Trading in credits .....	26
51 Trading facility to be established .....	26
52 Registration of credit traders .....	27
53 Use of credit trading facility .....	27
54 Transfers to be effected by registered traders by means of facility .....	27
55 Transfers may be made for consideration .....	27

<b>Division 2 Trading rules</b> .....	27
Note.....	27
56 General rules as to transfers .....	28
57 Credits only transferable to registered credit traders.....	28
58 Partial transfers not permitted.....	28
59 Transfer not permitted after credit used.....	28
60 (Repealed) .....	28
61 Offence for contravention of trading rules.....	28
62 Effect of contravention of trading rules on volume discharge limit .....	28
<b>Part 5A Credit Register</b> .....	29
63 Credit Register.....	29
63A Assignments to be entered in Credit Register .....	29
64 Transfers to be entered in Credit Register .....	30
65 Correction of Credit Register .....	30
<b>Part 6 Administration of scheme</b> .....	31
<b>Division 1 Services Co-ordinator</b> .....	31
66 Services Co-ordinator .....	31
67 Engagement of contractors to carry out functions .....	31
68 Functions of EPA .....	31
<b>Division 2 Registrar</b> .....	32
69 Registrar .....	32
<b>Division 3 Operations Committee</b> .....	32
70 Appointment of Operations Committee .....	32
71 Functions of Operations Committee .....	33
72 Failure by Operations Committee to perform functions .....	33
<b>Part 7 Cost recovery</b> .....	34
<b>Division 1 Contribution payable by participants towards costs of scheme</b> .....	34
73 Participants required to contribute toward costs of scheme.....	34

74 Calculation of contribution .....	34
75 Contribution on credit holdings .....	35
76 Contribution on discharge licence .....	35
77 Contributions on forfeited credits .....	36
<b>Division 2 Calculating total contributions amount</b> .....	<b>36</b>
78 Total contributions amount .....	36
79 Costs of Services Co-ordinator .....	37
80 Costs of Registrar .....	37
81 Costs of EPA .....	37
<b>Division 3 Adjustments to total cost</b> .....	<b>38</b>
82 Functions of EPA .....	38
83 Reconciliation at end of scheme year .....	38
84 Auction and sale proceeds .....	38
85 Adjustments to contributions .....	39
<b>Part 8 Enforcement</b> .....	<b>39</b>
86 General enforcement power of EPA .....	39
87 Confirmation of enforcement order .....	40
88 Forfeiture of credits .....	40
89 Notice of reasons for making forfeiture order .....	41
90 Effect of forfeiture order .....	42
91 Offence of providing false information .....	42
<b>Part 9 Miscellaneous</b> .....	<b>42</b>
92 Suspension of scheme .....	42
93 Application of amendments .....	43
94 Review of Regulation—timetable .....	43
<b>Part 10 (Repealed)</b> .....	<b>43</b>
<b>Schedule 1 (Repealed)</b> .....	<b>43</b>
<b>Schedule 2 Constitution and procedure of Operations Committee</b> .....	<b>43</b>
<b>Dictionary</b> .....	<b>46</b>

# Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 December 2002.

### 3 Establishment of scheme and objects

- (1) There is established by this Regulation a tradeable emission scheme, to be known as the Hunter River Salinity Trading Scheme, to provide for the management of discharges of saline water into the Hunter River catchment.
- (2) The objects of the scheme are:
  - (a) to minimise the impact of discharges of saline water on irrigation, other water uses and on aquatic ecosystems in the Hunter River catchment:
    - (i) at the lowest overall cost to the community, and
    - (ii) in a way that provides ongoing financial incentives to reduce pollution, and
  - (b) to facilitate sustainable water management by industry in the Hunter River catchment.

#### Note—

#### Overview of scheme

Under the scheme provided for by this Regulation, discharges of saline water into the Hunter River catchment are permitted only during periods when the Hunter River is considered to be in high flow or flood flow, and only by persons who hold licences that authorise such discharges (discharge licences).

During high flow periods, a discharge licence holder is entitled to discharge saline water only if the discharge licence holder holds one or more credits in the scheme. During flood flow periods, the amount of saline water that may be discharged by a discharge licence holder is unlimited, subject to the salinity targets and any overriding limit that may be applied by the EPA as a condition of the discharge licence. However, the EPA is authorised in certain circumstances to require discharges to be made in accordance with credit holdings, even during flood flow periods. The rules relating to discharges are set out in Parts 2 and 3.

Credits in the scheme are created by the EPA. Credits have a limited lifespan of not more than 10 years. The EPA creates and sells new credits as existing credits expire. Provisions relating to the creation and sale of credits are set out in Part 4.

A credit entitles a discharge licence holder to discharge 0.1% of the total allowable discharge of salt for the Hunter River catchment. The total allowable discharge is determined on a day-to-day basis, by reference to the salinity targets for the Hunter River catchment. The more credits the discharge licence holder holds, the more saline water the discharge licence holder is entitled to discharge. However, the timing of any discharge is subject to very specific rules.

A credit is transferable in accordance with this Regulation. Any person may buy, hold and trade in credits. A credit does not confer any authority on the holder to discharge saline water unless the person also holds a discharge licence and the credit is assigned to an authorised discharge point specified in that discharge licence. Provisions relating to the assignment of credits to an authorised discharge point are set out in Part 4A. Provisions relating to the trading of credits are set out in Part 5.

The remaining parts of this Regulation set out other provisions relating to the scheme, including administration, cost recovery and enforcement provisions.

#### 4 Definitions

Expressions used in this Regulation have the meanings set out in the Dictionary at the end of this Regulation.

#### 5 Participants in scheme

- (1) For the purposes of this Regulation, **participant** in the scheme has the meaning given by section 295A of the Act.
- (2) For the purposes of paragraph (b) of the definition of **participant** in that section, the scheme applies to discharge licences.

#### 6 Discharge licence and discharge licence holder

For the purposes of this Regulation:

- (a) **discharge licence** means a licence that authorises the discharge of saline water into the Hunter River catchment from an authorised discharge point or points, and
- (b) **discharge licence holder** means a holder of a discharge licence.

**Note—**

**Licence** is defined in the Act to mean an environment protection licence.



## 7 Hunter River catchment

For the purposes of this Regulation, the **Hunter River catchment** means the catchment of the Hunter River and its tributaries upstream of Singleton, excluding:

- (a) the Goulburn River upstream of Kerrabee, and
- (b) any tributary that drains into Lake St Clair, and
- (c) any tributary that drains into Lake Glenbawn.

## 8 Notes

Notes included in this Regulation do not form part of this Regulation.

## Part 2 General workings of scheme

### Division 1 River blocks, flow ranges and site discharge periods

#### 9 Division of Hunter River flow into blocks

- (1) For the purposes of the scheme, the flow of the Hunter River is taken to be divided into notional blocks.
- (2) A block is a body of water that flows down the Hunter River and that is predicted to pass through the lower sector reference point in a 24-hour period (starting at midnight on one day and ending immediately before midnight on the following day).

**Note—**

**Lower sector reference point** is defined in the Dictionary.

- (3) Blocks are to be identified in the River Register by the Services Co-ordinator by means of a unique identification number.

**Note—**

There will be the same number of blocks as there are days in a year. Each block represents an opportunity for a discharge licence holder to discharge saline water, depending on its classification. This is explained further below.

#### 10 Classification of river blocks

- (1) The Services Co-ordinator is to classify the rate of flow of each block of the Hunter River in accordance with this Part.
- (2) A block is to be classified, in relation to each sector that it passes through, as:
  - (a) a low flow block, or
  - (b) a high flow block, or
  - (c) a flood flow block.

- (3) The following reference points are to be used for the purpose of predicting the rate of flow of a block as it passes through each sector:
  - (a) for the upper sector—the upper sector reference point,
  - (b) for the middle sector—the middle sector reference point,
  - (c) for the lower sector—the lower sector reference point.
- (4) The classification of a block may differ from sector to sector.
- (5) The classification of a block is to be entered in the River Register.
- (6) If a block is not classified, or its classification is not entered in the River Register, in relation to any or all sectors, it is taken to be a low flow block in the sector concerned.

**Note—**

Classification of a block of the Hunter River establishes when discharges will be permitted. As a general rule, participants may discharge saline water into high flow and flood flow blocks.

**11 Flow ranges**

- (1) For the purposes of this Part, the low flow range, high flow range and flood flow range for each sector is as specified next to the sector concerned in the Table to this clause.
- (2) In the Table, **ML** means megalitres.

**Table**  
**Classification of river blocks**

<b>Sector</b>	<b>Low flow range</b>	<b>High flow range</b>	<b>Flood flow range</b>
Upper	Less than 1,000 ML per day	1,000 ML per day–6,500 ML per day (inclusive)	Exceeds 6,500 ML per day
Middle	Less than 1,800 ML per day	1,800 ML per day–16,500 ML per day (inclusive)	Exceeds 16,500 ML per day
Lower	Less than 2,000 ML per day	2,000 ML per day–28,500 ML per day (inclusive)	Exceeds 28,500 ML per day

**12 Classification of block—upper sector**

- (1) **Low flow block** A block is to be classified as a low flow block in relation to the upper sector if it is predicted that:
  - (a) the rate of flow of the block in the upper sector will be in the low flow range for the upper sector, or
  - (b) the rate of flow of the block in either the middle sector or the lower sector (or

both) will be in the low flow range for that sector (or for both those sectors).

- (2) **High flow block** A block is to be classified as a high flow block in relation to the upper sector if it is predicted that:
- (a) the rate of flow of the block in the upper sector will be in the high flow range for the upper sector and the rate of flow of the block in the middle sector and lower sector will be in the high flow or flood flow range for those sectors, but will not be in the low flow range in either of those sectors, or
  - (b) the rate of flow of the block in the upper sector will be in the flood flow range for the upper sector, and the rate of flow of the block in either the middle sector or the lower sector (or both) will be in the high flow range for those sectors, but will not be in the low flow range for either of those sectors.
- (3) **Flood flow block** A block is to be classified as a flood flow block in relation to the upper sector if it is predicted that:
- (a) the rate of flow of the block in the upper sector will be in the flood flow range for the sector, and
  - (b) the rate of flow of the block in both the middle sector and the lower sector will be in the flood flow range for those sectors.

### **13 Classification of block—middle sector**

- (1) **Low flow block** A block is to be classified as a low flow block in relation to the middle sector if it is predicted that:
- (a) the rate of flow of the block in the middle sector will be in the low flow range for the middle sector, or
  - (b) the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.
- (2) **High flow block** A block is to be classified as a high flow block in relation to the middle sector if it is predicted that:
- (a) the rate of flow of the block in the middle sector will be in the high flow range for the middle sector and the rate of flow of the block in the lower sector will be in the high flow or flood flow range for the lower sector, or
  - (b) the rate of flow of the block in the middle sector will be in the flood flow range for the middle sector, and the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.
- (3) **Flood flow block** A block is to be classified as a flood flow block in relation to the middle sector if it is predicted that:

- (a) the rate of flow of the block in the middle sector will be in the flood flow range for the sector, and
- (b) the rate of flow of the block in the lower sector will be in the flood flow range for the lower sector.

#### **14 Classification of block—lower sector**

- (1) **Low flow block** A block is to be classified as a low flow block in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the low flow range for the lower sector.
- (2) **High flow block** A block is to be classified as a high flow block in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the high flow range for the lower sector.
- (3) **Flood flow block** A block is to be classified as a flood flow block in relation to the lower sector if it is predicted that the rate of flow of the block in the lower sector will be in the flood flow range for the lower sector.

#### **14A Link between classifications and authorised discharge points**

- (1) A block that is classified in relation to a particular sector has that same classification in relation to each authorised discharge point that is in that sector.

**Note—**

For example, a block that is classified as a high flow block in relation to the upper sector is also a high flow block in relation to all authorised discharge points in the upper sector.

- (2) For the purposes of the scheme, an authorised discharge point is taken to be in the sector into which any saline water discharged from the authorised discharge point first flows.

#### **14B Services Co-ordinator to determine site discharge periods**

- (1) The Services Co-ordinator is to determine the site discharge periods for each authorised discharge point.
- (2) A site discharge period for an authorised discharge point is a period in which discharges of saline water are permitted from that authorised discharge point, subject to Part 3.
- (3) A site discharge period is to be determined for every block that is a high flow block or a flood flow block in relation to the authorised discharge point concerned.
- (4) Accordingly, the determination must specify:
  - (a) the authorised discharge point to which it applies, and

(b) the block to which it applies.

(5) There are to be no site discharge periods for low flow blocks.

**Note—**

The object of this restriction is to ensure that discharges of saline water are made into high flow and flood flow blocks, and not into low flow blocks.

(6) In determining a site discharge period, the Services Co-ordinator is to ensure that any discharge of saline water that is made from an authorised discharge point is made into the high flow block or flood flow block concerned.

(7) The start and finish times for a site discharge period are to be determined by the Services Co-ordinator based on an estimate of the time it will take a discharge from an authorised discharge point to reach and mix with a block as it passes through the sector in which the authorised discharge point is located.

(8) In determining a site discharge period, the Services Co-ordinator may make such adjustments as the Services Co-ordinator thinks fit to optimise water quality. For example, the Services Co-ordinator may adjust the start and finish times so as to ensure discharges mix with the higher flows of the block.

(9) The start and finish times for each site discharge period, in relation to a particular high flow or flood flow block, are to be entered in the River Register.

## **Division 2 River Register**

### **15 River Register**

(1) The Services Co-ordinator is to establish and maintain a River Register.

(2) The Services Co-ordinator is to enter in the River Register:

(a) such matters as are required to be included in it by this Regulation or by the EPA,  
and

(b) any additional matters that the Services Co-ordinator considers appropriate.

(3) The River Register may be kept wholly or partly by electronic means (including by means of an internet service).

(4) The River Register is to be made available for inspection by the public (including participants in the scheme) at an office of the Services Co-ordinator or another person or body appointed to provide the River Register.

(5) If the River Register is kept wholly or partly by electronic means, subclause (4) may be complied with by providing any of the following:

(a) access to a computer that can be used to view the River Register,

- (b) a hard copy (such as a computer print-out) of the River Register,
- (c) a soft copy (that is, an electronic file) of the River Register by email or on a data storage device,
- (d) access to the River Register through an internet service.

**Note—**

The Services Co-ordinator may enter into a contract with any person for the provision of the River Register. This is dealt with under Part 6 (Administration of scheme).

## **16 Entry of information in River Register**

The Services Co-ordinator is not required to classify a block, or to make any other determination under this Regulation that is required to be entered in the River Register, until it is satisfied that it has enough information to do so with a reasonable degree of accuracy.

## **Part 3 Discharge rules**

**Note—**

This Part sets out the discharge rules, which are aimed at ensuring that discharges of saline water into the Hunter River catchment do not cause a salinity target to be exceeded (clause 17).

Under the discharge rules, saline water may be discharged only from an authorised discharge point (clause 19) during a site discharge period (clause 20). The maximum volume of saline water that may be discharged from an authorised discharge point is:

- (a) in relation to a high flow block—the volume discharge limit (as calculated in accordance with Division 3) or the tributary protection limit for the authorised discharge point, whichever is the lower (clause 22A), and
- (b) in relation to a flood flow block—the tributary protection limit for the authorised discharge point (clause 26).

## **Division 1 Preliminary**

### **17 Salinity targets**

- (1) The object of the discharge rules is to ensure that salinity levels in the Hunter River catchment do not, as a result of discharges of saline water by participants in the scheme, exceed the salinity targets set out in this clause.
- (2) The electrical conductivity of saline water in a high flow block is not at any stage to exceed the following targets:
  - (a) 600 EC in the upper sector (determined at the upper sector reference point),
  - (b) 900 EC in the middle sector (determined at the middle sector reference point),
  - (c) 900 EC in the lower sector (determined at the lower sector reference point).
- (3) The targets set out in subclause (2) are referred to in this Regulation as the **high flow**

***salinity targets.***

- (4) The electrical conductivity of saline water in a flood flow block, determined as the average salinity level of the block, is not to exceed the following targets for each sector:
  - (a) 900 EC in the upper sector (determined at the upper sector reference point),
  - (b) 900 EC in the middle sector (determined at the middle sector reference point),
  - (c) 900 EC in the lower sector (determined at the lower sector reference point).
- (5) In addition, the electrical conductivity of saline water in a flood flow block is not at any stage to exceed 1500 EC in any sector.
- (6) The targets set out in subclauses (4) and (5) are referred to in this Regulation as the ***flood flow salinity targets.***
- (7) The Services Co-ordinator is to have regard to this clause in exercising its functions under this Part.
- (8) In this clause:

**EC** means electrical conductivity, measured in microSiemens per centimetre.

**18 Definition**

In this Part:

***sector credit discount factor*** means the sector credit discount factor for a block when it is in an identified sector, determined by the Services Co-ordinator under this Part and entered in the River Register.

**Division 2 Principal rules about discharges**

**19 No discharges except from authorised discharge point**

It is a condition of a discharge licence that the discharge licence holder does not cause or permit saline water to be discharged into the Hunter River catchment except from the discharge licence holder's authorised discharge point or points.

**20 No discharges except during site discharge period**

It is a condition of a discharge licence that the discharge licence holder does not cause or permit saline water to be discharged from an authorised discharge point otherwise than during a site discharge period for that authorised discharge point.

**21 (Repealed)**

## 22 No discharge in contravention of maximum discharge volume

It is a condition of a discharge licence that the discharge licence holder does not cause or permit saline water to be discharged from an authorised discharge point during a site discharge period in excess of the maximum discharge volume for that authorised discharge point, calculated in accordance with this Part.

### Note—

Under the Act, the maximum penalty for a contravention of a licence condition is \$1,000,000 (in the case of a corporation) or \$250,000 (in the case of an individual). Further penalties apply to continuing offences.

## Division 3 Maximum discharge volume—high flow block

### 22A Maximum discharge volume

The maximum discharge volume for an authorised discharge point is, during a site discharge period for a high flow block:

(a) the volume discharge limit for the block, determined in accordance with this Division, or

(b) the tributary protection limit (if any) for the authorised discharge point,

whichever is the lower.

### Note—

The tributary protection limit (if any) for saline water discharges is specified in the discharge licence that authorises discharges from the authorised discharge point.

## 23 High flow block—determination of volume discharge limit

(1) The volume discharge limit for an authorised discharge point, in relation to a high flow block, is to be determined in accordance with the following steps:

### Step 1: Determine the number of credits available for use

The number of credits available for use is to be determined as follows:

$$E = Cr \times D$$

Where:

**E** is the number of credits available for use.

**Cr** is the number of credits assigned to the authorised discharge point in relation to the block at the start of the discharge (as entered in the Credit Register), being credits that are in force, and excluding any credits forfeited under this Regulation or that are excluded under Part 4A or 5.

### Note—

Parts 4–5 explain credit holdings, assignment of credits to an authorised discharge point and trading in credits. Under Parts 4A and 5, a credit that is assigned or transferred in contravention of the Regulation



cannot be counted towards the volume discharge limit for an authorised discharge point.

**D** is the sector credit discount factor for the block at the start of the discharge.

**Step 2: Determine the salt discharge limit for the authorised discharge point**

The salt discharge limit for the authorised discharge point is to be determined as follows:

$$L = \frac{T \times E}{1,000}$$

Where:

**L** is the salt discharge limit for the authorised discharge point (in tonnes).

**T** is the total allowable discharge for the block (in tonnes) at the start of the discharge.

**E** is the number of credits available for use, being the amount determined in step 1 rounded down to the nearest whole number.

**Step 3: Calculate the salt concentration of the water to be discharged**

The salt concentration of the water to be discharged is to be calculated as follows:

$$C = \frac{EC \times F}{1,000}$$

Where:

**C** is the salt concentration of the water to be discharged from the authorised discharge point, measured in tonnes per megalitre.

**EC** is the mean electrical conductivity of the water discharged from the authorised discharge point, measured in microSiemens per centimetre, calculated in accordance with subclause (2).

**F** is the conversion factor set out in the discharge licence.

**Step 4: Determine the volume discharge limit**

The volume discharge limit for the authorised discharge point is to be determined as follows:

$$V = \frac{L}{C}$$

Where:

**V** is the volume discharge limit for the authorised discharge point in relation to the block (in megalitres).

**L** is the salt discharge limit for the authorised discharge point in relation to the block (calculated in step 2).

**C** is the salt concentration in the saline water to be discharged (calculated in step 3).

- (2) The mean electrical conductivity of the water discharged is to be estimated before the discharge takes place, and monitored throughout the period of the discharge, in accordance with the conditions of the discharge licence. If the mean electrical conductivity of the water discharged differs from any estimate made before the discharge is completed, the volume discharge limit must be re-calculated using the actual figures (and the amount of saline water discharged must be reduced if necessary).

#### **24 Sector credit discount factor—high flow block**

- (1) The Services Co-ordinator is to determine a sector credit discount factor that is to be applied in relation to a high flow block while it is in a particular sector.
  - (1A) In determining a sector credit discount factor, the Services Co-ordinator is to ensure that the full exercise of credit entitlements does not result in a high flow salinity target for any sector being exceeded.
- (2) The sector credit discount factor is to be one or a fraction of one.
- (3) The sector credit discount factor is to be entered in the River Register.

#### **25 Total allowable discharge of salt**

- (1) The Services Co-ordinator is to determine a total allowable discharge of salt in relation to each block that is a high flow block.
- (2) The total allowable discharge of salt is to be determined by calculating the maximum amount of salt that may be discharged into the Hunter River catchment during a block so that, taking into account the river flow and background salinity levels, the salinity target for the lower sector in relation to that block is not exceeded.
- (3) (Repealed)
- (4) The total allowable discharge is to be expressed in tonnes (or fractions of tonnes).
- (5) The total allowable discharge of salt for each block that is a high flow block is to be entered in the River Register.

### **Division 4 Maximum discharge volume—flood flow blocks**

#### **26 Maximum discharge volume**

- (1) The maximum discharge volume for an authorised discharge point is, during a site

discharge period for a flood flow block, the tributary protection limit for the authorised discharge point.

**Note—**

The tributary protection limit (if any) for saline water discharges is specified in the discharge licence that authorises discharges from the authorised discharge point.

(2) This clause does not apply if there is a trading rules order in force.

## **Division 5**

### **27 Imposition of trading rules by EPA**

- (1) If at any time it appears that a flood flow salinity target has been exceeded, the EPA may conduct an investigation to determine whether the flood flow salinity target was exceeded as a result of discharges of saline water by participants in the scheme.
- (2) Following that investigation, if the EPA is satisfied that the flood flow salinity target was exceeded as a result of discharges of saline water by participants in the scheme, the EPA may, by order published in the Gazette, direct that the trading rules be used during flood flows.
- (3) Any such order is called a **trading rules order**.
- (4) A trading rules order takes effect on the publication of the order in the Gazette or on a later date specified in the order.
- (5) A trading rules order remains in force for the period (not exceeding 5 years) specified in the order.

### **28 Effect of trading rules order**

- (1) If there is a trading rules order in force, the maximum discharge volume for an authorised discharge point is, during a site discharge period for a flood flow block:
  - (a) the volume discharge limit for the block, determined in accordance with Division 3 (as modified by this clause), or
  - (b) the tributary protection limit (if any) for the authorised discharge point,whichever is the lower.
- (2) For the purposes of this clause, Division 3 applies as if:
  - (a) a reference to a high flow block were a reference to a flood flow block, and
  - (b) a reference to a high flow salinity target for a sector were a reference to the flood flow salinity target for that sector.

### **29-31 (Repealed)**

## **Division 6 Other rules relating to discharges**

### **32 Saline water to be discharged at a regular rate**

- (1) Saline water is to be discharged from an authorised discharge point in such a manner as to ensure that, as far as is reasonably practicable, saline water is discharged at approximately the same rate throughout the site discharge period.

**Note—**

The object of this clause is to prevent salinity “spikes” in the Hunter River.

- (2) It is a condition of a discharge licence that the discharge licence holder does not cause or permit saline water to be discharged in contravention of this clause.

### **33 Record keeping requirements**

- (1) A discharge licence holder who causes or permits saline water to be discharged into the Hunter River catchment must make a record of the following:
  - (a) the date and time at which the discharge started and finished,
  - (b) the total volume (in megalitres) of saline water discharged during that discharge period,
  - (c) the quantity of salt (in tonnes) discharged during that discharge period,
  - (d) the mean electrical conductivity of water discharged during that discharge period,
  - (e) the unique identification number of the block to which the relevant site discharge period relates, as entered in the River Register,
  - (f) the total allowable discharge for that block, as entered in the River Register at the date and time at which the discharge started,
  - (g) the number of credits assigned to the relevant authorised discharge point, as entered in the Credit Register, as at the date and time at which the discharge started,
  - (h) any other matters relating to the discharge that the EPA, by notice in writing to the discharge licence holder, requires the discharge licence holder to include in the record.
- (2) The record must be made in a form and manner approved by the EPA.
- (3) The record must be retained by the discharge licence holder for at least 4 years after the discharge is completed.

**Note—**

Part 7.3 of Chapter 7 of the Act allows the EPA, or an authorised officer, to require any person to furnish records to the EPA or authorised officer.

- (4) It is a condition of a discharge licence that the discharge licence holder does not contravene this clause.
- (5) Subclause (1) (f) and (g) do not apply in respect of a discharge that is made during a site discharge period for a flood flow block, unless a trading rules order is in force.

### **34 Reporting requirements**

- (1) The EPA may, by notice in writing to a discharge licence holder, require the discharge licence holder to provide information to the EPA about the discharge licence holder's anticipated saline water discharge requirements.
- (2) A discharge licence holder must not, without reasonable excuse, fail to comply with any such requirement.
- (3) It is a condition of a discharge licence that the discharge licence holder does not contravene this clause.

## **Division 7 Emergency dilution arrangements**

### **35 Defence—emergency dilution arrangements**

- (1) If at any time the EPA is satisfied that:
  - (a) a contravention by a discharge licence holder of clause 20 (No discharges except during site discharge period) or clause 22 (No discharge in contravention of maximum discharge volume) is imminent, and
  - (b) the discharge licence holder has taken all reasonable steps to avoid the contravention,

the EPA may approve the discharge licence holder discharging saline water in accordance with an emergency dilution arrangement.

- (2) An emergency dilution arrangement is an arrangement under which a discharge licence holder purchases or secures the release of water from the Water Administration Ministerial Corporation (being water that is additional to any other water that is generally purchased from or released by the Corporation), and uses that water for the sole purpose of diluting the discharge of saline water that is the subject of the arrangement.
- (3) The EPA may approve the discharge licence holder discharging saline water in accordance with such an arrangement only if satisfied that:
  - (a) the discharge will not increase the overall salinity level of the Hunter River catchment (taking into account salinity levels upstream of the authorised discharge point of the discharge licence holder), and

- (b) the discharge licence holder purchases or secures the release of sufficient water to ensure that the rate of flow of the Hunter River catchment, at the time and point of the discharge, achieves a target rate determined by the EPA, and
  - (c) the arrangement is consistent with the water sharing provisions of any management plan under the *Water Management Act 2000* that has effect in relation to the area concerned.
- (4) An approval given by the EPA under this clause:
- (a) is to be in writing, and
  - (b) is subject to such conditions as may be specified by the EPA in the approval.
- (5) It is a defence to a prosecution for an offence arising from an alleged contravention of clause 20 or 22 that the discharge licence holder discharged the saline water concerned in accordance with such an approval.
- (6) An approval under this clause must not authorise a discharge licence holder to exceed the tributary protection limit for an authorised discharge point.

## **Part 4 Credits in scheme**

### **Division 1 General**

#### **36 Creation of credits**

- (1) Credits in the scheme are to be created by the EPA.
- (2) Credits are to be in a form approved by the EPA.

#### **37 Authority conferred by credit**

- (1) A credit assigned to an authorised discharge point confers authority to discharge from the authorised discharge point 0.1% of the total allowable discharge for a high flow block, subject to the discharge rules, during the period in which the credit remains in force.
- (2) If a trading rules order is in force, a credit assigned to an authorised discharge point also confers authority to discharge from the authorised discharge point 0.1% of the total allowable discharge for a flood flow block, subject to the discharge rules, during the period in which the credit remains in force.
- (3) A credit does not confer any authority on a person to discharge saline water unless:
  - (a) the person holds a discharge licence, and
  - (b) the credit is assigned to an authorised discharge point specified in that discharge licence.

### **37A Use of credit**

- (1) A credit may be used once only in relation to a particular block.
- (2) A credit is taken to be used in relation to a block when it is included in the calculation of a volume discharge limit for an authorised discharge point as it relates to that block.

### **38 Lifespan of credit**

- (1) A credit remains in force for the period specified in relation to the credit in the Credit Register, expressed by reference to a number of sequential blocks, and expires at the end of that period.
- (2) A credit ceases to be in force during any period in which it is suspended under this Regulation.

### **39 Who may hold credit**

- (1) Any person may hold a credit.
- (2) (Repealed)

## **Divisions 2, 3**

### **40-45 (Repealed)**

## **Division 4 Creation and sale of new credits**

### **46 New credits to be created every 2 years**

- (1) The EPA is to create 200 credits in the scheme every 2 years, for the purpose of replacing the 200 credits that expire every 2 years.

**Note—**

Clause 40 (now repealed) required the EPA to create 1,000 credits on the creation of the scheme, of which:

- (a) 200 had a lifespan ending on 30 June 2004, and
  - (b) 200 had a lifespan ending on 30 June 2006, and
  - (c) 200 had a lifespan ending on 30 June 2008, and
  - (d) 200 had a lifespan ending on 30 June 2010, and
  - (e) 200 had a lifespan ending on 30 June 2012.
- (2) The credits are to have a lifespan of 10 years.
  - (3) The 10-year lifespan of the credits so created must not start until the end of the lifespan of the credits that they replace, so that at no stage will there be more than 1,000 credits in force.

- (4) However, a credit may be sold by the EPA before its lifespan starts.

#### **47 Sale of new credits by auction**

- (1) The EPA is to make arrangements for the sale of credits created as provided for by this Division from time to time by auction.
- (2) At least one auction is to be held in every 2-year period.
- (3) An auction is to be conducted in a manner determined by the EPA, in accordance with such rules (if any) as the EPA may make from time to time in connection with the conduct of auctions.
- (4) Without limiting subclause (3), the rules made by the EPA in connection with the conduct of an auction may include:
- (a) a limit on the number of credits that may be purchased by any one person, and
  - (b) a requirement that the successful bidder provide to the EPA evidence to the satisfaction of the EPA that the bidder has complied with the other rules of the auction.
- (5) A copy of the rules (if any) that apply to an auction is to be made available for public inspection on the website of the EPA before the auction is conducted.
- (6) The EPA may charge a fee to any person who buys a credit at auction in order to recover the costs incurred by or on behalf of the EPA in connection with the auction.

#### **48 Sale of new credits by private treaty**

The EPA may sell any credit that is not sold at auction by private treaty or otherwise.

#### **49 (Repealed)**

### **Part 4A Assignment of credits to authorised discharge point**

#### **Note—**

This Part requires a discharge licence holder to assign a credit to an authorised discharge point as a precondition to using the credit and sets out rules about how a credit may be so assigned.

#### **49A Authorised discharge point to be nominated**

- (1) A credit cannot be used in relation to an authorised discharge point unless the credit has been assigned to that authorised discharge point.
- (2) For the purposes of this Part, a credit is **assigned** to an authorised discharge point if that authorised discharge point is nominated in accordance with this Part as the authorised discharge point at which the credit is to be used.
- (3) An assignment may be made only by the holder of the credit or a person acting with



the authority of the holder of the credit.

- (4) The holder of a credit, or a person acting with the authority of the holder, may at any time withdraw the assignment of a credit and make a new assignment of the credit, subject to this Part.
- (5) The assignment of a credit, or the withdrawal of an assignment, is to be entered in the Credit Register in accordance with arrangements approved by the EPA.

**Note—**

The assignment of a credit, or the withdrawal of an assignment, does not take effect until it is entered in the Credit Register: see clause 63A.

- (6) It is a condition of a discharge licence that the discharge licence holder does not use, in relation to an authorised discharge point, a credit that is not assigned to that authorised discharge point.

**49B How a credit may be assigned**

A credit may be assigned to an authorised discharge point as follows:

- (a) as it relates to a particular block,
- (b) as it relates to a particular series of blocks, being blocks that occur in a sequential order,
- (c) as it relates to all remaining blocks in the lifespan of the credit.

**49C Rules about assignment of credits**

- (1) A part of a credit cannot be assigned to an authorised discharge point.
- (2) A credit cannot be assigned to an authorised discharge point unless:
  - (a) the holder of the credit holds a discharge licence, and
  - (b) the authorised discharge point is specified in that discharge licence.
- (3) A credit cannot be assigned to an authorised discharge point if:
  - (a) the site discharge period for the authorised discharge point, as it relates to the block to which the assignment applies, has ended, or
  - (b) the credit, as it relates to the block to which the assignment applies, has been used at another authorised discharge point, or
  - (c) the authorised discharge point is in a restricted sector, unless subclause (4) applies.
- (4) An assignment of a credit to an authorised discharge point in a restricted sector can be made if, immediately before the assignment, the credit was assigned to another

authorised discharge point that is in the same sector.

- (5) It is a condition of a discharge licence that the discharge licence holder does not assign a credit in contravention of this clause.
- (6) An authorised discharge point is in a **restricted sector** if a sector credit discount factor of less than one applies to blocks in the sector that the authorised discharge point is in.

#### **49D Effect of contravention of assignment rules on volume discharge limit**

- (1) If a credit is assigned, in respect of a block, to an authorised discharge point in contravention of this Part, the credit is to be excluded from the calculation of the volume discharge limit for the authorised discharge point in respect of that block.
- (2) Subclause (1) applies even if the assignment of the credit is entered in the Credit Register.

**Note—**

A contravention of the provisions of this Regulation may also result in an enforcement or forfeiture order being made against a person under Part 8.

## **Part 5 Trading in credits**

### **Division 1 Trading in credits**

#### **50 Trading in credits**

- (1) Credits are tradeable only as provided by this Part.
- (2) A credit may be transferred in accordance with this Part.
- (3) A credit cannot be mortgaged, charged, leased or otherwise encumbered.
- (4) A credit cannot be assigned, except as permitted by Part 4A.

#### **51 Trading facility to be established**

- (1) The EPA is to make arrangements for the provision of a service to facilitate the trading of credits (a **credit trading facility**).
- (2) The credit trading facility is to be an internet service provided by the Registrar.
- (3) The credit trading facility may be used only by registered credit traders.
- (4) The EPA may approve the trading of credits by alternative means to the credit trading facility if the internet service is not available, or in any other circumstances in which the EPA considers it appropriate.

## **52 Registration of credit traders**

- (1) The Registrar may, on application in a form approved by the Registrar, register a person as a credit trader.
- (2)-(4) (Repealed)
- (5) The Registrar may require the applicant, in or in connection with the application, to supply to the Registrar such information as the Registrar may reasonably require in connection with the trading of credits by the applicant or the use of the credit trading facility.
- (6) The Registrar may refuse any application for registration as a credit trader that is not made in accordance with this clause.
- (7) The Registrar may cancel the registration of a person as a credit trader on request of the person.
- (8) (Repealed)

## **53 Use of credit trading facility**

- (1) Use of the credit trading facility is subject to such conditions as may be imposed by the Registrar from time to time.
- (2) If access to the credit trading facility is conditional on the use of a password, and a person accesses the credit trading facility by means of the password associated with a registered credit trader, the Registrar is entitled to assume that the person is the registered credit trader or is acting with the authority of the registered credit trader.

## **54 Transfers to be effected by registered traders by means of facility**

A transfer of a credit does not have effect unless:

- (a) it is effected by means of the credit trading facility, or by alternative means approved by the EPA, and
- (b) the parties to the transfer are registered credit traders.

## **55 Transfers may be made for consideration**

A transfer of a credit may be made for consideration or otherwise.

## **Division 2 Trading rules**

### **Note—**

This Division sets out rules relating to the transfer of credits. A credit transferred under this Division cannot be used unless it has been assigned to an authorised discharge point: see Part 4A.

**56 General rules as to transfers**

A credit may be transferred as follows:

- (a) as it relates to a particular block, or
- (b) as it relates to a particular series of blocks, being blocks that occur in a sequential order, or
- (c) as it relates to all remaining blocks in the lifespan of the credit.

**57 Credits only transferable to registered credit traders**

A credit may only be transferred to a registered credit trader.

**58 Partial transfers not permitted**

A part of a credit, as it relates to a particular block, is not transferable.

**59 Transfer not permitted after credit used**

A person must not transfer, or purport to transfer, a credit as it relates to a particular block to any person after using the credit.

**60 (Repealed)**

**61 Offence for contravention of trading rules**

A person who transfers, or purports to transfer, a credit in contravention of the provisions of this Division is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
- (b) in the case of an individual—200 penalty units.

**62 Effect of contravention of trading rules on volume discharge limit**

- (1) A person who proposes to accept the transfer of a credit is under a duty to ensure that the credit is transferred in accordance with this Division.
- (2) If a credit is transferred, in respect of a block, to a discharge licence holder in contravention of this Division, the credit is to be excluded from the calculation of the volume discharge limit for the authorised discharge point of the discharge licence holder in respect of that block under Part 3.
- (3) Subclause (2) applies even if the transfer of the credit is entered in the Credit Register.

**Note—**

A contravention of the provisions of this Regulation may also result in an enforcement or forfeiture order being made against a person under Part 8.

## **Part 5A Credit Register**

### **63 Credit Register**

- (1) The Registrar is to establish and maintain a Credit Register.
- (2) The following information is to be entered in the Credit Register in relation to each credit that is created in the scheme:
  - (a) the name of the person who holds each credit with respect to each block,
    - (a1) the authorised discharge point (if any) to which the credit, as it relates to a block, is assigned,
  - (b) the lifespan of the credit,
  - (c) such other particulars as the Registrar considers appropriate.
- (3) The Credit Register is to be in a form determined by the EPA.
- (4) The Credit Register may be kept wholly or partly by electronic means (including by means of an internet service).
- (5) The Credit Register is to be made available for inspection by members of the public at an office of the Registrar in a manner approved by the EPA.
- (6) If the Credit Register is kept wholly or partly by electronic means, subclause (5) may be complied with by providing any of the following:
  - (a) access to a computer that can be used to view the Credit Register,
  - (b) a hard copy (such as a computer print-out) of the Credit Register,
  - (c) a soft copy (that is, an electronic file) of the Credit Register by email or on a data storage device,
  - (d) access to the Credit Register through an internet service.

### **63A Assignments to be entered in Credit Register**

- (1) The assignment of a credit does not take effect until it is entered in the Credit Register, in accordance with such arrangements for the entry of transactions as may be approved by the EPA from time to time.
- (2) The following information, in relation to the assignment of a credit, is to be entered in the Credit Register (in accordance with the arrangements referred to in subclause (1)):
  - (a) the authorised discharge point (if any) from which the credit is assigned,

**Note—**

There will be no such authorised discharge point in the case of a first assignment of a credit.

(b) the authorised discharge point (if any) to which the credit is assigned,

**Note—**

There will be no such authorised discharge point if the assignment of the credit is withdrawn without reassignment.

(c) the date and time at which the assignment occurred,

(d) the number of credits assigned and the blocks to which the assignment applies,

(e) such other particulars as the Registrar considers appropriate.

(3) In this clause, **assignment** of a credit includes withdrawal of an assignment.

#### **64 Transfers to be entered in Credit Register**

(1) A transfer of a credit does not take effect until it is entered in the Credit Register, in accordance with such arrangements for the entry of transactions as may be approved by the EPA from time to time.

(2) After a transfer of a credit is entered in the Credit Register:

(a) the transferee becomes the holder of the credit, in respect of the block or blocks concerned, and

(b) the transferor ceases to be the holder of the credit, in respect of the block or blocks concerned.

(3) The following information, in relation to a credit transfer, is to be entered in the Credit Register (in accordance with the arrangements referred to in subclause (1)):

(a) the names of the transferor and the transferee,

(b) the date and time at which the transfer occurred,

(c) the number of credits transferred and the blocks to which the transfer applies,

(d) such other particulars as the Registrar considers appropriate.

#### **65 Correction of Credit Register**

The Registrar may correct any error or mistake in the Credit Register.

## **Part 6 Administration of scheme**

### **Division 1 Services Co-ordinator**

#### **66 Services Co-ordinator**

- (1) There is to be a Services Co-ordinator for the scheme.
- (2) The Services Co-ordinator is to be the EPA or a person or body appointed by the EPA as Services Co-ordinator.
- (3) The Services Co-ordinator has the following functions:
  - (a) to monitor and gauge the flow of the Hunter River, for the purpose of carrying out its functions under this Regulation,
  - (b) to establish and maintain the River Register,
  - (c) to make the contents of the River Register available to the public,
  - (d) such other functions as are conferred or imposed on it by this Regulation or, if the Services Co-ordinator is appointed by the EPA, by the EPA.

#### **67 Engagement of contractors to carry out functions**

- (1) The Services Co-ordinator may enter into a contract with any person (referred to in this Part as a **sub-contractor**) under which the person agrees to carry out any of the functions of the Services Co-ordinator.
- (2) If the Services Co-ordinator is not the EPA, such a contract may be entered into only with the approval of the EPA.

#### **68 Functions of EPA**

- (1) The EPA is to ensure that any contract or other arrangement under which the Services Co-ordinator (if it is not the EPA) is appointed, or under which a sub-contractor is appointed, includes such provisions as the EPA considers appropriate:
  - (a) to ensure that the objects and aims of the scheme are attained, and
  - (b) to ensure that the Services Co-ordinator or sub-contractor is accountable for its performance in connection with the scheme.
- (2) Without limiting subclause (1), the contract or arrangement may require the Services Co-ordinator or sub-contractor:
  - (a) to make and keep records in connection with the exercise of its functions under this Regulation and the contract, and
  - (b) to retain those records for at least 4 years after they are made, and

- (c) to make those records available to the EPA on request, and
  - (d) to establish and maintain suitable monitoring stations for the purpose of detecting contraventions of this Regulation, and
  - (e) to advise the EPA of any suspected contravention of this Regulation, and
  - (f) to provide the EPA with copies of the River Register.
- (3) The EPA is to ensure that a contract or arrangement under which the Services Co-ordinator is appointed requires the Services Co-ordinator to report to the EPA on the performance of its functions under the contract or arrangement on an annual basis and to make that report available for public inspection.

## **Division 2 Registrar**

### **69 Registrar**

- (1) There is to be a Registrar for the scheme.
- (2) The Registrar is to be the EPA or a person or body appointed as Registrar by the EPA.
- (3) The Registrar has the functions conferred or imposed on the Registrar by this Regulation.

## **Division 3 Operations Committee**

### **70 Appointment of Operations Committee**

- (1) There is constituted by this Regulation a body corporate to be called the Hunter River Salinity Trading Scheme Operations Committee.
- (2) The Operations Committee is to consist of the following members, each of whom is to be appointed by the EPA:
  - (a) 1 person nominated by Local Land Services,
  - (b) 4 persons appointed to represent the interests of discharge licence holders,
  - (c) 1 person appointed to represent the interests of persons who use water from the Hunter River catchment for irrigation,
  - (d) 1 person appointed to represent environmental interests,
  - (e) 1 person who is a member of a committee or other organisation concerned in the management of the Hunter River or of any other river in the Hunter River catchment (who may be a member of the Hunter Region Local Board of Local Land Services, who is additional to the person referred to in paragraph (a)),



- (f) 1 person who is employed in the Department of Industry, Skills and Regional Development.
- (3) Each person appointed by the EPA as a member of the Operations Committee is to be a person who, in the opinion of the EPA, has sufficient skills and experience to be a member of the Operations Committee.
- (4) If the EPA declines to appoint a person nominated as a member of the Operations Committee by a person or body as referred to in subclause (2), the EPA may invite the person or body to nominate another person as member of the Operations Committee.
- (5) The member referred to in subclause (2) (a) is to be Chairperson of the Operations Committee.
- (6) Schedule 2 has effect.
- (7) (Repealed)

#### **71 Functions of Operations Committee**

- (1) The Operations Committee has the following functions:
  - (a) to advise the EPA on such matters as are referred to it by the EPA in connection with the operation of the scheme,
  - (b) such other functions as may be conferred or imposed on it by this Regulation or by the EPA in connection with the scheme.
- (2) The EPA may appoint the Operations Committee as Services Co-ordinator.

#### **72 Failure by Operations Committee to perform functions**

- (1) If the EPA is not satisfied with the performance of the Operations Committee under this Regulation, the EPA may do either or both of the following:
  - (a) suspend the Operations Committee from performing its functions under this Regulation,
  - (b) remove any or all of the members of the Committee from office (as provided by Schedule 2).
- (2) If the EPA appoints the Operations Committee as Services Co-ordinator, and is not satisfied with the performance of the Operations Committee as Services Co-ordinator, the EPA may do any of the following:
  - (a) terminate the appointment of the Operations Committee as Services Co-ordinator,
  - (b) suspend the Operations Committee from performing any of the functions of Services Co-ordinator (in which case the EPA is to carry out those functions during

the suspension period),

- (c) remove any or all of the members of the Committee from office (as provided by Schedule 2).

## **Part 7 Cost recovery**

### **Division 1 Contribution payable by participants towards costs of scheme**

#### **73 Participants required to contribute toward costs of scheme**

- (1) A person who, at the start of a scheme year, is a participant in the scheme is required to pay to the EPA a contribution as referred to in section 295H of the Act, calculated in accordance with this Part.
- (2) The EPA is to inform each person who is required to pay a contribution under this clause of the amount that the person is required to pay, by notice in writing given to the person.
- (3) The contribution must be paid within 30 days after the notice is given by the EPA, or by such later date as may be specified by the EPA in the notice.
- (4) The contribution may be paid in instalments, in accordance with arrangements specified by the EPA in the notice.

**Note—**

Section 295H (4) of the Act provides that if an instalment is not paid by the due date, the balance then becomes due and payable.

- (5) If a contribution (or an instalment) is not paid by the due date for its payment, the contribution (or balance payable) is to be increased by the amount of simple interest calculated at the rate of 25 per cent per annum on the amount of the contribution unpaid for each day that elapses after the due date and before the date of payment.
- (6) For avoidance of doubt, a person remains liable for a contribution under this Part even if the person ceases to be a participant in the scheme during the scheme year.

**Note—**

The EPA is not required to pay a contribution under this Part (see section 295H (6) of the Act).

#### **74 Calculation of contribution**

The contribution payable by a person under this Part is calculated as follows:

$$C = H + DL$$

Where:

**C** is the contribution payable by the person.

**H** is the contribution payable by the person on the person's credit holdings (if any) at the start of the scheme year, calculated in accordance with this Part.

**DL** is the contribution payable by the person on the discharge licence (if any) held by the person at the start of the scheme year, calculated in accordance with this Part.

**Note—**

The calculation of the contribution payable by a participant in the scheme is based on their credit holdings at the start of the scheme year and their discharge licence. If the participant held a discharge licence but did not hold any credits at the start of the scheme year, the participant will only be liable for a contribution on the participant's discharge licence (**DL** in the formula above). If the participant held credits but not a discharge licence, the participant will only be liable for a contribution on the participant's credit holdings at the start of the scheme year (**H** in the formula above). If the participant held credits and a discharge licence, the participant will be liable for a contribution in respect of both.

## 75 Contribution on credit holdings

For the purposes of this Part, the contribution payable by a person on the person's credit holdings at the start of a scheme year is calculated as follows:

$$H = 0.5 \times TCA \times \frac{CH}{TCH}$$

Where:

**H** is the contribution payable by a person on the person's credit holdings at the start of the scheme year.

**TCA** is the total contributions amount (calculated under Division 2).

**Note—**

**TCA** is multiplied by 0.5 in the formula because half of the total contributions amount is paid by participants in the scheme who are credit holders and the other half is paid by participants in the scheme who are discharge licence holders. Participants who hold both credits and a discharge licence will be liable to contribute both as credit holders and as discharge licence holders.

**CH** is the number of credits held by the person at the start of the scheme year.

**TCH** is 1000, minus the number of credits (if any) held by the EPA at the start of the scheme year.

## 76 Contribution on discharge licence

(1) For the purposes of this Part, the contribution payable by a person on a discharge licence held by the person at the start of the scheme year is calculated as follows:

$$DL = 0.5 \times \frac{TCA}{TL}$$

Where:

**DL** is the contribution payable by the person on a discharge licence held by the person at the start of the scheme year.

**TCA** is the total contributions amount (calculated under Division 2).

**Note—**

**TCA** is multiplied by 0.5 in the formula because half of the total contributions amount is paid by participants in the scheme who are credit holders and the other half is paid by participants in the scheme who are discharge licence holders. Participants who hold both credits and a discharge licence will be liable to contribute both as credit holders and as discharge licence holders.

**TL** is the total number of discharge licences held by participants in the scheme at the start of the scheme year.

- (2) For avoidance of doubt, if more than one discharge licence is held by a person, a contribution is payable under this clause in respect of each of those discharge licences.

## 77 Contributions on forfeited credits

- (1) For the purposes of this Part, a person is taken to continue to hold a credit that is forfeited to the EPA under this Regulation until the EPA sells the credit.
- (2) Any such credit is not to be considered to be held by the EPA for the purposes of a calculation made under this Part.

**Note—**

The object of this clause is to ensure that participants who forfeit credits remain liable to make a contribution under this Part in respect of the credit until the EPA sells the credit.

## Division 2 Calculating total contributions amount

### 78 Total contributions amount

- (1) For the purposes of this Part, the **total contributions amount** for a scheme year is the total cost of the scheme for the scheme year estimated in accordance with this Division, and adjusted by the EPA (if required) in accordance with Division 3.
- (2) The total cost of the scheme for the scheme year is the total of the following costs:
  - (a) the costs of the Services Co-ordinator in connection with the scheme for the scheme year, as estimated by the Services Co-ordinator under this Division,
  - (b) the costs of the Registrar in connection with the scheme for the scheme year, as estimated by the Registrar under this Division,

- (c) the costs of the EPA in connection with the scheme for the scheme year, as estimated by the EPA under this Division.

#### **79 Costs of Services Co-ordinator**

- (1) For the purposes of this Part, the costs of the Services Co-ordinator in connection with the scheme for a scheme year consists of the costs incurred by the Services Co-ordinator (including any sub-contractor of the Services Co-ordinator), being costs of a kind referred to in section 295H (1) of the Act, in exercising its functions under this Regulation during the scheme year.
- (2) For the purposes of determining contributions payable in respect of a scheme year, the Services Co-ordinator must, before the start of each scheme year, prepare and adopt an estimate of the costs of the Services Co-ordinator in connection with the scheme for the scheme year.
- (3) If the Services Co-ordinator is not the EPA, the estimate may be adopted by the Services Co-ordinator only with the concurrence of the EPA.

#### **80 Costs of Registrar**

- (1) For the purposes of this Part, the costs of the Registrar in connection with the scheme for a scheme year consists of the costs incurred by the Registrar, being costs of a kind referred to in section 295H (1) of the Act, in exercising its functions under this Regulation.
- (2) For the purpose of determining the contributions payable in respect of a scheme year, the Registrar must, before the start of each scheme year, prepare and adopt an estimate of the costs of the Registrar in connection with the scheme for the scheme year.
- (3) If the Registrar is not the EPA, the estimate may be adopted by the Registrar only with the concurrence of the EPA.

#### **81 Costs of EPA**

- (1) For the purposes of this Part, the costs of the EPA in connection with the scheme for a scheme year consists of the costs incurred by the EPA, being costs of a kind referred to in section 295H (1) of the Act, not including those costs that are included in the costs of the Services Co-ordinator or the Registrar in connection with the scheme year.
- (2) The EPA must, before the start of each scheme year, prepare and adopt an estimate of the costs of the EPA in connection with the scheme for the scheme year.

## **Division 3 Adjustments to total cost**

### **82 Functions of EPA**

The EPA is to adjust the total contributions amount for a scheme year from time to time as required in accordance with this Division.

### **83 Reconciliation at end of scheme year**

- (1) At the end of a scheme year, the EPA is to calculate the actual cost of the scheme for that scheme year.
- (2) The actual cost of the scheme for the scheme year is the total of the following:
  - (a) the costs of the Services Co-ordinator in connection with the scheme for the scheme year, as assessed by the Services Co-ordinator at the end of the scheme year,
  - (b) the costs of the Registrar in connection with the scheme for the scheme year, as assessed by the Registrar at the end of the scheme year,
  - (c) the costs of the EPA in connection with the scheme for the scheme year, as assessed by the EPA at the end of the scheme year.
- (3) The Services Co-ordinator and the Registrar are to provide the EPA with such information as is necessary for the purpose of calculating the actual cost of the scheme for the scheme year.
- (4) If the actual cost of the scheme for the scheme year exceeds the total contributions amount in respect of that scheme year, the amount of the difference is to be added to estimated cost of the scheme for the next scheme year, and the total contributions amount for that year is to be increased accordingly.
- (5) If the actual cost of the scheme for the scheme year is less than the total contributions amount in respect of that scheme year, the amount of the difference is to be deducted from the estimated cost of the scheme for the next scheme year, and the total contributions amount for that year is to be decreased accordingly.

### **84 Auction and sale proceeds**

- (1) When calculating the total contributions amount for a scheme year (the **current scheme year**), the EPA is to deduct from the total cost of the scheme for the current scheme year the proceeds of credit sales for the previous scheme year. The total contributions amount is to be reduced accordingly.
- (2) If the proceeds of credit sales for the previous scheme year exceeds the total cost of the scheme for the current scheme year, the EPA may deduct the amount of the excess (or any part of the excess) from the total cost of the scheme in any scheme

year that follows the current scheme year. The total contributions amount is to be reduced accordingly.

- (3) In this clause, the **proceeds of credit sales** for a scheme year means the total proceeds of any auction or other sale of credits by the EPA held during that scheme year.

## **85 Adjustments to contributions**

The EPA may determine the arrangements for payment of any additional contribution, or refund of contribution, that is required because of an adjustment to the total contributions amount under this Division.

## **Part 8 Enforcement**

### **86 General enforcement power of EPA**

- (1) The EPA may, by order in writing served on a person, do either or both of the following:
- (a) suspend any or all credits held by the person,
  - (b) prohibit the person from transferring or accepting the transfer of credits, or impose conditions on any such transfers.
- (2) Such an order (an **enforcement order**) may be made only if the EPA is satisfied that the person:
- (a) has contravened a provision of this Regulation, or
  - (b) has contravened a condition of the person's discharge licence, being a condition that relates to the scheme.
- (3) An enforcement order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order, subject to clause 87.
- (4) An enforcement order may be expressed to have effect for a specified period, or until the fulfilment of specified conditions, or until further order of the EPA.
- (5) An enforcement order has effect according to its tenor, despite any other provision of this Regulation.
- (6) A person must not contravene the terms of an enforcement order.
- Maximum penalty:
- (a) in the case of a corporation—400 penalty units, and
  - (b) in the case of an individual—200 penalty units.

- (7) An enforcement order does not affect the liability of a person to pay a contribution in respect of a discharge licence or credit under this Regulation.
- (8) This clause does not prevent any proceedings being taken for an offence against the Act or this Regulation.

#### **87 Confirmation of enforcement order**

- (1) An enforcement order ceases to be in force at the end of the period of 60 days after the order takes effect, unless the EPA confirms the making of the enforcement order before the end of that period, in accordance with this clause.
- (2) The making of an enforcement order is confirmed if notice of the confirmation is served on the person against whom the order was made.
- (3) The EPA must not confirm the making of an enforcement order unless:
  - (a) it has given notice to the person against whom the order was made of its reasons for making the order, and
  - (b) it has given the person a reasonable opportunity to make submissions with respect to the order, and
  - (c) it has taken into consideration any such submissions by the person.

#### **88 Forfeiture of credits**

- (1) The EPA may, by order in writing served on a person, require the forfeiture of any credits held by the person to the EPA.
- (2) Such an order (a **forfeiture order**) may be made only if the EPA is satisfied that the person:
  - (a) has contravened a provision of this Regulation, or
  - (b) has contravened a condition of the person's discharge licence, being a condition that relates to the scheme, or
  - (c) has failed to pay a contribution required under this Regulation by the due date for its payment.
- (3) The order is to specify the number of credits forfeited.
- (4) In the case of a forfeiture order made because of a contravention of this Regulation, the EPA may, in determining how many credits are to be forfeited, take into account:
  - (a) any pecuniary benefit that has been obtained by the person, or any cost that has been avoided by the person, because of the contravention, and
  - (b) any other relevant matters.



- (5) In the case of a forfeiture order made because of a failure to pay a contribution by the due date for its payment, the EPA may order the forfeiture of the number of credits that, in the opinion of the EPA, would, if sold by auction or public tender, raise an amount sufficient to meet the following:
  - (a) the contribution that is payable by the person, together with any interest payable on the contribution, and
  - (b) the costs that are likely to be incurred by the EPA in connection with the sale of the credits.
- (6) A forfeiture order takes effect on the date notice of the order is served on the person against whom it is made, or on a later date specified in the order.
- (7) On the date that a forfeiture order takes effect, the credit or credits specified in the order are forfeited to the EPA.
- (8) This clause does not prevent any proceedings being taken:
  - (a) for an offence against the Act or this Regulation, or
  - (b) for the recovery of a contribution as a debt payable to the EPA, as provided for by section 295H (3) of the Act.

**Note—**

Under section 295H (3) of the Act, a contribution payable to the EPA is recoverable by the EPA as a debt in a court of competent jurisdiction.

**89 Notice of reasons for making forfeiture order**

- (1) The EPA must not make a forfeiture order unless:
  - (a) it has given notice to the person against whom the order is to be made of its intention to do so, and
  - (b) it has specified in that notice the reasons for its intention to do so, and
  - (c) it has given the person a reasonable opportunity to make submissions with respect to the proposed order, and
  - (d) it has taken into consideration any such submissions by the person.
- (2) For the purpose of preventing the trading of credits that are proposed to be forfeited under the forfeiture order, the EPA may make an enforcement order against the person, with effect from the date notice of its intention to make the forfeiture order is given to the person.

## **90 Effect of forfeiture order**

- (1) A forfeited credit continues in force as if it had not been forfeited, except that the EPA becomes the holder of the credit.
- (2) The EPA is to make arrangements for the sale of any credits forfeited to the EPA by auction or public tender.
- (3) This clause is subject to Part 7 (which requires a person who forfeits a credit to continue to pay to the EPA a contribution in respect of the credit until it is sold).

## **91 Offence of providing false information**

A person who, in or in connection with an application for credits or any other application or information provided to the EPA, the Services Co-ordinator or the Registrar under this Regulation, provides any information, or makes any statement, knowing that it is false or misleading in a material particular, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units,
- (b) in the case of an individual—100 penalty units.

**Note—**

### **Other enforcement powers**

The Act also provides that certain offences can be dealt with by the issue of a penalty notice (sometimes referred to as an on the spot fine) by an authorised officer. An officer or employee of the EPA is, by regulations under the Act, authorised to issue a penalty notice for the offence of contravening a licence condition (including the discharge licence conditions referred to in Part 3 of this Regulation). In such a case, the on the spot fine is \$15,000 (in the case of a corporation) or \$7,500 (in the case of an individual). If the offence is dealt with by a court, the maximum penalty that the court can impose for the offence is \$1,000,000 (in the case of a corporation) or \$250,000 (in the case of an individual).

## **Part 9 Miscellaneous**

### **92 Suspension of scheme**

- (1) A suspension of the scheme, or part of the scheme, as provided by section 293A of the Act, may be effected by the EPA by order published in the Gazette.

**Note—**

The Act requires the EPA to undertake public consultation before suspending the scheme, unless the suspension is required urgently in order to protect the environment, public health, property, or the integrity of the scheme, or is necessary because of an emergency.

- (2) The order is to specify the period during which the scheme or part of the scheme is suspended, but that period may be extended by further order published in the Gazette.

- (3) The order may specify the effect of the suspension on any rights conferred or obligations imposed under the scheme.
- (4) It is a condition of a discharge licence that the discharge licence holder does not discharge saline water during any period in which the scheme or part of the scheme is suspended by the EPA, except with the written approval of the EPA or in accordance with the terms of any order made under this clause.
- (5) Subclause (4) has effect despite the discharge rules.

### **93 Application of amendments**

The amendments made to this Regulation by the *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Amendment Regulation 2016* extend to a credit created before the commencement of that Regulation.

### **94 Review of Regulation—timetable**

The Minister is to review this Regulation as soon as possible after the period of 10 years from the commencement of the *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Amendment Regulation 2016*.

## **Part 10**

### **95-98 (Repealed)**

### **Schedule 1 (Repealed)**

## **Schedule 2 Constitution and procedure of Operations Committee**

(Clause 70)

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

***Chairperson*** means the Chairperson of the Operations Committee.

***member*** means any member of the Operations Committee.

### **Part 2 Constitution**

#### **2 Terms of office of members**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the member.

### **4 Deputies**

- (1) The EPA may, from time to time, appoint a person to be the deputy of a member, and the EPA may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person:
  - (a) has all the functions of the member and is taken to be a member, and
  - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the EPA may from time to time determine in respect of the person.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the EPA, or
  - (d) is removed from office by the EPA under this clause, or
  - (e) is absent from 4 consecutive meetings of the Operations Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the EPA or unless the member is excused by the EPA for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The EPA may at any time remove a member from office.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson**

(1) The Chairperson vacates office as Chairperson if the person:

- (a) is removed from office by the EPA under this clause, or
- (b) ceases to be a member.

(2) The EPA may at any time remove the Chairperson from office as Chairperson.

## **8 Disclosure of pecuniary interests**

(1) If:

- (a) a member of the Operations Committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Operations Committee, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Operations Committee.

(2) A disclosure by a member at a meeting of the Operations Committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Operations Committee in the minutes of the meeting concerned.

(4) A member of the Operations Committee is not disqualified from taking part in any

deliberation of the matter, or in a decision with respect to the matter, because of the member's pecuniary interest.

- (5) A contravention of this clause does not invalidate any decision of the Operations Committee.

## Part 3 Procedure

### 9 Procedures of Operations Committee

Subject to this Schedule, the procedures of the Operations Committee are to be determined by the EPA and, subject to any such determination, by the Operations Committee.

### 10 Quorum

The quorum for a meeting of the Operations Committee is a majority of its members for the time being.

### 11 Presiding member

- (1) The Chairperson is to preside at a meeting of the Operations Committee.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### 12 Voting

A decision supported by a majority of the votes cast at a meeting of the Operations Committee at which a quorum is present is the decision of the Operations Committee.

### 13 Minutes

The Operations Committee is required to keep minutes of proceedings at its meetings.

## Dictionary

(Clause 4)

### Note—

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

**assign** a credit to an authorised discharge point has the meaning given by Part 4A.

**authorised discharge point** means a discharge point in the Hunter River catchment that is specified in a discharge licence as a point from which discharges of saline water by the discharge licence holder are authorised (subject to the scheme).

**block** or **river block** means a block identified in the River Register, as referred to in Part 2.

**credit** means a credit in the scheme.

**Credit Register** means the Credit Register required to be kept under this Regulation.

**credit trading facility** means the facility for the trading of credits provided by the Registrar, as referred to in Part 5.

**discharge licence** is defined in clause 6 (a).

**discharge licence holder** is defined in clause 6 (b).

**discharge rules** means the provisions set out in Part 3.

**enforcement order** means an order made by the EPA under clause 86.

**flood flow block**, in relation to a particular sector, means a block classified as a flood flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register.

**flood flow salinity target** has the meaning given by clause 17.

**forfeiture order** means an order made by the EPA under clause 88.

**high flow block**, in relation to a particular sector, means a block classified as a high flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register.

**high flow salinity target** has the meaning given by clause 17.

**Hunter River catchment** is defined in clause 7.

**internet service** means a service provided by or through the facilities of a computer communication system and access through a telecommunications network that allows for:

- (a) the input, output or examination of computer data or computer programs, or
- (b) the transmission of computer data from one computer to another.

**lifespan** of a credit means the period (expressed in terms of sequential blocks) for which it remains in force.

**low flow block**, in relation to a particular sector, means:

- (a) a block classified as a low flow block in relation to that sector under this Regulation, and identified as such by an entry in the River Register, or
- (b) a block in respect of which no classification is entered in the River Register.

**lower sector** means that part of the Hunter River catchment downstream of the middle sector reference point and upstream of the lower sector reference point.

**lower sector reference point** means the Hunter River gauging station number 210129 at Singleton, or another gauging station nominated as the lower sector reference point on the website of the EPA.

**middle sector** means that part of the Hunter River catchment downstream of the upper sector reference point and upstream of the middle sector reference point.

**middle sector reference point** means the Hunter River gauging station number 210127 immediately upstream of the confluence of the Hunter River and Glennies Creek, or another gauging station nominated as the middle sector reference point on the website of the EPA.

**Operations Committee** means the Hunter River Salinity Trading Scheme Operations Committee established by the EPA under this Regulation.

**participant** in the scheme has the meaning given by clause 5.

**registered credit trader** means a person who is registered by the Registrar as a credit trader under Part 5.

**Registrar** means the EPA or a person or body appointed by the EPA as Registrar.

**River Register** means the River Register required to be kept under this Regulation.

**saline water** means water with an electrical conductivity of not less than 400 microSiemens per centimetre.

**salinity target** means a high flow salinity target or a flood flow salinity target.

**scheme** means the Hunter River Salinity Trading Scheme established by this Regulation.

**scheme year** means the period commencing on 1 July in any year and ending on 30 June in the following year.

**sector** means the upper sector, the middle sector or the lower sector.

**sector credit discount factor** has the meaning given by Part 3 (see clause 18).

**sequential blocks** means blocks that have identification numbers that are in sequential order.

**Services Co-ordinator** means the EPA or the person or body appointed by the EPA as Services Co-ordinator.

**site discharge period**, in relation to an authorised discharge point, means the site discharge period determined by the Services Co-ordinator under clause 14B for a high flow or flood flow block and entered in the River Register.

**the Act** means the [Protection of the Environment Operations Act 1997](#).

**total allowable discharge** means the total allowable discharge of salt for a block determined by the Services Co-ordinator under Part 3 and entered in the River Register.

**total contributions amount** has the meaning given by Part 7.

**trading rules order**—see clause 27.

**tributary protection limit** for an authorised discharge point means a volume specified in a discharge licence as the maximum volume of saline water that may be discharged from the authorised discharge point during any specified period.

**upper sector** means that part of the Hunter River catchment upstream of the upper sector reference



point.

**upper sector reference point** means the Hunter River gauging station number 210055 upstream of the confluence of the Hunter River and the Goulburn River at Denman, or another gauging station nominated as the upper sector reference point on the website of the EPA.

**volume discharge limit** for an authorised discharge point in relation to a block means the volume discharge limit calculated under Part 3.