



New South Wales

# Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020

under the

Water Management Act 2000

[*The following enacting formula will be included if this Regulation is made—*]

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

Minister for Water, Property and Housing

## **Explanatory note**

The objects of this Regulation are—

- (a) to provide for the circumstances in which an owner or occupier of a landholding located on a floodplain who uses or used, or proposed to use, water from the floodplain is eligible for, and is taken to hold, a replacement floodplain harvesting access licence, and
- (b) to set out the process by which the Minister for Water, Property and Housing is to determine the share component of a replacement floodplain harvesting access licence.

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

Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020 [NSW]

---

## **Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020**

under the

Water Management Act 2000

### **1 Name of Regulation**

This Regulation is the *Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020*.

### **2 Commencement**

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

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

### Part 2A

Insert after Part 2—

## Part 2A Replacement floodplain harvesting access licences

### Division 1 Preliminary

#### 23A Definitions

In this Part—

**Barwon-Darling source** means the Barwon-Darling Unregulated River Water Source within the meaning of clause 4 of the *Water Sharing Plan for the Barwon-Darling Unregulated and Alluvial Water Sources 2012*.

**current conditions model**—see clause 23H.

**eligible work** means a work referred to in clause 23B(1) for a regulated river water source or the Barwon-Darling source that existed on 3 July 2008.

**eligible works scenario model**—see clause 23H.

**existing share component**, for a relevant landholder, means the sum of—

- (a) the relevant landholder's metered groundwater usage in megalitres for the relevant year under a bore licence held by the landholder, where 1 megalitre is 1 unit of a share component, and
- (b) the number of units of a share component in an unregulated river access licence held by the landholder.

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

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

**plan limit compliance scenario model**—see clause 23H.

**relevant landholder** means an owner or occupier of a landholding located on a floodplain who uses or used, or proposed to use, water from the floodplain.

**relevant year** means the year between 1993 and 1999, inclusive, in which the greatest maximum crop area occurred on land of a relevant landholder to whom clause 23E or 23F applies.

**Volumetric Conversion document** means Appendix 2 to the *Volumetric Conversion—the next stage* published in September 2000, as in force from time to time, and available on the Department's website.

**year** means a year beginning on 1 July and ending on June 30.

### Division 2 Eligibility for licences

#### 23B Landholders may be eligible for licence in certain circumstances

- (1) For the purposes of section 57A(2)(a) of the Act, a relevant landholder is eligible for a replacement floodplain harvesting access licence if the Minister is satisfied that, on 3 July 2008, a work of the relevant landholder that was capable of floodplain harvesting was—

- (a) located on a floodplain in accordance with a relevant approval, or

- (b) located on a floodplain without a relevant approval because a relevant approval was not required, or
  - (c) located, or proposed to be located, on a floodplain and an application for a relevant approval was made but not yet determined.
- (2) In determining the eligibility of a relevant landholder, the Minister must take into account any relevant information provided by the relevant landholder in relation to the work.
- (3) Before determining that a relevant landholder is not eligible, the Minister must—
  - (a) give written notice to the relevant landholder, and
  - (b) give the relevant landholder an opportunity to make submissions, and
  - (c) consider any submissions received within 28 days after giving the relevant landholder written notice.
- (4) The Minister must, as soon as practicable after making a determination about the eligibility of a relevant landholder, give written notice to the landholder of the Minister's determination.
- (5) Despite this clause, a relevant landholder is not eligible for a replacement floodplain harvesting access licence if—
  - (a) the Minister determines that the final share component is 0 or less under Division 3, or
  - (b) the Minister, by written notice published on the Department's website, finalises the process for issuing replacement floodplain harvesting access licences for a particular water source for which the relevant landholder may have been eligible.
- (6) In this clause—

**relevant approval** means—

  - (a) an approval under Chapter 3, Part 3 of the Act, or
  - (b) a licence or permit within the meaning of Part 2, or Part 8 as in force immediately before the repeal of the Part, of the *Water Act 1912*.

## **Division 3 Determination of share components**

### **23C Minister must determine matters relating to landholders eligible for licence**

If the Minister determines that a relevant landholder is eligible for a replacement floodplain harvesting access licence under clause 23B, the Minister must determine the proposed share component of the licence in accordance with this Division.

### **23D Determination of share component—regulated and unregulated river access licence holders**

- (1) This clause applies to a relevant landholder who is eligible for a replacement floodplain harvesting access licence under clause 23B who, on 3 July 2008, was a holder of—
  - (a) a regulated river access licence, but not an unregulated river access licence, or
  - (b) an unregulated river access licence with a share component that specified the Barwon-Darling source as a water source (the *Barwon-Darling licence*), or

---

# public consultation draft

---

Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020 [NSW]  
Schedule 1 Amendment of Water Management (General) Regulation 2018

---

- (c) a regulated river access licence and an unregulated river access licence.
- (2) For the purposes of section 57A(2)(c) of the Act, the Minister must determine the share component of a replacement floodplain harvesting access licence of the relevant landholder by using the following models for the water source to which the relevant landholder's regulated river access licence or the Barwon-Darling licence applies—
  - (a) the current conditions model,
  - (b) the eligible works scenario model,
  - (c) the plan limit compliance scenario model.
- (3) The current conditions model is to be used to determine the percentage, if any, by which the estimated volume of water used by all works for the water source—
  - (a) exceeds the long-term average annual extraction limit, and
  - (b) must be reduced to comply with the long-term average annual extraction limit.
- (4) The eligible works scenario model is to be used to determine—
  - (a) the estimated volume of water that is capable of being used by an eligible work of the relevant landholder for the water source, and
  - (b) the estimated volume of water that is capable of being used by all eligible works for the water source.
- (5) Taking into account the determinations under subclauses (3) and (4), the plan limit compliance scenario model is to be used to determine the estimated volume of water that is capable of being used by an eligible work of the relevant landholder to ensure that—
  - (a) the estimated volume of water does not exceed the long-term average annual extraction limit, and
  - (b) if an adjustment is required to reduce the estimated volume of water so it complies with the long-term average annual extraction limit—the adjustment is proportionately allocated to each relevant landholder who has an eligible work for the water source, and
  - (c) the total usage of water from the water source does not exceed the long-term average annual extraction limit.
- (6) In determining the share component for a relevant landholder specified in subclause (1)(c), the Minister must deduct the whole or part of the share component, if any, of the unregulated river access licence that was held by the relevant landholder from the proposed share component of the replacement floodplain harvesting access licence.
- (7) Subclause (6) applies only if—
  - (a) one or more works were constructed in connection with the unregulated river access licence, and
  - (b) the relevant landholder used water under the unregulated river access licence, and
  - (c) the Minister is satisfied that the volume of water used under the unregulated river access licence was less than or equal to the amount entitled to be used by the landholder.

## **23E Determination of share component—unregulated river access licence holders**

- (1) This clause applies to a relevant landholder if—

---

# public consultation draft

---

Water Management (General) Amendment (Floodplain Harvesting) Regulation 2020 [NSW]  
Schedule 1 Amendment of Water Management (General) Regulation 2018

---

- (a) the landholder is eligible for a replacement floodplain harvesting access licence under clause 23B, and
  - (b) on or after 1 January 1993, and on or before 31 December 1999, the landholder was a holder of an entitlement (the *prescribed entitlement*) that is taken to be, and is replaced by, an unregulated river access licence under Schedule 10 to the Act, and
  - (c) the Minister is satisfied that the replacement of the prescribed entitlement with the unregulated river access licence under Schedule 10 to the Act may not have adequately taken into account the landholder's use of water in connection with a floodplain.
- (2) For the purposes of section 57A(2)(c) of the Act, the Minister must determine the share component of a replacement floodplain harvesting access licence of a relevant landholder based on a calculation that considers—
- (a) the maximum crop area for the relevant year, and
  - (b) whether or not the maximum crop area for the relevant year is greater than the irrigated area.
- (3) If the maximum crop area for the relevant year is less than or equal to the irrigated area, the Minister must determine the share component of the replacement floodplain harvesting access licence of the relevant landholder as 0.
- (4) If the maximum crop area for the relevant year is greater than the irrigated area, the Minister must determine the share component of the replacement floodplain harvesting access licence by deducting the existing share component, if any, from the crop component.
- (5) In this clause—
- crop component* means the maximum crop area for the relevant year multiplied by the crop conversion rate relevant to the type of crop grown in that year.
- crop conversion rate* has the same meaning as in the Volumetric Conversion document, expressed in units of a share component per hectare.
- irrigated area* means the area in hectares used in the volumetric conversion process carried out in accordance with the Volumetric Conversion document at the time the prescribed entitlement was replaced with an unregulated river access licence under Schedule 10 to the Act.

## **23F Determination of share component—groundwater or bore entitlement**

- (1) This clause applies to a relevant landholder who—
  - (a) is eligible for a replacement floodplain harvesting access licence under clause 23B, and
  - (b) on or after 1 January 1993, and on or before 31 December 1999, was a holder of a bore licence under Part 5, Division 3 of the *Water Act 1912* that is taken to be, and is replaced by, an aquifer access licence under Schedule 10 to the Act.
- (2) For the purposes of section 57A(2)(c) of the Act, the Minister must determine the share component of a replacement floodplain harvesting access licence of a relevant landholder based on—
  - (a) the maximum crop area for the relevant year, and
  - (b) a calculation that deducts the existing share component from the crop component.

- (3) In this clause—  
*cotton conversion rate* has the same meaning as in the Volumetric Conversion document, expressed in units of a share component per hectare.  
*crop component* means the maximum crop area for the relevant year multiplied by the cotton conversion rate.

## **23G Minister to notify relevant landholders of share component**

- (1) The Minister must give written notice to a relevant landholder to whom this Division applies of the Minister's determination of a proposed share component and the reasons for the determination.
- (2) The Minister is to take into account submissions made by the relevant landholder within 28 days after giving the relevant landholder written notice of the determination.
- (3) The Minister may, after considering the submissions—  
(a) adjust the proposed share component, or  
(b) finally determine the share component.

## **Division 4 Miscellaneous**

### **23H Minister must develop models for determination of share components**

- (1) For the purposes of section 57A(2)(c) of the Act, the Minister must develop the following models for the purposes of determining the share component of a replacement floodplain harvesting access licence—  
(a) the *current conditions model* that represents—  
(i) the total number of works, whether or not eligible works, for a regulated river water source or the Barwon-Darling source, and  
(ii) the estimated volume of water that is used by those works from the water source concerned,  
(b) the *eligible works scenario model* that represents—  
(i) the total number of eligible works, and  
(ii) the estimated volume of water that is used by those works from the water source concerned,  
(c) the *plan limit compliance scenario model* that represents, based on the current conditions model, the eligible works scenario model and the water allocation account rules for a particular water source to which a proposed replacement floodplain harvesting access licence relates—  
(i) the total number of eligible works, and  
(ii) the estimated volume of water that is used by those works that exceeds the long-term average annual extraction limit, and  
(iii) the required adjustment for the estimated volume of water in subparagraph (ii), if any, to ensure that the estimated volume of water does not exceed the long-term average annual extraction limit.
- (2) In this clause—  
*water allocation account rules* means the rules that are specified in a water sharing plan for a particular water source that include one or more of the following—  
(a) a limit on the volume of water that a particular replacement floodplain harvesting access licence may use in a year,

- (b) a limit on the volume of water that a particular replacement floodplain harvesting access licence may carry over into the next year,
- (c) a limit on the volume of water that may be in a water allocation account for a particular replacement floodplain harvesting access licence.

**23I Information about models must be published**

The Minister must publish the following information in relation to the current conditions model, the eligible works scenario model and the plan limit compliance scenario model—

- (a) a description of the model,
- (b) the objectives for the model,
- (c) the matters that the model represents,
- (d) the data that the model relies upon.

**23J Licence takes effect after written notice given to landholder**

- (1) A replacement floodplain harvesting access licence takes effect, and a person is taken to hold the licence, only after the Minister gives written notice to the person of—
  - (a) the category of the licence, being—
    - (i) for a relevant landholder who is eligible for the licence and who was a holder of a regulated river access licence on 3 July 2008, whether or not the landholder also held an unregulated river access licence—a floodplain harvesting (regulated river) access licence, or
    - (ii) for any other relevant landholder who is eligible for the licence—a floodplain harvesting (unregulated river) access licence, and
  - (b) the final share component of the licence determined in accordance with Division 3.
- (2) For the purposes of section 57A(2)(b) of the Act, a replacement floodplain harvesting access licence is subject to any conditions imposed by the Minister.