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# Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021

## Part 1 Introduction

### Notes.

- 1 In accordance with section 48 of the *Water Management Act 2000*, the Minister must take all reasonable steps to give effect to the provisions of this Plan when exercising functions under the Act.
- 2 In accordance with section 49 of the *Water Management Act 2000*, public authorities must also have regard to the provisions of this Plan to the extent they apply to the public authority.
- 3 The Minister may amend this Plan at any time under section 45 of the *Water Management Act 2000*, including if satisfied it is in the public interest to do so, or in such circumstances, in relation to such matters and to such extent as Part 12 of this Plan provides.

### 1 Name of Plan

This Plan is the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2021 (this Plan)*.

### 2 Nature and status of Plan

- (1) This Plan is made under section 50 of the *Water Management Act 2000 (the Act)*.
- (2) This Plan is a replacement management plan for the purposes of subsection 43(4) of the Act in relation to the NSW Border Rivers Regulated River Water Source and replaces the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2009*.
- (3) This Plan is a plan for water sharing and generally deals with the matters set out in sections 20 and 21 of the Act, as well as other sections of the Act.

**Note.** Where a provision of this Plan is made under another section of the Act, the section is referred to in the notes to this Plan.

### 3 Commencement

This Plan commences on 2 July 2021.

#### Notes.

- 1 In accordance with section 43 of the Act, this Plan will have effect for 10 years from 1 July 2022. The Minister may extend this Plan for a further period of 10 years after it is due to expire, in accordance with section 43A of the Act.
- 2 Under the Intergovernmental Agreement on Implementing Water Reform in the Murray-Darling Basin and the associated National Partnership Agreement, NSW has agreed to develop water resource plans for Murray-Darling Basin water resources that are consistent with the requirements of the Basin Plan. This Plan was made in 2021 partly to meet NSW's commitments under these agreements. Certain provisions of this Plan form part of the water resource plan for the NSW Border Rivers surface water resource plan area.
- 3 **Basin Plan** is defined in the Dictionary.

### 4 Application of Plan

- (1) This Plan applies to the NSW Border Rivers Regulated River Water Source within the Border Rivers Water Management Area (the *water source*).

**Note.** The Border Rivers Management Area was constituted by Ministerial order made under section 11 of the Act and published in the NSW Government Gazette No 180 on 23 November 2001 at page 9389.

- (2) The water in the water source consists of the water between the bed and banks of all rivers that have been declared by the Minister to be regulated rivers and that is available to New South Wales under the terms of the *New South Wales—Queensland Border Rivers Act 1947*, the Border Rivers Agreement 1946 under the Schedule to that Act, and the *New South Wales – Queensland Border Rivers Intergovernmental Agreement 2008 (the IGA)*, from:
- (a) the Pindari Dam water storage downstream to the Pindari Dam wall,
  - (b) the Macintyre River from its junction with the Severn River downstream to the junction of the Barwon River,
  - (c) the Barwon River from its junction with the Macintyre River downstream to Mungindi Weir,
  - (d) the Dumaresq River from its junction with Pike Creek downstream to the junction of the Macintyre River.

**Notes.**

- 1 The *NSW Border Rivers Regulated River Water Source Order* was made by the Minister and published in the NSW Government Gazette No 79 of 29 May 2009 at page 2491 and amended by Part 5 of Schedule 12 of the Act.
- 2 The IGA covers water management issues in the Border Rivers and sets out arrangements for the sharing of water between New South Wales and Queensland.
- 3 A Water Plan and a Water Management Protocol have been developed under the *Queensland Water Act 2000*. These deal with the management of the water distributed to Queensland under the Border Rivers Agreement 1947.
- 4 Section 57A(4) of the Act provides that any water taken under a floodplain harvesting (regulated river) access licence from a floodplain for a regulated river identified in clause 4(2) of this Plan is to be treated as having been taken from the regulated river water source for the purposes of this Plan.

## 5 Interpretation

- (1) Unless otherwise defined in this Plan, words and expressions that are defined in the Act or in the regulations made under the Act have the same meaning in this Plan.
- (2) Words and expressions that are defined in the Dictionary at the end of this Plan have the meaning set out in that Dictionary.
- (3) Unless otherwise specified, a clause that applies to a category of access licence also applies to any subcategories of that category of access licence.
- (4) The Dictionary and Schedules to this Plan form part of this Plan.
- (5) A number in brackets following the name of a gauge is the gauge number.
- (6) Notes in the text of this Plan do not form part of this Plan.
- (7) Appendices to this Plan do not form part of this Plan.

- (8) A reference in this Plan to the calculation of values which do not have the same unit is a reference to the calculation of values in ML, ML/year or unit shares (as the case requires), without regard to the unit.

**Note:** For example, the sum of 40 unit shares plus 40 ML/year is taken to be 80.

## Part 2 Vision, objectives, strategies and performance indicators

### Notes.

- 1 This Part is made in accordance with section 35 (1) of the Act.
- 2 This Part describes broad objectives, which are the long-term outcomes sought by this Plan and are not directly measured but evaluated by considering the cumulative achievement of the associated targeted objectives. Targeted objectives described in this Part are specific outcomes that can be achieved by the strategies in this Plan and can be directly measured so that success or failure to achieve the objective can be quantified.

### 6 Acknowledgement

Respect is paid to the traditional owners of this country, who are acknowledged as the first natural resource managers within the NSW Border Rivers Water Management Area.

### 7 Vision statement

The vision for this Plan is to provide for the following:

- (a) the health and enhancement of the water source and its water-dependent ecosystems,
- (b) the continuing productive extraction of surface water for economic benefit,
- (c) the spiritual, social, customary and economic benefits of surface water to Aboriginal communities,
- (d) social and cultural benefits to urban and rural communities that depend on surface water.

### 8 Environmental objectives

**Note.** The environmental water objectives, strategies and provisions in this Plan make a contribution towards achieving the Aboriginal cultural objectives of this Plan.

- (1) The broad environmental objective of this Plan is to protect and contribute to the enhancement of the ecological condition of the water source and its water-dependent ecosystems over the term of this Plan.
- (2) The targeted environmental objectives of this Plan are as follows:
  - (a) to protect and contribute to the enhancement of the following over the term of this Plan:
    - (i) the recorded distribution or extent, and the population structure of, target ecological populations,

#### Notes.

- 1 **Target ecological populations** is defined in the Dictionary.
- 2 Target ecological populations in the water source that may be managed by this Plan include known or predicted populations of the following:
  - (a) native fish including golden perch, eel-tailed catfish, Murray cod, purple

spotted gudgeon, and olive perchlet,

- (b) native vegetation including river red gum woodland and black box-coolibah woodland,
- (c) high diversity hotspots and significant habitat for native fish, frogs, waterbirds and native vegetation.

3 Significant wetlands, and the associated ecological communities such as waterbirds and lignum, are primarily managed by the NSW Environmental Water Manager.

- (ii) the longitudinal and lateral connectivity within and between water sources to support target ecological processes,

**Notes.**

1 Longitudinal connectivity means flows along the length of the river and between hydrologically connected rivers. Lateral connectivity means flows between the river and its anabranches, riparian zones, wetlands and floodplains.

2 Target ecological processes in the water source include the following:

- (a) carbon and nutrient transport pathways, which are the connected networks of stream, riparian zones, floodplains and wetlands that transport dissolved and suspended organic material and nutrients throughout the water source,
- (b) fish movement across significant barriers.,.

3 Connectivity may be within the water source, and between the water source and water sources in the *Water Sharing Plan for the Border Rivers Unregulated River Water Sources 2012* or the *Water Sharing Plan for the Barwon-Darling Unregulated Water Source 2012* or any plan replacing these.

- (iii) water quality within target ranges for the water source to support water-dependent ecosystems and ecosystem functions,

**Note.** Water quality targets for the water source are defined in the Water Quality Management Plan for the NSW Border Rivers Water Resource Plan Area SW16 and the NSW State Water Quality Assessment and Monitoring Plan.

- (b) support environmental watering in the water source to contribute to maintaining or enhancing ecological condition in streams, riparian zones, dependent wetlands and floodplains.

- (3) The strategies for achieving the targeted environmental objectives of this Plan are as follows:

- (a) maintain compliance with the long-term average annual extraction limit and the long-term average sustainable diversion limit,

**Notes.**

1 Part 6 of this Plan sets out the provisions for maintaining compliance with the long-term average annual extraction limit and the long-term average sustainable diversion.

2 The long-term average annual extraction limit in Part 6 of this Plan is set to achieve the end-of-system flow target for Mungindi as identified in the IGA between NSW and Queensland.

- (b) reserve a share of water to partially mitigate alterations to natural flow regimes in the water source,

**Notes.**

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- 1 **Flow regimes** is defined in the Dictionary.
  - 2 Division 1 of Part 10 of this Plan contains rules that mitigate the alterations to low, medium and high flows by:
    - (i) providing a minimum daily flow of 10 ML/day from Pindari Dam, and
    - (ii) depending on the month of the year, releasing either 50 ML/day or 200 ML/day of Pindari Dam inflows, and
    - (iii) setting aside 4,000 ML in Pindari Dam each water year to be used as a stimulus flow.
  - (c) reserve a share of water to maintain longitudinal and lateral connectivity within and between the water sources,
  - (d) reserve a share of water to support environmental watering events in streams, riparian zones, floodplains and wetlands connected to the water source.
  - (4) The performance indicator used to measure the success of the strategies for achieving the broad environmental objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted objectives in subclause (2) have contributed to the achieving the broad objective.
  - (5) The performance indicators used to measure the success of the strategies for achieving the targeted environmental objectives in subclause (2) are the changes or trends in ecological condition during the term of this Plan, as assessed using one or more of following:
    - (a) the recorded range, extent or condition of target ecological populations,
    - (b) measurements of fish movements through priority fish passage areas,
    - (c) the recorded values of water quality measurements including salinity, turbidity, total nitrogen, total phosphorous, pH, water temperature and dissolved oxygen,
    - (d) the magnitude, frequency, timing and water quality of environmental water events.
  - (6) In evaluating the effectiveness of the strategies in meeting the objectives in this clause, the following will be relevant:
    - (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
    - (b) the extent to which changes in the performance indicators can be attributed to the strategies and provisions in this Plan,
    - (c) the extent to which the strategies in subclause (3) support achievement of the environmental objectives,
    - (d) the extent to which external influences on the water source during the term of this Plan have affected progress towards achieving the environmental objectives.
- Note.** External influences may include climate trends, land use patterns, decisions made by

the Environmental Water Manager and other factors.

## 9 Economic objectives

- (1) The broad economic objective of this Plan is to maintain, and where possible improve, access to water to optimise economic benefits for agriculture, surface water-dependent industries and local economies.
- (2) The targeted economic objectives of this Plan are as follows:
  - (a) to provide water trading opportunities for water-dependent businesses,  
**Note.** Trading is a generic term referring to dealings under Division 4 of Part 2 of Chapter 3 of the Act.
  - (b) to maintain, and where possible improve, access to water for agriculture, surface water-dependent businesses and landholders, up to the long-term average annual extraction limit and the long-term average sustainable diversion limit,
  - (c) to contribute to maintaining water quality within target ranges for agriculture, water-dependent business and landholders.
- (3) The strategies for achieving the targeted economic objectives of this Plan are as follows:
  - (a) provide for trade of water allocations and access licence share components subject to environmental and system constraints,  
**Note.** The provisions in Part 9 permit a variety of dealings within environmental and system constraints, including assignment of rights under access licences and assignment of water allocations between access licences.
  - (b) provide a stable and predictable framework for sharing water among water users,  
**Note.** The individual account management rules in Division 1 of Part 8 and priority of delivery provisions in clause 60 provide certainty in how water is to be shared between individual access licence holders and different categories of access licences.
  - (c) provide for flexibility of access to water,  
**Note.** The water allocation account management rules in Part 8 provided flexibility that reflects the characteristics of the licence category.
  - (d) manage extractions to the long-term average annual extraction limit and the long-term average sustainable diversion limit, while recognising variability in climatic conditions in different years, including during drought,  
**Note.** The application of the long-term average annual extraction limit and the long-term average sustainable diversion limit and the assessment and compliance provisions in Part 6 manage extractions to different climatic conditions in different years.
  - (e) provide access for supplementary water access licences to a portion of uncontrolled flows, subject to announcements,  
**Note.** *Uncontrolled flows* is defined in the Dictionary.
  - (f) reserve a share of water to partially mitigate deterioration in water quality due to alterations to natural flow regimes.
- (4) The performance indicator used to measure the success of the strategies for achieving

the broad economic objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted economic objectives in subclause (2) have contributed to achieving the broad objective.

- (5) The performance indicators used to measure the success of the strategies for achieving the targeted economic objectives in subclause (2) are the changes or trends in economic benefits during the term of this Plan as assessed using one or more of the following:
- (a) the economic benefits of water extraction and use, including the movement of water to higher value uses,
  - (b) the economic benefits of water trading including as demonstrated by:
    - (i) the change in the unit price of water that is subject to a dealing, and
    - (ii) the annual total volume of access licence share components subject to a dealing, and
    - (iii) the weighted average unit price of water traded within the water source,  
**Note. *Weighted average unit price*** is defined in the Dictionary.
  - (c) the recorded values of water quality measurements including salinity, sodium adsorption ratio, harmful algal blooms, total nitrogen, total phosphorus, pH, and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives of this clause, the following will be relevant:
- (a) the extent to which the strategies in subclause (3) and provisions in the Plan have been implemented and complied with,
  - (b) the extent to which the changes in the economic benefits of water extraction and use can be attributed to the strategies in subclause (3) and provisions in this Plan,
  - (c) the water made available during the term of this Plan through available water determinations and the granting of new licences,
  - (d) the extent to which changes in the economic benefits of water extraction and use can be attributed to the strategies in subclause (3) and provisions in this Plan,
  - (e) the extent to which external influences on surface water-dependent businesses during the term of this Plan have affected progress towards achieving the economic objectives.

## 10 Aboriginal cultural objectives

- (1) The broad Aboriginal cultural objective of this Plan is to maintain, and where possible, enhance the spiritual, social, customary and economic values and uses of water by Aboriginal people.

- (2) The targeted Aboriginal cultural objectives of this Plan are as follows:
- (a) to provide access to water in the exercise of native title rights,
  - (b) to provide access to water for Aboriginal cultural use, including fishing,
  - (c) to protect, and where possible, improve identified water-dependent culturally significant areas, including important riparian vegetation communities,
  - (d) to contribute to the maintenance of water quality within target ranges to ensure suitability of water for Aboriginal cultural use.
- (3) The strategies for achieving the targeted Aboriginal cultural objectives of this Plan are as follows:
- (a) manage access to water consistent with the exercise of native title rights,
  - (b) provide for water associated with Aboriginal cultural values and uses,  
**Note.** The provisions in Part 7 provide opportunities for Aboriginal people to access water by allowing for the granting of an access licence of the subcategory 'Aboriginal cultural'.
  - (c) reserve a share of water to partially mitigate alterations to natural flow regimes in the water source,  
**Note.** The provisions in Division 1 of Part 10 partially mitigate the alterations to low, medium and high flows.
  - (d) reserve a share of water to maintain longitudinal and lateral connectivity with and between water sources.
- (4) The performance indicator used to measure the success of the strategies for achieving the broad Aboriginal cultural objective in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted Aboriginal cultural objectives in subclause (2) have contributed to achieving the broad objective.
- (5) The performance indicators used to measure the success of the strategies for achieving the targeted Aboriginal cultural objectives in subclause (2) are the changes or trends in Aboriginal cultural benefits during the term of this Plan as assessed using one or more of the following:
- (a) the use of water by Aboriginal people by measuring factors including:
    - (i) the extent to which native title rights are able to be exercised, consistently with any determination of native title or indigenous land use agreement,
    - (ii) the extent to which access to water has contributed to achieving Aboriginal cultural outcomes,
  - (b) the recorded range or extent of target populations of native fish,
  - (c) the recorded range or condition of target populations of riparian vegetation,
  - (d) the recorded values of water quality measurements including salinity, harmful
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algal blooms, total nitrogen, total phosphorus, pH, water temperature and dissolved oxygen.

- (6) In evaluating the effectiveness of the strategies in meeting the objectives of this clause, the following will be relevant:
- (a) the extent to which the strategies in subclause (3) and provisions in this Plan have been implemented and complied with,
  - (b) the extent to which changes in the performance indicators can be attributed to the strategies in subclause (3) and provisions in this Plan,
  - (c) the extent to which the strategies in subclause (3) support achievement of the Aboriginal cultural objectives,
  - (d) the water made available for Aboriginal cultural values and uses during the term of this Plan through available water determinations and the granting of new access licences,
  - (e) the extent to which external influences on water-dependent Aboriginal cultural activities during the term of this Plan have affected progress toward achieving the Aboriginal cultural objectives.

## 11 Social and cultural objectives

- (1) The broad social and cultural objectives of this Plan provide access to surface water to support water-dependent social and cultural values.
- (2) The targeted social and cultural objectives of this Plan are to maintain and where possible, enhance the following:
  - (a) access to water for basic landholder rights, town water supply and licensed domestic and stock purposes,
  - (b) access to water for water-dependent cultural, heritage and recreational uses, including recreational fishing,
  - (c) water quality within target ranges for basic landholder rights, town water supply, licensed domestic and stock purposes and water-dependent cultural, heritage and recreational uses, including recreational fishing.
- (3) The strategies for achieving the targeted social and cultural objectives of this Plan are as follows:
  - (a) provide water access for basic landholder rights, town water supply, and for licensed domestic and stock purposes,

**Note.** The provisions for the maintenance of water supply in Division 3 of Part 10 ensure that water is available for basic landholder rights, town water supply and licensed domestic and stock purposes.

- (b) reserve a share of water to partially mitigate alterations to natural flow regimes in the water source,
- (c) reserve a share of water to maintain longitudinal and lateral connectivity within and between water sources,

**Notes.** The provisions in Division 2 of Part 8 mitigate the alterations to medium and high flows in the Dumaresq River by protecting 25% of supplementary water events for the environment.

- (4) The performance indicator used to measure the success of the strategies for achieving the broad social and cultural objectives in subclause (1) is an evaluation of the extent to which the combined outcomes of the targeted social and cultural objectives in subclause (2) have contributed to achieving the broad objective.
- (5) The performance indicators used to measure the success of the strategies for achieving the targeted social and cultural objectives in subclause (2) are the changes or trends in social and cultural benefits during the term of this Plan as assessed under one or more of the following:
  - (a) the social and cultural uses of water during the term of this Plan by measuring factors including:
    - (i) the extent to which basic landholder, licensed domestic and stock rights have been met, and
    - (ii) the extent to which major utility and local utility access licence requirements have been met,
  - (b) the recorded range or extent of target populations of native fish that are important for recreational fishing,
  - (c) the recorded takes of native fish that are important for recreational fishing within legal age and size classes,
  - (d) the recorded values of water quality measurements including salinity, harmful algal blooms, total nitrogen, total phosphorus, pH, water temperature and dissolved oxygen.
- (6) In evaluating the effectiveness of the strategies in meeting the objectives of this clause, the following will be relevant:
  - (a) the extent to which the strategies in subclause (3) and provisions in the Plan have been implemented and complied with,
  - (b) the extent to which the changes in the performance indicators can be attributed to the strategies in subclause (3) and provisions in this Plan,
  - (c) the extent to which the strategies in subclause (3) support achievement of the social and cultural objectives,

- (d) the water made available during the term of this Plan through available water determinations and the granting of new licences,
- (e) the extent to which external influences on water-dependent social and cultural activities during the term of this Plan have affected progress toward achieving the social and cultural objectives.

**Note.** External influences may include trends in urban, agricultural and industrial development, social or cultural behaviour, climate or changes in policy or regulation.

## **Part 3 Bulk access regime**

### **12 Bulk access regime**

- (1) This Plan establishes a bulk access regime for the extraction of water under access licences, having regard to the following:
  - (a) the environmental water provisions established under Part 4,
  - (b) the requirements for water to satisfy basic landholder rights identified under Part 5,
  - (c) the requirements for water for extraction under access licences identified under Part 5,
  - (d) the access licence dealing provisions established under Part 9.
- (2) The bulk access regime:
  - (a) establishes rules according to which:
    - (i) access licences are granted as provided for in Part 7,
    - (ii) available water determinations are to be made as provided for in Part 6,
    - (iii) access licences are managed as provided for in Part 8, and
  - (b) establishes provisions with respect to the priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water due to an increase in long-term average annual extraction above the long-term average annual extraction limit or long-term average sustainable diversion limit in Part 6, and
  - (c) recognises, and is consistent with, the following:
    - (i) the limits to the availability of water as provided for in Part 6,
    - (ii) the water management principles set out in section 5 of the Act,
    - (iii) the effect of climatic variability on the availability of water as described in clause 13, and
  - (d) contains provisions with respect to the mandatory conditions imposed on access licences in Part 11.

### **13 Climatic variability**

This Plan recognises the effects of climatic variability on river flow in the water source through provisions contained in Part 6 that:

- (a) manage the sharing of water within the limits of water availability on a long-term basis, and

- (b) establish priorities according to which water allocations are to be adjusted as a consequence of any reduction in the availability of water due to an increase in extraction against the long-term average annual extraction limit or the long-term sustainable diversion limit, and
- (c) manage the sharing of water between categories of access licences on an annual basis through available water determinations.

**Note.** Other statutory tools are available to manage climatic variability within a water source, for example, temporary water restrictions under section 324 of the Act.

## Part 4 Environmental water provisions

**Note.** This Part is made in accordance with section 8 of the Act.

### 14 General

This Part contains environmental water provisions to commit, identify, establish and maintain planned environmental water.

**Note.** In accordance with the Act, planned environmental water is water that is committed by management plans for fundamental ecosystem health or other specified environmental purposes, either generally or at specified times or in specified circumstances and that cannot, to the extent committed, be taken or used for any other purpose.

### 15 Commitment and identification of planned environmental water

Water is committed and identified as planned environmental water by reference to the following:

- (a) the physical presence of water in the water source,
- (b) the long-term average annual commitment of water as planned environmental water.

### 16 Establishment and maintenance of planned environmental water

- (1) Planned environmental water is established in the water source as follows:
  - (a) the physical presence of water, resulting from the environmental flow provisions specified in Division 1 of Part 10,
  - (b) the long-term average annual commitment of water as planned environmental water, resulting from compliance with the long-term average annual extraction limit and the long-term average sustainable diversion limit in Part 6.
- (2) The planned environmental water established under subclause (1) (a) is maintained by the environmental flow provisions specified in Division 1 of Part 10.
- (3) The planned environmental water established under subclause (1) (b) is maintained by the provisions in Part 6.

**Note.** The provisions in Part 6 ensure that there will be water remaining in the water source over the long term by maintaining compliance with the long-term average annual extraction limit and the long-term sustainable diversion limit. The provisions in Part 6 also provide for lower available water determinations when either of the limits has been assessed to have been exceeded.

## Part 5 Requirements for water

### Division 1 General

#### 17 Application

- (1) This Part identifies the requirements for water for basic landholder rights and for extraction under access licences in the water source.
- (2) The volumes of water specified in this Part represent the estimated requirements for water to satisfy basic landholder rights and the total volumes or unit shares specified in the share components of all access licences on commencement of this Plan, excluding floodplain harvesting (regulated river) access licences which are estimated in clause 24A as at 1 July 2022.
- (3) This Plan recognises that requirements for water for basic landholder rights and the total share components of access licences may change during the term of this Plan.

**Notes.**

- 1 The total share components of access licences in the water source may change during the term of this Plan as a result of:
  - (a) the grant, surrender or cancellation of access licences in the water source, or
  - (b) the variation of local water utility licences under section 66 of the Act.
- 2 Basic landholder rights requirements may increase as provided for under the Act. This Plan manages changes in basic landholder rights and total share components of all access licences through provisions in Part 6 that manage the sharing of water within the limits of water availability.
- 3 Inherent water quality and land use activities may make the water in some areas unsuitable for human consumption. Water should not be consumed or otherwise used, without first being tested and, if necessary, appropriately treated to ensure it is fit for purpose. Testing and treatment is the responsibility of the water user.

### Division 2 Requirements for water for basic landholder rights

**Note.** Under the Act, basic landholder rights are defined as domestic and stock rights, native title rights and harvestable rights. There are no harvestable rights in the water source.

#### 18 Domestic and stock rights

It is estimated that at the time of commencement of this Plan the water requirements of persons entitled to domestic and stock rights total 8,000 megalitres per year (*ML/year*).

**Notes.**

- 1 Domestic and stock rights are set out in section 52 of the Act and must be exercised in accordance with any mandatory guidelines established under the Act on the taking and use of water for domestic consumption or stock watering.
- 2 Under section 331 of the Act, the Minister may direct the holder of a domestic and stock right to take specified measures to protect the environment, to preserve basic landholder rights or to overcome a threat to public health.
- 3 The volumes set out in this clause are separate from any volumes of water that may be taken under an access licence for domestic and stock purposes

## **Native title rights**

The requirement for water to satisfy native title rights is the water that may be taken in the exercise of native title rights in accordance with the *Native Title Act 1993* of the Commonwealth, including:

- (a) any determination of native title, and
- (b) any indigenous land use agreement.

### **Notes.**

- 1 No determinations of native title in relation to the water source have been made in accordance with the *Native Title Act 1993* of the Commonwealth.
- 2 This Plan provides for its amendment if there is an additional, or change to a, native title determination in accordance with the *Native Title Act 1993* of the Commonwealth by which water is required.
- 3 Native title rights may be exercised in accordance with the *Native Title Act 1993* of the Commonwealth, including section 211 of that Act.

## **Division 3 Requirements for water under access licences**

### **Notes.**

- 1 The share components in this Division include access licences with adaptive environmental water conditions as defined in section 8 of the Act, and other access licences intended to be used for environmental purposes. The Environmental Water Register maintained by the Department provides a record of these licences.
- 2 On the commencement of this Plan, there are six access licences with share components totalling 4,243 ML that are not identified as licensed environmental water as defined in section 8 of the Act but are intended to be used for environmental purposes. These are held by the Commonwealth Government. These access licences are regulated river (general security) access licences, regulated river (high security) access licences and supplementary water access licences.
- 3 This Division sets out the total volumes or unit shares in the share components of access licences in the water source on the commencement of this Plan. The actual volume of water available from year to year will depend on climate, access licence priority and the provisions in this Plan.

### **20 Share components of domestic and stock access licences**

It is estimated that at the time of commencement of this Plan the share components of domestic and stock access licences total 1,275 ML/year.

### **21 Share components of local water utility access licences**

It is estimated that at the time of commencement of this Plan the share components of local water utility access licences total 620 ML/year.

### **22 Share components of regulated river (high security) access licences**

It is estimated that at the time of commencement of this Plan the share components of regulated river (high security) access licences total 1,500 unit shares.

### **23 Share components of regulated river (general security—A class) access licences**

It is estimated that at the time of commencement of this Plan the share components of regulated river (general security—A class) access licences total 22,007 unit shares.

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**24 Share components of regulated river (general security—B class) access licences**

It is estimated that at the time of commencement of this Plan the share components of regulated river (general security—B class) access licences total 241,211 unit shares.

**24A Share components of floodplain harvesting (regulated river) access licences**

It is estimated that on 1 July 2022 the share components of floodplain harvesting (regulated river) access licences total 51,742 unit shares.

**25 Share components of supplementary water access licences**

It is estimated that at the time of commencement of this Plan the share components of supplementary water access licences total 120,000 unit shares.

## **Part 6 Limits to the availability of water**

**Note.** This Part sets out the rules for managing the availability of water for extraction in accordance with the following extraction limits:

- (a) a long-term average annual extraction limit, and
- (b) a long-term average sustainable diversion limit.

### **Division 1 Calculations under this Part**

#### **26 Exclusions, inclusions and variations in calculations**

- (1) This clause applies to the calculation of the following:
  - (a) the long-term average annual extraction limit under clause 27,
  - (b) the long-term average annual extraction under clause 28,
  - (c) the annual permitted take under clause 31,
  - (d) the annual actual take under clause 31.

**Note.** *Annual permitted take* and *annual actual take* are defined in the Dictionary.

- (2) Any calculation to which this clause applies must include allocations assigned to an access licence in the water source from an access licence in another water source under section 71T of the Act.
- (3) The calculation of the long-term average annual extraction limit under clause 27 must be adjusted by a volume that appropriately reflects the share components of water access licences in the water source that are subject to a dealing under section 71U of the Act.
- (4) For the avoidance of doubt, the following are not extraction for the purposes of calculations to which this clause applies:
  - (a) allocations assigned from an access licence in the water source to an access licence in another water source under section 71T of the Act,
  - (b) environmental water delivered under Division 1 of Part 10 of this Plan,
  - (c) delivery of replenishment flows in accordance with clause 58 of this Plan.
- (5) The calculation of long-term annual extraction under clause 28 must not include water taken under clause 43A.

### **Division 2 Long-term average annual extraction limit**

#### **27 Calculation of the long-term average annual extraction limit**

- (1) Following the end of each water year, the Minister must calculate the long-term average annual extraction limit for the water source in accordance with this clause and clause 26.

- (2) The long-term average annual extraction limit is the lesser of the following:
- (a) long-term average annual extraction calculated based on the following:
    - (i) the water storages and water use development that existed in the 2001/2002 water year, excluding that which is the subject of subclause (v),
    - (ii) the basic landholder rights and access licence share components that existed on 1 July 2009,
    - (iii) the rules set out in the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2009* as at 1 July 2009,
    - (iv) the level of development for plantation forestry that existed on 1 July 2009,
    - (v) the level of development for floodplain harvesting that existed in the 2001/2002 water year in connection with extractions from a regulated river in the water source, excluding the collection of rainfall run-off from an irrigated field by a tailwater drain, except where another work on the land, other than a tailwater drain, takes overland flow water, as assessed by the Minister,
  - (b) long-term average annual extraction calculated under Cap baseline conditions as agreed under the Murray-Darling Basin Agreement that was in place at the commencement of the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2009*.

**Note.** *Murray-Darling Basin Agreement* is defined in the Dictionary.

- (3) For the purposes of subclause (2), the long-term average annual extraction limit is to be calculated over the duration of available climate records using the plan limit hydrological computer model approved by the Minister.

**Notes.**

- 1 Under section 8F of the Act the long-term average annual extraction limit is taken to be varied by the amount of any change to the amount of water committed as licensed environmental water.
- 2 The long-term average annual extraction limit recognises the effect of climatic variability on the availability of water in accordance with section 20 (2) (c) of the Act, as historic climate and river flow information is used in its determination.
- 3 If a NSW water access licence is used in Queensland, by nominating works in Queensland, the extraction is still tagged to NSW when assessing compliance with the long-term average annual extraction limit.
- 4 ***Plantation forestry***, ***water storages*** and ***water use development*** are defined in the Dictionary.

## 28 Calculation of long-term average annual extraction

The Minister, using the current conditions hydrological computer model approved by the Minister, is to calculate the long-term average annual extraction following the end of

each water year, calculated over the duration of available climate records and based on the following:

- (a) the water storages and water use development that existed in that water year,
- (b) the basic landholder rights and access licence share components that existed in that water year,
- (c) the rules in this Plan or in the water sharing plan that this Plan replaces, that applied in that water year,
- (d) the level of development for plantation forestry in that water year.

**Note.** It is intended that the Department's current conditions hydrological computer model will be extended each water year and used to calculate long-term average annual extraction under this clause.

## **29 Assessment of compliance with the long-term average annual extraction limit**

- (2) Following the calculations under clauses 27 and 28, the Minister is to compare long-term average annual extraction against the long-term average annual extraction limit.
- (3) There is non-compliance with the long-term average annual extraction limit if the long-term average annual extraction exceeds the long-term average annual extraction limit by 3% or more.

## **Division 3 Long-term average sustainable diversion limit**

### **30 Calculation of the long-term average sustainable diversion limit**

- (1) Subject to any variation in accordance with subclause (2), the long-term average sustainable diversion limit for the water source is:
  - (a) the component of the baseline diversion limit for the NSW Border Rivers surface water SDL resource unit as determined under Schedule 3 of the Basin Plan, that in the Minister's opinion is attributable to the water source, minus
  - (b) 7,000 ML/year, minus
  - (c) the NSW Border Rivers surface water SDL resource unit shared reduction amount as determined under section 6.05 of the Basin Plan, plus
  - (d) the SDL adjustment amount as determined under section 6.05A of the Basin Plan
- (2) The long-term average sustainable diversion limit is to be varied as determined under Chapter 7 of the Basin Plan.

#### **Notes.**

- 1 **Baseline diversion limit, NSW Border Rivers surface water SDL resource unit, SDL resource unit shared reduction amount and SDL adjustment amount** are defined in the Dictionary.

- 2 The long-term sustainable diversion limit for the Border Rivers surface water SDL Resource Unit as specified in Schedule 2 of the Basin Plan covers extraction from both the NSW Border Rivers Regulated River Water Source and the Border Rivers Unregulated River Water Sources.
- 3 The subtraction of 7,000 ML/year, the SDL resource unit shared reduction amount and the SDL adjustment amount are prescribed in Schedule 2 of the Basin Plan.

### **31 Calculation of annual permitted take and annual actual take for the water year**

- (1) Following the end of each water year, the Minister is to calculate the annual permitted take and annual actual take of water for the previous water year in accordance with Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (2) For the purposes of the calculation, references to the SDL resource unit in Division 2 of Part 4 of Chapter 6 of the Basin Plan are taken to be references to the water source.

#### **Notes.**

- 1 Take of licensed environmental water and take under licences held by the Commonwealth Environmental Water Holder are not included in the calculation of annual permitted take and annual actual take as they fall outside the definition of take for consumptive use.
- 2 **Take** and **consumptive use** are defined in section 4 of the *Water Act 2007* of the Commonwealth.

### **32 Assessment of compliance with the long-term average sustainable diversion limit**

- (1) Following the calculation under clause 31 the Minister is to undertake an assessment of compliance with the long-term average sustainable diversion limit in accordance with the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (2) There is non-compliance with the long-term average sustainable diversion limit in the circumstances set out in Division 2 of Part 4 of Chapter 6 of the Basin Plan.

## **Division 4 Compliance with extraction and diversion limits**

### **33 Action following non-compliance**

- (1) Subject to subclauses (2) to (4C), if an assessment under clauses 29 or 32 demonstrates non-compliance with either the long-term average annual extraction limit or the long-term average sustainable diversion limit, the Minister must take one or more of the following actions:
  - (a) make future available water determinations for supplementary water access licences under clause 40 of less than 1 ML per unit share,
  - (b) reduce the limit on the amount of water allocation that may be taken under or assigned from regulated river (general security—A class) access licences and regulated river (general security—B class) access licences as specified in clause 42 (3),
  - (c) make future available water determinations for floodplain harvesting (regulated

river) access licences under clause 39A of less than 1 ML per unit share.

**Note.** Action under this clause will have effect from the water year following the assessment, which will be two water years after the non-compliance occurred.

- (2) The Minister may also take one or more of the actions specified in subclause (1) as a result of any action taken under clause 6.12 (5) of the Basin Plan.
- (3) Any action under subclauses (1) and (2) must only be taken to the extent to which, and only for as long as, the Minister considers the following is necessary:
  - (a) in the case of non-compliance with the long-term average annual extraction limit—to return long-term average annual extraction in the water source to the long-term average annual extraction limit, or
  - (b) in the case of non-compliance with the long-term average sustainable diversion limit—to meet the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan, or
  - (c) in the case where non-compliance with the long-term average sustainable diversion limit would have occurred but for a reasonable excuse to meet the requirements of Division 2 of Part 4 of Chapter 6 of the Basin Plan.
- (3A) The Minister must only take action under subclause (1) (a) if total extractions (excluding extractions under floodplain harvesting (regulated river) access licences) exceed the sum of the amounts under clause 27 (2) (a) (i) to (iv).
- (4) The Minister must only take action under subclause (1) (b) if:
  - (a) the Minister has taken action under subclause (1) (a) and made an available water determination of zero for supplementary water access licences, and
  - (b) there is the same proportional reduction to the limit that may be taken under or assigned from for both regulated river (general security—A class) access licences and regulated river (general security—B class) access licences under clause 42 (3).
- (4A) In taking action under subclause (1) (a) and (b), the Minister must have regard to the extent that total extractions (excluding extractions under floodplain harvesting (regulated river) access licences) have exceeded the sum of the amounts under clause 27 (2) (a) (i) to (iv).
- (4B) The Minister must only take action under subclause (1) (c):
  - (a) if the total extractions under floodplain harvesting (regulated river) access licences exceeds the amount under clause 27 (2) (a) (v), and
  - (b) having regard to the extent that total extractions under floodplain harvesting (regulated river) access licences have exceeded the amount under clause 27 (2)

(a) (v).

- (4C) Subclauses (1) (c), (3A), (4A) and (4B) only apply if floodplain harvesting (regulated river) access licences have been issued in the water source.
- (5) Before taking any action under this clause, the Minister may consult with water user representatives, the NSW Environmental Water Manager and the operator regarding the following:
- (a) the data used for the calculations under Divisions 2 and 3,
  - (b) the proposed actions under this Division.

## **Division 5 Available water determinations**

### **34 General**

- (1) Available water determinations for access licences are to be expressed as one of the following:
- (a) for an access licence specifying the share component in ML/year—a percentage of the share component,
  - (b) for an access licence specifying the share component as a number of unit shares— ML per unit share.
- (2) The sum of available water determinations made for any access licence, other than for regulated river (general security—B class) access licences and floodplain harvesting (regulated river) access licences must not exceed the following in any water year:
- (a) for any access licence where share components are specified as ML/year— 100% of the share component,
  - (b) for any access licence specifying the share component as a number of unit shares— 1 ML per unit share of the share component or any lower limit determined under clause 33.

### **35 Available water determinations for domestic and stock access licences**

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 100% of the access licence share component is to be made for domestic and stock access licences.

### **36 Available water determinations for local water utility access licences**

Unless the Minister otherwise determines, at the commencement of each water year an available water determination of 100% of the access licence share component is to be made for local water utility access licences.

**37 Available water determinations for regulated river (high security) access licences**

- (1) Unless the Minister otherwise determines and subject to subclause (2), at the commencement of each water year an available water determination is to be made for regulated river (high security) access licences of 1 ML per unit share.
- (2) The Minister must not make an available water determination in accordance with this clause unless sufficient water is available for all of the following:
  - (a) to meet the provisions in Division 1 of Part 10,
  - (b) to meet the requirements for basic landholder rights,
  - (c) to make available water determinations totaling 100% of access licence share components for both domestic and stock access licences and local water utility access licences,
  - (d) to provide for existing water allocations in the water allocation accounts of regulated river (general security—A class) access licences and regulated river (general security—B class) access licences,
  - (e) to account for water losses associated with holding and delivering the water:
    - (i) to be made available as a result of the available water determinations made in accordance with subclause (1), and
    - (ii) referred to in paragraphs (a) to (d) above.

**Note.** If the available water determination is less than 1 ML per unit share, the Minister may conduct further assessments of available water resources and may make further available water determinations subject to clause 34 (2).

**38 Available water determinations for regulated river (general security—A class) access licences**

- (1) At the commencement of each water year, and at least monthly, the Minister is to assess if water is available for the making of an available water determination for regulated river (general security—A class) access licences.
- (2) For the purposes of the assessment, water is not available unless sufficient water is available for all of the following:
  - (a) to meet the provisions in Division 1 of Part 10,
  - (b) to meet the requirements for basic landholder rights,
  - (c) to make available water determinations totaling 100% of access licence share components for both domestic and stock access licences and local water utility access licences,
  - (d) to make available water determinations totaling 1 ML per unit share for regulated

- river (high security) access licences,
- (e) to provide for existing water allocations in the water allocation accounts of regulated river (general security—A class) access licences and regulated river (general security—B class) access licences, and
  - (f) to account for water losses associated with holding and delivering the water:
    - (i) to be made available as a result of the available water determination made in accordance with subclause (3), and
    - (ii) referred to in paragraphs (a) to (e) above.
- (3) If the Minister assesses under subclause (1) that water is available, the Minister is to consider making an available water determination for regulated river (general security—A class) access licences.

**39 Available water determinations for regulated river (general security—B class) access licences**

- (1) At the commencement of each water year, and at least monthly the Minister is to assess if water is available for the making of an available water determination for regulated river (general security—B class) access licences.
- (2) For the purposes of the assessment, water is not available unless sufficient water is available for all of the following:
  - (a) to meet the provisions in Division 1 of Part 10,
  - (b) to meet the requirements for basic landholder rights,
  - (c) to make available water determinations totaling 100% of access licence share components for both domestic and stock access licences and local water utility access licences,
  - (d) available water determinations totaling 1 ML per unit share for regulated river (high security) access licences,
  - (e) available water determinations totaling 1 ML per unit share for regulated river (general security—A class) access licences,
  - (f) to provide for existing water allocations in the water allocations of regulated river (general security—A class) access licences and regulated river (general security—B class) access licences, and
  - (g) to account for water losses associated with holding and delivering the water:
    - (i) to be made available as a result of the available water determination made in accordance with subclause (3), and

- (ii) referred to in subclauses (a) to (f) above.
- (3) If the Minister assesses under subclause (1) that water is available, the Minister is to consider making an available water determination for regulated river (general security—B class) access licences.

### **39A Available water determinations for floodplain harvesting (regulated river) access licences**

At the commencement of each water year, the Minister is to make an available water determination for floodplain harvesting (regulated river) access licences of 1 ML per unit share, unless a lower amount is determined under clause 33.

**Note.** The Minister may also make an available water determination for floodplain harvesting (regulated river) access licences other than at the commencement of a water year pursuant to section 59 of the Act. For example, if floodplain harvesting (regulated river) access licences are issued after 1 July.

### **40 Available water determinations for supplementary water access licences**

At the commencement of each water year, the Minister is to make an available water determination for supplementary water access licences of 1 ML per unit share, unless a lower amount is determined under clause 33.

**Note.** Taking of water under a supplementary water access licence is subject to Division 2 of Part 8.

## Part 7 Rules for granting access licences and water supply work approvals

### Notes.

- 1 This Part is made in accordance with sections 61 and 63 of the Act. Section 61 of the Act provides for applications for specific purpose access licences in accordance with the regulations and the relevant water sharing plan.
- 2 Access licences granted in the water source will be subject to mandatory conditions required to be imposed by this Plan, the regulations and the Act, and may also be subject to discretionary conditions.

### 41 Specific purpose access licences

- (1) The Minister must not grant a specific purpose access licence unless satisfied that the share and extraction components of the access licence are the minimum required for the proposed use.
- (2) A person may make an application for a regulated river (high security) (Aboriginal cultural) access licence only if the share component of the proposed access licence is no greater than 10 ML/year.
- (3) The Minister may only grant a regulated river (high security) (Aboriginal cultural) access licence for the taking of water by an Aboriginal person or Aboriginal community for any personal, domestic or communal purpose, including drinking, food preparation, washing, manufacturing traditional artefacts, watering domestic gardens, cultural teaching, hunting, fishing, gathering and for recreational, cultural and ceremonial purposes.

**Note.** *Aboriginal person* is defined in the Dictionary.

### 41A Rules for water supply works located near flood-dependent areas

- (1) A water supply work approval must not be granted if the water supply work is to be:
  - (a) nominated by a floodplain harvesting (regulated river) access licence, and
  - (b) located within the Border Rivers Management Zone A or Border Rivers Management Zone D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*.

### Notes.

- 1 Border Rivers Management Zone A includes areas of the Floodplain where a significant discharge of floodwater occurs during floods, with relatively high flood flow velocity and depth.
  - 2 Border Rivers Management Zone D is a special protection zone for areas of ecological or cultural significance, or both.
  - 3 An overview of Border Rivers Management Zone A and Border Rivers Management Zone D are shown in Appendix 1.
- (2) A water supply work approval must not be amended to add a work to which the approval relates if:

- (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence, and
  - (b) the water supply work proposed to be added is not located on the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*.
- Note.** An overview of Border Rivers Valley Floodplain is shown in Appendix 2.
- (3) A water supply work approval must not be amended to add a work to which the approval relates if:
- (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence, and
  - (b) the water supply work proposed to be added is located within Border Rivers Management Zone A or Border Rivers Management Zone D (as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*).
- (4) A water supply work approval must not be amended if all of the following apply:
- (a) the water supply works currently subject to the approval are nominated by a floodplain harvesting (regulated river) access licence,
  - (b) amending the water supply work approval would increase the capability of water supply works subject to the approval to take water within Border Rivers Management Zone A or Border Rivers Management Zone D (as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*), and
  - (c) the increase in capability is not a result of adding a water supply work that is or was previously nominated by that floodplain harvesting (regulated river) access licence.
- (5) Subclauses (2), (3) and (4) do not apply if all of the following apply:
- (a) the applicant was determined to be eligible for a replacement floodplain harvesting access licence under Division 1 of Part 2A of the *Water Management (General) Regulation 2018*,
  - (b) the work was constructed on or before 12 February 2021, but was not the subject of a water supply work approval prior to that date,
  - (c) if the work is also a flood work, the work is subject to a flood work approval, and
  - (d) the work is the subject of an application for the grant or amendment of a water supply work approval which was made prior to 31 December 2022.

**Note:** *Replacement floodplain harvesting access licences* is defined in section 57A of

the Act.

## **Part 8      Operation of water allocation accounts and managing access licences**

### **Notes.**

- 1      Section 85 of the Act and the regulations provide for the keeping of water allocation accounts for access licences. The provisions in this Part restrict the water that may be taken under, or assigned from, an access licence over a specified period of time, and the unused water allocations in water allocation accounts that may be carried over from one water year to the next. These restrictions are in addition to any other limits on access licences for the taking or assignment of water. It is an offence under section 60C of the Act to take water under an access licence for which there is no or insufficient water allocation.
- 2      The provisions in this Part apply to the following:
  - (a)    the Minister in managing water allocation accounts,
  - (b)    the access licence holder, as required by mandatory conditions imposed on the access licence under Part 11.

### **Division 1    Water allocation account management rules**

#### **42    Credits to and debits from an individual water allocation account**

- (1)    For an access licence other than a supplementary water access licence or a floodplain harvesting (regulated river) access licence, the Minister must debit the greater of the following from the water allocation account for that access licence:
    - (a)    the volume of water extracted by water supply works nominated by the access licence,
    - (b)    the water ordered for extraction under the access licence.
  - (2)    For a supplementary water access licence, the Minister must, in accordance with any applicable supplementary water announcement, debit the volume of water extracted by the water supply works nominated by the access licence from the water allocation account for that access licence.
  - (2A)   For a floodplain harvesting (regulated river) access licence, the Minister must debit the volume of water extracted during a notified measurement period by the water supply works nominated by the access licence from the water allocation account for that access licence, except where subclause (2B) applies.
  - (2B)   For a floodplain harvesting (regulated river) access licence, the Minister must not debit the volume of water extracted in accordance with clause 43A from the water allocation account for that access licence.
  - (3)    For a regulated river (general security—A class) access licence or regulated river (general security—B class) access licence, the total water allocation that is taken, or assigned under section 71T of the Act, or otherwise debited or withdrawn, from the water allocation account of the licence in a water year, must not exceed:
    - (a)    1 ML per unit share or any lower amount determined in accordance with clause 33, plus
-

- (b) any water allocations assigned to the water allocation account for the access licence under section 71T of the Act in that water year, plus
- (c) any water allocations recredited to the water allocation account for the access licence in accordance with section 76 of the Act in that water year.

#### **43 Limits on water allocation accounts and carryover**

- (1) The Minister must not allow allocations in a water allocation account to exceed the following at any time:
  - (a) for a domestic and stock access licence or local water utility access licence—100% of the share component,
  - (b) for a regulated river (high security) access licence, regulated river (general security—A class) access licence or regulated river (general security—B class) access licence—1 ML per unit share,
  - (c) for a floodplain harvesting (regulated river) access licence—5 ML per unit share.
- (2) The Minister must not carry over water allocations remaining in a water allocation account from one water year to the next water year for the following categories of licence:
  - (a) domestic and stock access licence,
  - (b) local water utility access licence,
  - (c) regulated river (high security) access licence,
  - (d) supplementary water access licence.
- (3) The Minister must not allow allocations in a water allocation account of a supplementary water access licence to exceed:
  - (a) 1 ML per unit share of the access licence component, plus
  - (b) any water allocations assigned to the access licence under section 71T of the Act, minus
  - (c) any water allocations assigned from the access licence under section 71T of the Act.
- (4) Subject to subclause (1), water allocations remaining in a water allocation account must be carried over from one water year to the next water year for the following categories of licence:
  - (a) regulated river (general security—A class) access licence,
  - (b) regulated river (general security—B class) access licence,
  - (c) floodplain harvesting (regulated river) access licence.

## **Division 1A Taking of water under floodplain harvesting (regulated river) access licences**

### **43A Taking of uncontrolled flows under floodplain harvesting (regulated river) access licences**

#### **Notes.**

- 1 This clause is made under section 85A of the Act.
- 2 **Uncontrolled flow, irrigated field** and **tailwater drain** are defined in the Dictionary.
- 3 **Overland flow water** is defined in section 4A of the Act.
  - (1) This clause does not apply if an exemption from section 60A (1) and (2) of the Act is in force in relation to the taking of water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field.
  - (2) The Minister may, by order published on the Department's website, authorise the holders of floodplain harvesting (regulated river) access licences to take water from uncontrolled flows that have not been credited to the water allocation accounts of the licences in accordance with the rules in this clause.
  - (3) This clause only authorises the taking of water from uncontrolled flows if:
    - (a) the water from the uncontrolled flows is captured by means of a tailwater drain, and
    - (b) no other work, other than a tailwater drain, is taking overland flow water at the time the tailwater drain is capturing uncontrolled flows.

### **43B Taking of water under floodplain harvesting (regulated river) access licences**

- (1) For the purposes of this clause **Menindee Lakes Storage** has the same meaning as it does under the Murray-Darling Basin Agreement.,
- (2) The taking of water under a floodplain harvesting (regulated river) access licence, other than in accordance with clause 43A, may only occur if the Minister has announced that the taking of overland flow water is permitted.
- (3) The Minister must not announce that the taking of overland flow water is permitted if the volume of water stored in Menindee Lakes Storage is less than 195 gigalitres.
- (4) Subclause (3) does not apply during periods for which, in the Minister's opinion, the flow in the Barwon River at Mungindi gauge (416 001) will remain at or above 3,000 ML/day.

## **Division 2 Supplementary water events**

#### **Notes.**

- 1 This Division is made under section 70 of the Act.
  - 2 **Supplementary water event** is defined in the Dictionary.
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#### 44 Taking of water under supplementary water access licences

The holder of a supplementary water access licence may only take water in accordance with supplementary water event announcements made by the Minister that are relevant to that licence.

#### 45 Announcement of supplementary water event (general)

- (1) The Minister may announce a supplementary water event:
    - (a) if, in the Minister's opinion, there will be uncontrolled flows in the river segment to which the announcement applies, and
    - (b) in accordance with the rules specified in this clause and clauses 46 and 47.
  - (2) A supplementary water event is not to be announced, or is to be limited, for supplementary water access licences nominating water supply works on the Macintyre River when in the Minister's opinion it is necessary to do so to ensure that outflows from the water source contribute to meeting the requirements of the flow targets under clause 2 of Schedule 1 (*the Barwon Darling Flow Targets*).
  - (3) Action under subclause (2) must not substantially alter the long-term average annual total amount of water able to be extracted under supplementary water access licences in the water source.
  - (4) The Minister must, in making an announcement:
    - (a) in relation to the Dumaresq River, ensure the volume of uncontrolled flow will be shared equally between NSW and Queensland,  
**Note.** This rule is consistent with section 31 (viii) of the IGA.
    - (b) consider whether and how access opportunities can be evenly shared between all holders of supplementary water access licences,
    - (c) ensure the amount specified under subclause (5) does not allow the extraction of over 75% of the uncontrolled flow volume in the Barwon River at Mungindi gauge (416001),  
**Note.** This rule is consistent with section 33 of the IGA and ensures that 25% of uncontrolled flows are protected for the environment.
    - (d) between, and including, 1 September and 31 March, ensure that the amount that may be taken under subclause (4) (c) does not cause the uncontrolled flow in the Barwon River at Mungindi gauge (416001) to be less than or equal to 100 ML/day.  
**Note.** This rule is consistent with section 32 of the IGA and has the objective of improving low flows at the end of the Border Rivers system to support a healthy riverine environment.
  - (5) An announcement must include the following:
    - (a) the segments of the water source and the licences to which the announcement
-

applies,

- (b) the start or end date, or both, of the supplementary water event,
- (c) the amount of water that may be taken by each holder of a supplementary water access licence to which the announcement applies (to be expressed as a number of ML per unit share plus any water allocations traded into the account and minus any water allocations traded out of the account).

**46 Announcement of supplementary water events upstream of the Macintyre River and Dumaresq River junction**

- (1) This clause applies to supplementary water event announcements for:
  - (a) licences that nominate a water supply work located upstream of the junction of the Macintyre River and Dumaresq River, excluding those listed in Schedule 2, and
  - (b) licences listed in Schedule 3 that nominate a water supply work located downstream of the junction of the Macintyre River and Dumaresq River.
- (2) A supplementary water event must not be announced for supplementary water access licences specified in subclause (1) unless uncontrolled flows are greater than or equal to the volumes specified in Column 3 of Table A for the segment of the water source specified in Column 1 of Table A during the period specified in Column 2 in Table A, when measured at the flow reference point specified in Column 5 of Table A.
- (3) A supplementary water event must cease to be announced for supplementary water access licences specified in subclause (1) when uncontrolled flows are less than the volumes specified in Column 4 of Table A for the segment of the water source specified in Column 1 of Table A during the period specified in Column 2 in Table A, when measured at the flow reference point in column 5 of Table A.

**Table A Supplementary water event start and finish flows**

<b>Column 1: Segment of the water source</b>	<b>Column 2: Period</b>	<b>Column 3: Supplementary water event start flow (ML/day)</b>	<b>Column 4: Supplementary water event finish flow (ML/day)</b>	<b>Column 5: Flow reference point</b>
Pindari Dam to the Macintyre River and Dumaresq River junction	1 September to 31 March, inclusive	500	150	Severn River at Ashford gauge (416006)
		1,000	250	Macintyre River at Holdfast (Yelarbon crossing) gauge (4126012)
	1 April to 31 August, inclusive	100	50	Severn River at Ashford gauge (416006)
		150	50	Macintyre River at Holdfast (Yelarbon crossing) gauge (4126012)
Dumaresq River and Pike Creek junction to the Dumaresq River and Macintyre River junction	1 September to 31 March, inclusive	750	250	Dumaresq River at Glenarbon Weir gauge (416040)
	1 April to 31 August, inclusive	150	50	

- (4) For the purposes of this clause, the supplementary water access licences listed in the Table to Schedule 3, are to be considered to be part of the following segments of the water source:
- (a) Pindari Dam to the Macintyre River and Dumaresq River junction if the uncontrolled flow originates from the Macintyre River, and
  - (b) Dumaresq River and Pike Creek junction to the Dumaresq River and Macintyre River junction if the uncontrolled flow originates from the Dumaresq River.
- (5) Supplementary water event announcements made in accordance with this clause must specify that the water taken under a supplementary water access licence:
- (a) may only be used for irrigation directly after being taken, and

- (b) must not be pumped into on-farm storages, and
- (c) must not exceed 6 ML/day per water supply work (pump).

**47 Announcement of supplementary water events downstream of the Macintyre River and Dumaresq River junction**

- (1) This clause applies to supplementary water event announcements for:
  - (a) licences that nominate a water supply work located downstream of the junction of the Macintyre River and Dumaresq River, excluding those listed in Schedule 3, and
  - (b) licences listed in Schedule 2 that nominate a water supply work located upstream of the junction of the Macintyre River and Dumaresq River.
- (2) A supplementary water event must not be announced for the licences to which this clause applies unless, when measured at the reference point in Column 4 of Table B, the uncontrolled flows that originate from the segment of the water source specified in Column 1 of Table B are, or in the Minister's opinion will be, greater than or equal to the volumes specified in Column 2 of Table B over two consecutive days for the segment of the water source specified in Column 1 of Table B.
- (3) A supplementary water event must cease to be announced for supplementary water access licences specified in subclause (1) when uncontrolled flows are less than the volumes specified in Column 3 of Table B over two consecutive days for the segment of the water source specified in Column 1 of Table B, when measured at the reference point in Column 4 of Table B.

**Table B — Supplementary water event start and finish flows**

<b>Column 1: Segment of the water source</b>	<b>Column 2: Supplementary water event start flow (ML over two consecutive days)</b>	<b>Column 3: Supplementary water event finish flow (ML over two consecutive days)</b>	<b>Column 4: Flow reference point</b>
Upstream of Goondiwindi	10,000	3,650	Goondiwindi gauge (416201A)
Downstream of Goondiwindi	2,000	1,550	Combined flow from Macintyre River at Kanowna gauge (416048) and Weir River at Mascot gauge (416207A)

**Notes.**

- 1 These flow targets are consistent with section 3 (iii) and (iv) of Schedule D of the IGA.
- 2 The two-day flow at Goondiwindi is the 24-hour flow at Goondiwindi on the day of the assessment plus the flow for the previous 24 hours in the Macintyre Brook at Booba Sands plus the Dumaresq River at Glenarbon Weir plus the Macintyre River at Holdfast.
- 3 The supplementary water event finish flow volume for upstream of Goondiwindi was developed to ensure an end of system flow consistent with section 23 of IGA.

## Part 9 Access licence dealing rules

### Notes.

- 1 Access licence dealings in the water source are subject to the provisions of the Act, the regulations, any access licence dealing principles established by order made under section 71Z of the Act and the access licence dealing rules established under this Part.
- 2 At the commencement of this Plan the *Access Licence Dealing Principles Order 2004* applies. The access licence dealing principles prevail over the access licence dealing rules in this Plan to the extent of any inconsistency, as provided by section 71Z (3) of the Act.
- 3 This Part may be amended if individual daily extraction components are imposed on access licences in the water source.

### 48 Conversion of access licence to new category

Dealings under section 71O of the Act are prohibited.

### 49 Assignment of rights dealings (within the water source or within a water management area)

- (1) A dealing under section 71Q of the Act is prohibited if:
  - (a) the dealing involves an assignment of rights to a supplementary water access licence that nominates a water supply work located upstream of the junction of the Macintyre River and Dumaresq River, and
  - (b) that assignment would cause the sum of the share components of all supplementary water access licences that nominate a water supply work located upstream of the junction of the Macintyre River and Dumaresq River to exceed 40,000 unit shares.

**Note.** The 40,000 unit shares specified in the clause above represents the total share components of supplementary water access licences that nominated a water supply work upstream of the junction of the Macintyre and Dumaresq rivers at the commencement of the *Water Sharing Plan for the NSW Border Rivers Regulated River Water Source 2009*.
- (1A) A dealing under section 71Q of the Act is prohibited if the dealing involves an assignment of rights to a floodplain harvesting (regulated river) access licence that nominates a water supply work:
  - (a) not located within the Border Rivers Valley Floodplain (as declared under clause 252 of the *Water Management (General) Regulation 2018*) unless the work was nominated by the licence when the licence was first issued in the water source, or
  - (b) located within the Border Rivers Management Zone A or Border Rivers Management Zone D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020* unless the work was nominated by the licence when the licence was first issued in the water source, or
  - (c) located on a natural pool, lagoon, lake or wetland specified in Schedule 5 or 6 of the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012* unless the work was nominated by the licence when the licence was

first issued in the water source.

- (2) A dealing under section 71Q of the Act that is from or to an access licence in another water source is prohibited.

## **50 Amendment of share components dealings (change of water source)**

Dealings under section 71R of the Act are prohibited.

## **51 Assignment of water allocations dealings**

A dealing under section 71T of the Act is prohibited in any of the following circumstances:

- (a) the dealing involves an assignment of water allocation to a supplementary water access licence from an access licence of any another category,

**Note.** At the commencement of this Plan, dealings under section 71T of the Act involving the assignment of water allocations from a supplementary water access licence to an access licence of any other category under are also prohibited under clause 17 of the *Access Licence Dealing Principles Order 2004*.

- (b) the dealing involves an assignment of water allocation to or from an access licence in the water source from or to an access licence in another water source,
- (c) the dealing involves an assignment of water allocation to or from a floodplain harvesting (regulated river) access licence.

## **52 Interstate access licence transfer and assignment of water allocation**

- (1) Dealings under section 71U of the Act are prohibited unless administrative arrangements have been put in place by New South Wales and Queensland and the interstate transfer of access licences is made in accordance with these arrangements.
- (2) Dealings under section 71V of the Act are prohibited unless administrative arrangements have been put in place by New South Wales and Queensland and the interstate transfer of access licences is made in accordance with these arrangements.

## **53 Nomination of water supply works dealings**

- (1) A dealing under section 71W of the Act is prohibited if it involves an access licence being amended to nominate a water supply work located in a different water source within NSW to that specified in the share component of the access licence.
- (1A) A dealing under section 71W of the Act is prohibited if it involves a floodplain harvesting (regulated river) access licence being amended to nominate a water supply work located:
  - (a) outside the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*, or
  - (b) within the Border Rivers Management Zone A or Border Rivers Management Zone

D, as established under clause 5 of the *Floodplain Management Plan for the Border Rivers Valley Floodplain 2020*, or

- (c) on a natural pool, lagoon, lake or wetland that is specified in Schedule 5 or 6 of the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012*.
- (2) A dealing under section 71W of the Act is prohibited if it involves an access licence being amended to nominate a water supply work located in Queensland, except where:
- (a) the water supply work in Queensland takes water from a river that is regulated by Glenlyon Dam or Coolmunda Dam, and
  - (b) administrative arrangements have been put in place by New South Wales and Queensland and the nomination of the water supply work is to in accordance with these arrangements.
- (3) A dealing under section 71W of the Act is prohibited if it involves a Queensland water licence or other water entitlement or authorisation nominating a water supply work in the water source, except where:
- (a) the Queensland water licence or other water entitlement or authorisation is permitted to extract water from a river that is regulated by Glenlyon Dam and Coolmunda Dam, and
  - (b) administrative arrangements have been put in place by New South Wales and Queensland and the nomination of the water supply work in the water source is made in accordance with these arrangements.

## Part 10 System operation rules

**Note** *NSW Environmental Water Manager* and *operator* are defined in the Dictionary.

### Division 1 Environmental flow rules

#### 54 Daily environmental release

- (1) The operator must make a daily environmental release from Pindari Dam of either of the following amounts, whichever is greater:

- (a) 10 ML per day,
- (b) the daily inflow to Pindari Dam water storage,

but it must be no more than 50ML per day between, and including, 1 September and 31 May, or 200ML per day between, and including, 1 June and 31 August.

**Note.** The effect of subclause (1) is that the minimum daily environmental release must be the same as the volume of the inflow into Pindari Dam, up to the maximums set out in paragraph (a) or (b). However, if the inflow is less than 10 ML/day, a release of 10 ML/day must be made.

- (2) The water released under this clause must not be used by the operator to meet basic landholder requirements and access licence water orders between Pindari Dam and the junction of the Severn River and Frazers Creek.
- (3) Unless subclause (1) is suspended by an order made under section 49A or 49B of the Act, if for operational reasons the amounts in subclause (1) are not released, the operator must release any outstanding amount at a later date in accordance with a plan prepared by the NSW Environmental Water Manager and approved by the Minister.

#### 55 Stimulus flow

- (1) The operator is to maintain an account of water set aside for a stimulus flow (*stimulus flow account*) as set out in this clause.

**Note.** The stimulus flow will be used to mirror a naturally occurring hydrograph, target pre-season cues to fish breeding and to regularly wet and inundate interconnected riparian areas.

- (2) At the start of each water year, the operator is required to undertake the following:
  - (a) credit the stimulus flow account with 4000 ML,
  - (b) set aside sufficient water in Pindari Dam water storage to account for the water in the stimulus flow account.
- (3) The operator must release water in the stimulus flow account (*stimulus flow*) from Pindari Dam in accordance with an order made by the NSW Environmental Water Manager and any procedures established by the Minister with the concurrence of the Minister for the Environment, but only if:
  - (a) an inflow to Pindari Dam water storage of greater than 1,200 ML per day has

occurred on any day between, and including, 1 April and 31 August,

- (b) except where subclause (4) applies, the order requests that water in the stimulus flow account is released between, or including, 1 August and 1 December, and
  - (c) the order for the release of the stimulus flow was made at least seven days prior to the release.
- (4) The Minister may permit the release of the stimulus flow outside of the dates specified in subclause (3) (b) if the Minister has considered advice from the NSW Environmental Water Manager on the need to permit stimulus flows outside of those dates.
- (5) The NSW Environmental Water Manager must submit the order for the release of the stimulus flow water to the operator at least seven days prior to the release.
- Note.** The NSW Environmental Water Manager will consult with the Environmental Water Advisory Group on any releases proposed to be made in accordance with subclause (3) and (4).
- (6) In determining the timing, rate, volume and duration of the stimulus flow released under subclause (3), the Minister and the NSW Environmental Water Manager must consider all of the following:
- (a) antecedent conditions,
  - (b) irrigation demand,
  - (c) flows in the water source,
  - (d) the ability to monitor environmental outcomes.
- (7) The operator is to debit from the stimulus flow account by the amount of stimulus flow released under subclause (3).
- (8) The operator is to carryover any water remaining in the stimulus flow account at the end of the water year to the next water year, subject to the total amount of water in the stimulus flow account not exceeding 8,000 ML.
- (9) The stimulus flow must not be used by the operator to meet basic landholder requirements and access licence water orders between Pindari Dam and the junction of the Macintyre River and Dumaresq River.

## Division 2 Consultation

### 56 Consultation

The NSW Environmental Water Manager may consult with any government agency or the EWAG established for the water source, or both, and consider any relevant advice before taking action under this Plan.

## Division 3 General system operation rules

### 57 Maintenance of water supply

- (1) In this clause, the period of lowest accumulated inflows to the water source is identified by flow information held by the Department prior to 1 July 2009.
- (2) The operator must operate the water supply system in such a way that water would be able to be supplied during a repeat of the period of lowest accumulated inflows to the water source, to meet the following:
  - (a) the annual water requirements of persons exercising domestic and stock rights and native title rights,
  - (b) available water determinations of 100% of share components for domestic and stock access licences and local water utility access licences,
  - (c) available water determinations of 1 ML per unit share for regulated river (high security) access licences.
- (3) For the purpose of subclause (2), the operator must set aside sufficient volumes of water from inflows into the water source and in reserves held in Pindari Dam and Glenlyon Dam water storages.

**Note. Reserves** is defined in the Dictionary.

- (4) During the first 5 years of this plan, the Minister will undertake a review of this clause that considers the following:
  - (a) options for redefining the period of lowest accumulated inflows to the water source,
  - (b) whether different periods should apply to different categories of access licences,
  - (c) the impact of any options for change on planned environmental water and each category of access licence, and
  - (d) the views of stakeholders and the broader community.
- (5) On the basis of the review referred to in subclause (4), the Minister may make such amendments to this clause as are reasonably necessary to not jeopardise the critical needs of basic landholder rights, domestic and stock access licence holders and local water utility access licence holders.
- (6) Any amendments made under subclause (5) cannot substantially alter the long-term average annual amount of water able to be extracted under water access licences.

**Notes.**

- 1 If satisfied that it is in the public interest to do so, the Minister may amend this clause under s.45 (1) (a) of the Act to such an extent that it substantially alters the long-term average annual amount of water able to be extracted under water access licences. If this

occurs, compensation may be payable under chapter 3 Part 2 Division 9 of the Act.

- 2 Section 10.28 of the Basin Plan requires that a water resource plan must ensure there is no net reduction in the protection of planned environmental water from the protection provided under State water management law immediately before the commencement of the Basin Plan.

## 58 Replenishment flows

- (1) Unless the operator otherwise determines, the operator is to provide a replenishment flow for domestic and stock purposes of up to 10,000 ML per water year to the Boomi River.
- (2) The operator must set aside sufficient volumes of water from inflows into the water source and ensure that water is held in reserves in Pindari Dam and Glenlyon Dam water storages to provide for the replenishment flow referred to in subclause (1).

### Notes.

- 1 The circumstances under which the replenishment flow specified in subclause (1) are to be provided will be specified as conditions on the water supply work approval held by Water NSW.
- 2 The operator may use tributary inflows to the water sources to provide the replenishment flow specified in subclause (1).

## 59 Water delivery and channel capacity constraints

In managing the water supply system, the operator must consider, determine and specify the operating channel capacities throughout the water source after taking into account the following, and in accordance with any procedures established by the Minister.

- (a) inundation of private land or interference with access,
- (b) the effects of inundation on the floodplain and associated wetlands,
- (c) the transmission losses expected to occur,
- (d) the capacity of structures in the water supply system.

**Note.** *transmission losses* is defined in the Dictionary.

## 60 Priority of delivery for access licences

Following any release of the stimulus flow under clause 55, if supply capability due to channel capacity is insufficient in any segment of the water source to satisfy all water orders and basic landholder rights, the following rules of priority apply:

- (a) the operator is to give first priority to the requirements for water to satisfy basic landholder rights,
- (b) once the requirements in (a) have been met, the operator is to supply water to domestic and stock access licences, local water utility access licences and regulated river (high security) access licences that have placed orders for water, in that order, and

- (c) once the requirements in (b) have been met, unless otherwise directed by the Minister, any remaining supply capability is to be shared between regulated river (general security— A class) access licences, and regulated river (general security— B class) access licences, that have placed an order for water.

**Notes.**

- 1 **Supply capability** is defined in the Dictionary.
- 2 During periods of channel capacity constraint, the implementation of the above provisions may result in ordering delays and an inability to supply water requirements from regulated water deliveries on a daily basis.
- 3 This clause does not apply to supplementary water access licences as water is not delivered to these licences.

## **61 Rates of change to storage releases**

In changing the rate of the release from a water storage, or other water supply system structure, the operator must consider relevant environmental impacts, damage to river banks, public safety, and operational efficiency in accordance with any procedures established by the Minister.

## **62 Grouping of water orders due to high delivery losses**

- (1) The operator may group water orders or periodically release water in accordance with any procedures that have been established by the Minister in consultation with access licence representatives and the NSW Environmental Water Manager, if the continuous delivery of water orders would involve unacceptably high delivery losses.
- (2) The operator must consult with water access licence representatives and relevant government agencies, as the operator considers appropriate, before grouping water orders and releasing water in accordance with subclause (1).

## **63 Dam operation during floods and spills**

- (1) The operator must operate Pindari Dam and Glenlyon Dam during times of flood and spilling of water from those dams in a manner that maintains the safety of dam infrastructure.
- (2) Providing it is consistent with subclause (1), the operator must aim to:
  - (a) leave the storage at full supply level after the flood or spilling of water, and
  - (b) minimise downstream flood damage.
- (3) For the purposes of subclause (2) (b), the operator is to consider the temporary storage of water above the normal maximum storage level and manage the rate of release of this water to avoid aggravating downstream flood damage.

## Part 11 Mandatory conditions

**Note.** Mandatory conditions relating to metering equipment and recording information are imposed by the *Water Management (General) Regulation 2018*. Clauses in this Plan that provide for mandatory conditions to be imposed in relation to metering apply only until the commencement of the metering and reporting mandatory conditions that are prescribed in Part 10 and Part 11 of the *Water Management (General) Regulation 2018*.

### Division 1 General

#### 64 Requirement to notify

In this Part, a requirement to notify the Minister in writing will only be satisfied by writing to the email address for enquiries on the Department's website.

**Note.** As at the commencement of this Plan, the email address for enquiries on the Department's website is [water.enquiries@dpie.nsw.gov.au](mailto:water.enquiries@dpie.nsw.gov.au).

### Division 2 Access licences

**Note.** This Division is made in accordance with sections 17 (c), 20 and 66 of the Act.

#### 65 Mandatory conditions on access licences

- (1) Each access licence must have mandatory conditions to give effect to the following:
  - (a) upon becoming aware of a breach of any condition of the access licence, the licence holder must:
    - (i) notify the Minister as soon as practical, and
    - (ii) if the notification under paragraph (i) is not in writing, confirm the notification in writing within seven days of becoming aware of the breach,
  - (b) any other condition required to implement the provisions of this Plan.
- (2) Each access licence, other than a supplementary water access licence and a floodplain harvesting (regulated river) access licence, must have mandatory conditions requiring that the licence holder must not take water unless it has been ordered in accordance with procedures established by the Minister.
- (3) Each supplementary water access licence must have a mandatory condition that gives effect to Division 2 of Part 8.
- (4) Each floodplain harvesting (regulated river) access licence must have a mandatory condition requiring that the licence holder only take water from overland flow within the Border Rivers Valley Floodplain, as declared under clause 252 of the *Water Management (General) Regulation 2018*.

**Note.** **Overland flow** is defined under section 4A of the Act.

- (5) Each floodplain harvesting (regulated river) access licence must have a mandatory condition that gives effect to Division 1A of Part 8.

## Division 3 Water supply work approvals

**Note.** This Division is made in accordance with sections 17 (c) and 100 of the Act.

### 66 General conditions

- (1) Each water supply work approval must have mandatory conditions to give effect to:
  - (a) the clauses set out in this Division, and
  - (b) any other condition required to implement the provisions of this Plan.
- (2) Upon becoming aware of a breach of any condition of the approval, the approval holder must:
  - (a) notify the Minister as soon as practical, and
  - (b) if the notification under paragraph (a) was not in writing, confirm this notification in writing within seven days of becoming aware of the breach.
- (3) Flow measurement devices must be installed and maintained on all water supply works used for extraction of water under an access licence (other than a floodplain harvesting (regulated river) access licence) and must be of a type and maintained in a manner, which is acceptable to the Minister.

**Note.** The *Water Management (General) Regulation 2018* provides that measurement devices must be installed by the date specified in the regulation for all water supply works used for extraction of water under a floodplain harvesting (regulated river) access licence.

- (4) Water extraction, property water management infrastructure and cropping details must be provided on request, in the form and in accordance with procedures established by the Minister.
- (5) The taking of water may only occur in accordance with the conditions applying to the access licence that will have its water allocation account debited for that take.
- (6) Subclauses (3) to (5) do not apply to approvals for water supply works held by Water NSW provided the approval is not nominated by an access licence.
- (7) Subclauses (3) and (4) are taken to be repealed on the day on which the temporary exemption from the mandatory metering equipment condition ceases to apply to the water source in accordance with clause 230 (1) of the *Water Management (General) Regulation 2018*.

#### Notes.

- 1 **Mandatory metering equipment condition** is defined in clause 228 of the *Water Management (General) Regulation 2018*.
  - 2 Clause 230 of the *Water Management (General) Regulation 2018* provides that the mandatory metering equipment condition applies to existing and new water supply works required to have a meter from 1 April 2019, and to other approvals in the water source from 1 December 2021.
- (8) Water supply work approvals held by Water NSW must have mandatory conditions to

give effect to the provisions in Part 10.

## **Part 12      Amendment of this Plan**

### **Notes.**

- 1      This Part sets out the amendments authorised by this Plan.
- 2      For the purposes of section 87 of the Act, the initial period for the water source expired before the commencement of this Plan.
- 3      The Department intends to consult with relevant stakeholders before making any material amendments to this Plan in accordance with this Part.

### **67      General**

For the purposes of section 45 (1) (b) of the Act, this Part and clause 57 (5) set out when this Plan may be amended, and any such amendment is taken to be authorised by this Plan.

### **68      Amendments relating to Part 1**

Part 1 may be amended to add, modify or remove a river or segment of river to or from the water source provided that:

- (a)    any amendment is consistent with any applicable regulated river order, and
- (b)    the Minister is satisfied that there will be no impact on the water available to the environment under Division 1 of Part 10, or to any access licence in the water source.

### **69      Amendments relating to Part 2**

Part 2 may be amended following a review of the monitoring, evaluation and reporting plan that has been developed for water sources in the NSW Border Rivers surface water resource plan area which considers the need for alternate performance indicators for the environmental, economic, Aboriginal cultural, and social and cultural objectives of this Plan.

### **70      Amendments relating to floodplain harvesting**

- (1)    This Plan may be amended to add, modify or remove provisions relating to floodplain harvesting (regulated river) access licences in response to any of the following:
  - (a)    to protect overland flow for environmental purposes,
  - (b)    monitoring, evaluation and reporting outcomes,
  - (c)    an improved understanding of the influence of floodplain harvesting on downstream flows,
  - (d)    a review that assesses the potential benefits and impacts of new access provisions for floodplain harvesting (regulated river) access licences,
  - (e)    a review of dealing rules in the *Water Sharing Plan for the NSW Border Rivers Unregulated River Water Sources 2012*,

- (f) other circumstances as determined by the Minister.
- (2) Clause 39A may be amended to provide available water determinations for floodplain harvesting (regulated river) access licences that are:
- (a) less than 1 ML per unit share if the Minister is satisfied that they are appropriate because the determination of the amount under clause 27 (2) (a) (v) is less than the determination of the amount under clause 27 (2) (a) (v) when floodplain harvesting (regulated river) access licences were first issued in the water source,
  - (b) greater than 1 ML per unit share if the Minister is satisfied that they may be made without total extractions exceeding the long-term average annual extraction limit, because the determination of the amount under clause 27 (2) (a) (v) is greater than the determination of the amount under clause 27 (2) (a) (v) when floodplain harvesting (regulated river) access licences were first issued in the water source.
- (3) Before making an amendment in accordance with subclause (2) the Minister may consult with water user representatives, the NSW Environmental Water Manager and the operator regarding the following:
- (a) the data used for the calculations under clause 27 (2) (a) (v),
  - (b) the proposed amendment under subclause (2).
- (4) Actions under subclause (1) or subclause (5) must not substantially alter the long-term average annual total amount of water able to be extracted under floodplain harvesting (regulated river) access licences in the water source.
- (5) This Plan may be amended to add, remove or modify rules in clause 43B.
- (6) Before making any amendment under subclause (5) and before 1 July 2025, the Minister will:
- (a) seek, consider and publish independent expert advice on the adequacy of the rules in clause 43B including:
    - (i) the needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders,
    - (ii) the adequacy of the existing flow target and volume to meet those needs,
    - (iii) any changes to the flow target and volume that would be required to meet those needs, and
    - (iv) the impact of those changes to the flow target and volume on the long-term average annual total amount of water able to be extracted under floodplain harvesting (regulated river) access licences in the water source,

- (b) consider the views of stakeholders and other community members on the independent expert advice.

## **71 Amendments relating to individual daily extraction components**

This Plan may be amended to include provisions to establish and manage individual daily extraction components of access licences.

## **72 Dictionary**

The Dictionary may be amended to add, modify or remove a definition.

## **73 Schedules**

- (1) The Minister may amend Schedule 1 to add, modify or remove flow targets as reasonably necessary to ensure the taking of water under supplementary water access licences does not jeopardise the critical needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders in the Barwon-Darling River.
- (2) Before making any amendment under subclause (1) and before 1 July 2023, the Minister will:
  - (a) undertake an assessment of:
    - (i) the critical needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders in the Barwon-Darling River,
    - (ii) the adequacy of the existing flow targets to meet those needs,
    - (iii) any changes to the flow targets that would be required to meet those needs, and
    - (iv) the impact of those changes to flow targets on the long-term average annual total amount of water able to be extracted under supplementary water access licences in the water source,
  - (b) seek and consider recommendations from an independent expert panel on:
    - (i) the adequacy of the assessment in (a), and
    - (ii) any changes to the flow targets in (a)(iii) required to meet the critical needs of the environment, basic landholder rights, domestic and stock access licence holders and local water utility access licence holders in the Barwon-Darling River, and
  - (c) consider the views of stakeholders and other community members on the expert panel's recommendations.

- (3) Action under subclause (1) must not substantially alter the long-term average annual total amount of water able to be extracted under supplementary water access licences in the water source.

**Note.** If satisfied that it is in the public interest to do so, the Minister may amend this clause under s.45 (1) (a) of the Act to such an extent that it substantially alters the long-term average annual amount of water able to be extracted under water access licences. If this occurs, compensation may be payable under chapter 3 Part 2 Division 9 of the Act.

- (4) Schedule 2 may be amended to add or remove an access licence.
- (5) Schedule 3 may be amended to add or remove an access licence.

#### **74 Other amendments (general)**

- (1) This Plan may be amended to include provisions for any of the following:
- (a) the interception of water before it reaches a stream or aquifer by plantations or other means,
  - (b) water return flows, as referred to in Division 5 of Part 2 of Chapter 3 of the Act,
  - (c) the conversion of regulated river (high security) licences with share components that specify the water source to access licences with share components that specify connected upstream unregulated river water sources.
- (2) This Plan may be amended to facilitate total extractions reaching the long-term average annual extraction limit or long-term average sustainable diversion limit, subject to:
- (a) an assessment of compliance with the limits made under Part 6 verifying that total extractions are less than those limits over the long term
  - (b) a review and report on the reasons for total extractions being less than the limits over the long term, including recommendations for potential changes to this Plan to increase extractions to the limits and assessment of the impacts of the recommendations on future water allocations to all categories of water access licences, and
  - (c) there being no net reduction in the protection of planned environmental water established under clause 16 of this Plan.

**Note.** Section 10.28 of the Basin Plan requires that a water resource plan must ensure there is no net reduction in the protection of planned environmental water from the protection provided under State water management law immediately before the commencement of the Basin Plan.

- (3) Division 3 of Part 6 may be amended to establish a long-term average sustainable diversion limit that combines the long-term average sustainable diversion limits for the water source and the NSW Border Rivers Unregulated River Water Sources.
- (4) This Plan may be amended to give effect to, or in connection with, a determination of native title under the *Native Title Act 1993* of the Commonwealth.
- (5) This Plan may be amended to enable all or part of this Plan to be accredited as all or part

of a water resource plan under the *Water Act 2007* of the Commonwealth.

- (6) This Plan may be amended to do any of the following for the protection of water-dependent Aboriginal cultural assets:
  - (a) identify water-dependent Aboriginal cultural assets,
  - (b) establish rules for the granting and amending of water supply work approvals,
  - (c) establish dealing rules.
- (7) This Plan may be amended as a result of any amendments made to the *New South Wales – Queensland Border Rivers Intergovernmental Agreement 2008*, any subsequent agreement made between New South Wales and Queensland and any amendments made to the *New South Wales—Queensland Border Rivers Act 1947*.
- (8) An amendment authorised by this Plan is taken to include any consequential amendments to this Plan required to give effect to that particular amendment.
- (9) Consequential amendments may be made to this Plan as a result of an amendment to the Act or regulations.

## Dictionary

**Aboriginal person** has the same meaning as it has in section 4 of the *Aboriginal Land Rights Act 1983*.

**annual actual take** has the same meaning as it has in section 6.10 of the Basin Plan.

**annual permitted take** has the same meaning as it has in section 6.10 of the Basin Plan.

**baseline diversion limit** has the same meaning as it has in section 1.07 of the Basin Plan.

**Basin Plan** means the *Basin Plan 2012* made under section 44 (3) (b) (i) of the *Water Act 2007* of the Commonwealth.

**IGA** means the *New South Wales – Queensland Border Rivers Intergovernmental Agreement 2008*.

**floodplain harvesting** means the collection, extraction or impoundment of water flowing across floodplains, including rainfall runoff and overbank flow, excluding the take of water pursuant to any of the following:

- (a) a water access licence other than a floodplain harvesting access licence,
- (b) a basic landholder right,
- (c) an exemption from the need to hold a licence to take water under the Act.

**flow regimes** mean, collectively, the magnitudes, durations, frequency and patterns of flows that characterise a river or water source.

**held environmental water** has the same meaning as it has in section 4 of the *Water Act 2007* of the Commonwealth.

**irrigated field** means an area of land that is used for the growing of crops using irrigation.

**Minister** means the Minister administering the Act.

**ML** means megalitres.

**Murray-Darling Basin Agreement** means the Murray-Darling Basin Agreement as set out in Schedule 1 of the *Water Act 2007 of the Commonwealth* (as in force from time to time, unless the context provides otherwise).

**NSW Border Rivers surface water SDL resource unit** has the same meaning as provided for in section 6.02 of the Basin Plan.

**natural flow** means a flow that occurs in a watershed or waterbody under natural unregulated conditions.

**NSW Environmental Water Manager** means the NSW Government department or agency whose responsibility it is to manage licensed environmental water that is held by the NSW Government.

**Note.** As at the commencement of this Plan, this is the NSW Department of Planning and Environment – Environment, Energy and Science (EES).

**operator** means the operator of the water supply system for the water source.

**Note.** As at the commencement of this Plan, this is Water NSW.

**plantation forestry** means a commercial plantation as defined in section 1.07 of the Basin Plan.

**replenishment flows** are flows provided to effluent river systems downstream of major headwater dams to address the flow related impacts within those systems caused by dam construction.

**reserves** are volumes of water put aside in a **water storage** to allow the supply of future water requirements.

**SDL adjustment amount** has the same meaning as it has in section 1.07 of the Basin Plan

**SDL resource unit shared reduction amount** has the same meaning as it has in section 1.07 of the Basin Plan.

**stimulus flow** is a release that mirrors a naturally occurring hydrograph, targets pre-season cues to fish breeding and to regularly wet and inundate interconnected riparian areas.

**supplementary water event** means a period during which the taking of water under supplementary water access licences is permitted in all or part of the water source.

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**supply capability** means the rate at which the Minister determines water can be supplied to a segment of the water source without incurring unacceptable transmission losses.

**tailwater drain** means a channel or trench that collects excess water from an irrigated field.

**the water source** is as defined in clause 4.

**target ecological populations** are communities of one or more species that are monitored to evaluate the success of targeted objectives for the environment. Populations must be easily monitored (i.e. not rare or cryptic) and may be linked to conservation or other environmental priorities.

**transmission losses** means the additional water required to ensure that a specified quantity of water is delivered to a specified delivery point.

**uncontrolled flows** are:

- (a) except in clause 43A, flows not able to be captured in an operator managed water storage that are in excess of that needed to meet the following:
  - (i) the environmental flow rules in Division 1 of Part 10,
  - (ii) the requirements of basic landholder rights in the water source,
  - (iii) the requirements for the delivery of replenishment flows set out in clause 58,
  - (iv) access licence water orders and the water required to meet transmission losses associated with those water orders, and Queensland water requirement as set out in the IGA, or
- (b) in clause 43A, rainfall runoff from an irrigated field.

**water storage** means a state-owned dam, weir or other structure that is used to regulate and manage river flows in the water source and the water body impounded by this structure.

**water supply system** includes the water storages and all other infrastructure that can influence water supply controlled by the operator, including regulators and weirs.

**water use development** includes all privately-owned water management structures, and all aspects of farm, industry, town or private household development which affect the volumes of water taken from the water source, and the management practices that are applied in relation to them.

**weighted average unit price** means the total value of all units sold divided by the number of units sold for a monetary value.

## Schedule 1 Flow targets

(Clause 45)

### 1 Application

The flow targets under clause 2 of this Schedule apply to clause 45 of this Plan.

### 2 Flow targets

(1) The following are flow targets:

- (a) a flow of 150 ML/day in the Darling River at Wilcannia gauge (425008),
- (b) a flow of 280 ML/day in the Darling River at Louth (gauge 425004),
- (c) a flow of 390 ML/day in the Darling River at Bourke gauge (425003),
- (d) a flow of 550 ML/day in the Darling River at Brewarrina gauge (422002), and
- (e) a flow of 700 ML/day in the Barwon River at Dangar Bridge (gauge 422001).

**Note.** This subclause is intended to protect flows needed to meet basic landholder rights requirements along the Barwon-Darling River.

(2) Between, and including, 1 September and the last day of February, a flow for five consecutive days of either of the following is a flow target, provided two such flow events have not already occurred during that period in the water year:

- (a) a flow of 14,000 ML/day in the Darling River at Brewarrina gauge (422002),
- (b) a flow of 10,000 ML/day in the Darling River at Bourke gauge (425003).

**Note.** This subclause is intended to provide opportunity for the passage of fish across the major weirs in the Barwon-Darling River.

(3) Between, and including, 1 October and 30 April, a flow for five consecutive days of 2,000 ML/day in the Darling River at Wilcannia gauge (425008) is a flow target, provided this target has not been reached during the preceding three months.

**Note.** This subclause is intended to protect flows needed to suppress blue-green algae blooms.

## **Schedule 2 Licences excluded from supplementary water events upstream of the junction of the Macintyre and Dumaresq rivers**

(Clause 46, 47)

<b>Water access licences</b>
37789
37790
37791
37555
37556
37557
37558
37559
16757
16737
16465

### **Schedule 3 Licences excluded from supplementary water events downstream of the junction of the Macintyre and Dumaresq rivers**

(Clause 46,47)

<b>Water access licences</b>
16773
16720
16469
16524
16571
16831

# Appendix 1 Overview map of Border Rivers Management Zone A and Border Rivers Management Zone D



