



New South Wales

# Water Management (General) Amendment Regulation 2021

under the

Water Management Act 2000

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

MELINDA PAVEY, MP  
Minister for Water, Property and Housing

## Explanatory note

The object of this Regulation is to amend the *Water Management (General) Regulation 2018* to—

- (a) provide for replacement floodplain harvesting access licences, including by—
  - (i) setting out the circumstances in which a landholder may be eligible for a replacement floodplain harvesting access licence, and
  - (ii) providing for the determination by the Minister for Water, Property and Housing of the share components of replacement floodplain harvesting access licences, and
- (b) impose mandatory conditions on a work approval in relation to a water supply work nominated for the purpose of capturing or storing water taken under the following arrangements—
  - (i) a floodplain harvesting (regulated river) access licence,
  - (ii) a floodplain harvesting (unregulated river) access licence,
  - (iii) a basic landholder right and an access licence referred to in subparagraph (i) or (ii), and
- (c) provide for exemptions from requirements under the *Water Management Act 2000* for a landholder—
  - (i) to hold a water supply work approval to use a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land, and
  - (ii) to hold a water access licence to take water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land, except during a period in which a work on the land, other than a tailwater drain, takes overland flow water.

**Note.** This Regulation was tabled in the Legislative Council on 22 February 2022. The Water Management (General) Amendment Regulation 2021 was published on the NSW legislation website on 17 December 2021 and was disallowed in the Legislative Council on 24 February 2022.

## **Water Management (General) Amendment Regulation 2021**

under the

Water Management Act 2000

### **1 Name of Regulation**

This Regulation is the *Water Management (General) Amendment Regulation 2021*.

### **2 Commencement**

This Regulation commences on 14 February 2022 and is required to be published on the NSW legislation website.

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

### [1] Part 2A

Insert after Part 2—

## Part 2A Replacement floodplain harvesting access licences—the Act, s 57A

### Division 1 Preliminary

#### 23A Definitions

In this Part—

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

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

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

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

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

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

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

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

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

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

- (1) The Minister is to determine if a landholder is eligible for a replacement floodplain harvesting access licence.
- (2) A landholder is eligible if the Minister is satisfied that, on 3 July 2008, a water supply work capable of floodplain harvesting—
  - (a) was fully constructed on the landholder's land and a relevant approval was in force that specified the work or another work to which the work was related or connected, or
  - (b) was fully constructed on the landholder's land without a relevant approval and an approval under the *Water Act 1912*, Part 8 was not required to construct the work, or
  - (c) was fully or partially constructed, or proposed to be constructed, on the landholder's land and an application for a relevant approval that specified the work was made but not determined.

- (3) In determining whether or not a landholder is eligible, the Minister must consider relevant information provided by the landholder in relation to the water supply work.
- (4) The Minister may determine that a landholder is not eligible only if—
  - (a) the landholder is given, whether under this clause or otherwise, written notice and 28 days in which to make submissions about the proposed determination of eligibility, and
  - (b) the Minister has considered submissions received from the landholder within the 28 days.
- (5) If the Minister determines that a landholder is eligible for a replacement floodplain harvesting access licence under this clause, the Minister must determine the share component of the licence in accordance with Division 2.
- (6) In this clause—

**relevant approval** means—

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

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

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

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

**Barwon-Darling unregulated river access licence** means an unregulated river access licence with a share component that specifies the Barwon-Darling water source.

**Barwon-Darling water source** means the Barwon-Darling Unregulated River Water Source to which the *Water Sharing Plan for the Barwon-Darling Unregulated River Water Source 2012* applies.

**unregulated river access licence** means—

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

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

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

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

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

- (1) This clause applies to an eligible landholder if—
  - (a) a bore licence was, on or after 1 July 1993 and on or before 30 June 1999, in force in relation to the land on which the landholder's eligible water supply work is located, and
  - (b) the bore licence was replaced by an aquifer access licence under the Act, Schedule 10, and
  - (c) clause 23D does not apply to the landholder.

- (2) The Minister must determine the share component of a replacement floodplain harvesting access licence by—
  - (a) multiplying the maximum crop area for the relevant year by the crop conversion rate for cotton, and
  - (b) deducting the existing share component.
- (3) The share component of the replacement floodplain harvesting access licence is zero if the result under subclause (2) is less than or equal to zero.
- (4) In this clause—

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

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

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

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

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

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

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

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

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

- (b) must be reduced to comply with the long-term average annual extraction limit.

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

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

**23J Plan limit compliance scenario model**

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

**Division 4 Miscellaneous**

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

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

- (b) is located on the eligible landholder's land, and
- (c) is specified in a water supply work approval on the date the access licence takes effect.

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

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

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

**[2] Clause 29 Circumstances in which approvals may be amended**

Insert at the end of clause 29(1)(b)—

, or

- (c) for a water supply work approval held by 1 person and nominated in a floodplain harvesting (regulated river) access licence or a floodplain harvesting (unregulated river) access licence—
  - (i) the person requests the creation of 2 or more approvals from the approval held by the person, and
  - (ii) the resulting approvals do not relate to additional uses, works, activities or land, and
  - (iii) each resulting approval includes a work nominated in a floodplain harvesting (regulated river) access licence or a floodplain harvesting (unregulated river) access licence.

**[3] Clause 39B**

Insert after clause 39A—

**39B Exemption relating to use of tailwater drain**

- (1) A landholder is exempt from the Act, section 91B(1) in relation to the use of a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land.
- (2) In this clause—

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

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

**[4] Clause 228 Interpretation**

Insert in alphabetical order in clause 228(1)—

***approval holder***, for an approved work, means the holder of the water supply work approval relating to the approved work.

***faulty***, in relation to point-of-intake metering equipment or storage metering equipment, means equipment not operating properly or is not operating.

**mandatory floodplains condition** means the mandatory condition imposed on a water supply work approval under clause 238B or Division 3A, Subdivision 2.

**metered work** means a water supply work in connection with which metering equipment has been installed.

**point-of-intake metering equipment**, for a water supply work, means equipment that measures the flow of water as it enters the water supply work.

**primary metering equipment** means the point-of-intake metering equipment or storage metering equipment for a water supply work.

**registered surveyor** means a person registered as a surveyor under the *Surveying and Spatial Information Act 2002* or a corresponding law of another State or a territory.

**secondary metering device** means a device or a type of device—

- (a) approved by the Minister, notice of the approval of which must be published in the Gazette, and
- (b) validated by a duly qualified person in accordance with the standards specified by the Minister.

**storage metering equipment**, for a water supply work, means metering equipment that measures the surface level of water in the work.

**storage metering equipment standards** means the storage metering equipment standards approved by the Minister and published in the Gazette.

**survey benchmark standard** means a survey benchmark standard approved by the Minister and published in the Gazette.

**[5] Clause 236 Duly qualified persons**

Insert after clause 236(15)—

- (16) A person who holds a current certification as a storage meter installer and validator issued by Irrigation Australia Limited is specified for storage metering equipment.
- (17) The following persons are specified for the purpose of determining if all water entering a water supply work is able to be measured by point-of-intake metering equipment as referred to in clause 238K(3)—
  - (a) a certified practising hydrographer,
  - (b) a registered engineer who has experience in assessing overland water flow.
- (18) The following persons are specified for the purpose of determining if point-of-intake metering equipment has been installed correctly as referred to in clause 238K(4)—
  - (a) a certified meter installer,
  - (b) a certified practising hydrographer.
- (19) The following persons are specified for the purpose of validating a secondary metering device capable of measuring the volume of water in a water supply work by reference to the water level in the work—
  - (a) a registered surveyor,
  - (b) a person holding a Bachelor degree in Surveying,
  - (c) a person holding a Diploma of Surveying,
  - (d) a person working under the supervision of a person referred to in paragraph (a)–(c),

(e) a registered engineer.

(20) A registered surveyor is specified for validating survey benchmarks.

**[6] Part 10, Divisions 3A–3D**

Insert after Part 10, Division 3—

**Division 3A Metering equipment conditions for particular water supply work approvals**

**Subdivision 1 General**

**238A Application of Division**

This Division applies to a water supply work approval under which an approved work is authorised to be constructed or used for the purpose of capturing or storing water taken—

- (a) under a floodplain harvesting (regulated river) access licence, or
- (b) under a floodplain harvesting (unregulated river) access licence, or
- (c) under a basic landholder right and an access licence referred to in paragraph (a) or (b).

**238B Mandatory floodplains condition**

- (1) For the purposes of the Act, section 115, it is a mandatory condition of a water supply work approval to which this Division applies that point-of-intake metering equipment or storage metering equipment is installed, used and maintained in connection with an approved work that is authorised to be constructed or used to capture or store water under the approval.
- (2) The holder of an approval is taken to have complied with a particular aspect of the condition imposed by this clause if the holder has complied with the applicable requirements set out in this Regulation.
- (3) The mandatory floodplains condition does not apply to an approved work that is or may be used to capture or store water under an approval if—
  - (a) the approval indicates the work is inactive, and
  - (b) the approval is subject to conditions prohibiting the approved work from—
    - (i) being used to take water while the work is inactive, and
    - (ii) being capable of taking water from a water source while the work is inactive, and
  - (c) the approval holder complies with the conditions in paragraph (b).

**238C Exemptions by Minister**

- (1) For the purposes of the Act, section 400(2), the Minister may, at the Minister's discretion or on the application of an approval holder, exempt an approval holder or a class of approval holders from the application of the mandatory floodplains condition to the holder or the class of holders.
- (2) The Minister may grant an exemption only if the Minister is satisfied it is not possible for water captured or stored using the approved work to be measured by—
  - (a) point-of-intake metering equipment, or
  - (b) storage metering equipment.

- (3) An exemption may be unconditional or granted subject to conditions.
- (4) The Minister may amend or revoke an exemption at any time.
- (5) The Minister must notify the following matters relating to a class of approval holders on the Department's website—
  - (a) an exemption,
  - (b) the amendment of an exemption,
  - (c) the revocation of an exemption.

**238D Reporting faulty metering equipment**

- (1) For the purposes of the Act, sections 91IA and 115, it is a mandatory condition of a water supply work approval to which this Division applies that the approval holder must notify the Minister if the point-of-intake metering equipment or storage metering equipment for the approved work is faulty.
- (2) The notice under subclause (1) must be in the approved form and contain the following particulars—
  - (a) the approval holder's name and contact details,
  - (b) the type and location of the metered work,
  - (c) the relevant approval or access licence numbers,
  - (d) the purposes for which water taken from the metered work is used,
  - (e) a description of the method to be used to determine the quantity of water taken while the equipment is faulty.

**Subdivision 2 Measurement period**

**238E Measurement period—general**

- (1) For the purposes of the Act, section 115, it is a mandatory condition of a water supply work approval to which this Division applies that the approval holder must notify the Minister in the approved form of each measurement period for an approved work that is authorised to be constructed or used to capture or store water under the approval.
- (2) The approval holder must not take water outside a notified measurement period with a water supply work nominated for the purpose of capturing or storing water under the following—
  - (a) a floodplain harvesting (regulated river) access licence,
  - (b) a floodplain harvesting (unregulated river) access licence.

**238F Measurement period—approved works**

- (1) The measurement period for the approved works begins when the overland flow collected and impounded by 1 or more of the works—
  - (a) has commenced filling infrastructure, including surge areas, field storage and dams, used to hold water, or
  - (b) is not able to be isolated from water taken under—
    - (i) an access licence other than the following—
      - (A) a floodplain harvesting (regulated river) access licence,
      - (B) a floodplain harvesting (unregulated river) access licence,or
    - (ii) a basic landholder right, or

- (iii) an exemption from holding an access licence.
- (2) During a measurement period the approval holder must not take and use water from an approved work unless—
  - (a) the water being taken and used is accounted for under—
    - (i) an access licence other than—
      - (A) a floodplain harvesting (regulated river) access licence, or
      - (B) a floodplain harvesting (unregulated river) access licence, or
    - (ii) a basic landholder right, or
    - (iii) an exemption from holding an access licence, and
  - (b) the water being taken—
    - (i) is measured using point-of-intake metering equipment, or
    - (ii) was taken during a previous measurement period.
- (3) For an approved work in connection with which storage metering equipment is installed and used—
  - (a) water may be removed from the work, but not at the same time as water is being added to the work, and
  - (b) if water is removed from the work, the following must be recorded—
    - (i) the date and time immediately before the water is removed,
    - (ii) the date and time immediately after the water is removed.
- (4) The measurement period for the approved works ends when—
  - (a) overland flow is no longer being collected and impounded by 1 or more of the works, and
  - (b) all infrastructure, including surge areas, field storage and dams, used to hold water during the measurement period is empty.

**238G Measurement period—records**

- (1) The approval holder must record, in the approved form, the amount of water captured and stored using the approved works during each 24-hour period throughout the measurement period for the works.
- (2) The approval holder must—
  - (a) keep records in the approved form of the following—
    - (i) water added to the approved works taken under the authority of an access licence, basic landholder right or exemption referred to in clause 238F(1)(b),
    - (ii) water taken from the approved works under the authority of an access licence, basic landholder right or exemption referred to in clause 238F(1)(b), and
  - (b) report fortnightly to the Minister in the approved form on the following matters—
    - (i) water taken from an approved work under the authority of an access licence, basic landholder right or exemption referred to in clause 238F(1)(b),
    - (ii) during a measurement period—records of water added to an approved work under the authority of an access licence, basic landholder right or exemption referred to in clause 238F(1)(b), and

- (c) provide the Minister, in the approved form, a copy of records—
  - (i) kept under subclause (1), on a fortnightly basis during the measurement period for the works, and
  - (ii) made between the last fortnightly report and the end of the measurement period, not later than 14 days after the end of the measurement period.

### **Subdivision 3 Repairs and reporting requirements**

#### **238H Repairs to faulty metering equipment**

- (1) For the purposes of the Act, section 115, it is a mandatory condition of a water supply work approval that the holder of the approval who captures and stores water using a metered work while the metered work's point-of-intake metering equipment or storage metering equipment is faulty must comply with this clause.
- (2) The approval holder must repair the equipment, or cause it to be repaired, within—
  - (a) 21 days of becoming aware the equipment is faulty, or
  - (b) a further period permitted under this clause.
- (3) If the approval holder becomes aware the equipment is not able to be repaired within the period specified in subclause (2), the approval holder—
  - (a) must notify the Minister in the approved form, and
  - (b) may seek an extension of the period within which repairs are to be carried out.
- (4) An application for an extension must set out—
  - (a) the reasons the repair is not able to be carried out within the specified period, and
  - (b) the date by which the equipment is proposed to be repaired.
- (5) The Minister may, by written notice given to the approval holder, extend the repair period by a specified period.
- (6) The approval holder may make more than 1 application to extend the repair period.
- (7) The approval holder must give the following information to the Minister in the approved form not later than 28 days after the faulty metering equipment is repaired—
  - (a) the date the equipment was repaired,
  - (b) a description of the repairs,
  - (c) evidence of the repairs, which may include a statement from the person who repaired the equipment,
  - (d) the name of the person who repaired the equipment.

#### **238I Mandatory condition relating to other reporting**

For the purposes of the Act, section 115, it is a mandatory condition of a water supply work approval to which this Division applies and is the subject of the mandatory floodplains condition that the approval holder must, not more than 14 days after the end of each month forming part of a measurement period under clause 238G, give the Minister in the approved form—

- (a) the records made during the month, under clause 238G, for each approved work under the approval, or
- (b) if no water was taken, a statement indicating no water was taken.

**238J Application of Schedule 8 to floodplain access licences**

If there is an inconsistency between a condition imposed under this Division and a provision of Schedule 8 for an approval to which this Division applies, the condition imposed under this Division prevails.

**Division 3B Metering equipment standards for particular water supply work approvals**

**238K Mandatory requirements for point-of-intake metering equipment**

- (1) This clause sets out the applicable requirements for point-of-intake metering equipment for an approved work for the purposes of clause 238B(2).
- (2) The point-of-intake metering equipment must be installed to measure the flow of all water entering the approved work.
- (3) A duly qualified person must inspect all floodplain harvesting intake points for the approved work to determine if all water entering the work is able to be measured by point-of-intake metering equipment that complies with the requirements of Schedule 8.
- (4) A duly qualified person must inspect all floodplain harvesting intake points for the approved work to determine if the point-of-intake metering equipment has been installed in compliance with the requirements of Schedule 8.
- (5) The approval holder must ensure point-of-intake metering equipment is maintained in accordance with the requirements of Schedule 8, clause 2(4).

**238L Mandatory requirements for storage metering equipment**

- (1) This clause sets out the applicable requirements for storage metering equipment for an approved work for the purposes of clause 238B(2).
- (2) The storage metering equipment must be installed to determine variation in the water level of water stored in the approved work.
- (3) The storage metering equipment for the approved work must—
  - (a) meet the relevant specifications set out in the approved storage metering equipment standards, and
  - (b) be installed and validated by a duly qualified person in accordance with the approved storage metering equipment standards.
- (4) Storage metering equipment must be calibrated by a duly qualified person—
  - (a) in accordance with the approved storage metering equipment standards, and
  - (b) by reference to a survey benchmark.
- (5) The survey benchmark must be—
  - (a) installed, in relation to the approved work, in accordance with a survey benchmark standard by—
    - (i) a registered surveyor, or
    - (ii) a person or a class of persons approved by the Minister by notice published in the Gazette, and

- (b) validated by—
  - (i) a registered surveyor, or
  - (ii) a person or a class of persons approved by the Minister by notice published in the Gazette.
- (6) Storage metering equipment must have—
  - (a) data logging capacity to enable the equipment to collect, record and store water storage data in accordance with data logging and telemetry specifications approved by the Minister under Schedule 8, clause 10, and
  - (b) telemetry capacity to transmit data relating to water usage that complies with the approved data logging and telemetry specifications approved by the Minister under Schedule 8, clause 10, and
  - (c) tamper evident seals, locks, controls or other devices that comply with the requirements of Schedule 8, clause 5.
- (7) The approval holder must ensure storage metering equipment is maintained in accordance with the storage metering equipment standards.

**238M Storage curve documents**

- (1) The Minister may adopt a storage curve for a nominated approved work.
- (2) If the approval holder for the work becomes aware of the adopted storage curve for the work being inaccurate by more than 5% of the volume of the work at a specified water level, the approval holder must within 21 days of becoming aware of the inaccuracy—
  - (a) notify the Minister, and
  - (b) submit a revised storage curve for the work to the Minister.
- (3) The approval holder for the work may, at any other time, submit a revised storage curve for the work to the Minister.
- (4) A revised storage curve submitted under subclause (2) or (3) must be—
  - (a) in the approved form, and
  - (b) certified by a registered surveyor as meeting the relevant specifications set out in the storage curve standards approved by the Minister.
- (5) A revised storage curve submitted under subclause (2) or (3) is taken to be adopted by the Minister 24 hours after the revised storage curve is submitted unless the approval holder is given notice that the revised storage curve will not be adopted.
- (6) A revised storage curve taken to be adopted under subclause (5) takes effect as the adopted storage curve for the work and any previously adopted storage curve for the work ceases to have effect.
- (7) The Minister must give notice of the adoption of a revised storage curve to the approval holder for the work.
- (8) If a revised storage curve is not adopted by the Minister, the existing adopted storage curve remains in force.
- (9) In this clause—

***adopted storage curve*** means a storage curve adopted by the Minister under this clause.

***storage curve***, for a nominated approved work, means a document that indicates the volume of water in the work by reference to the surface level of

the water in the work as measured by the storage metering equipment installed for the work.

*storage curve standards* means the storage curve standards approved by the Minister and published in the Gazette.

### **Division 3C Obligations of duly qualified persons**

#### **238N Obligations of duly qualified persons—inspections**

- (1) A duly qualified person who performs an inspection of a water supply work under clause 238K(3) must give a certificate to the approval holder for the water supply work confirming if—
  - (a) water entering the work is able to be measured by equipment that complies with the requirements of Schedule 8, or
  - (b) water entering the work is not able to be measured by equipment that complies with the requirements of Schedule 8.
- (2) A duly qualified person who performs an inspection of a water supply work under clause 238K(4) must give a certificate to the approval holder for the water supply work confirming if—
  - (a) the point-of-intake metering equipment for the water supply work is connected in compliance with the requirements of Schedule 8, or
  - (b) the point-of-intake metering equipment for the water supply work is not connected in compliance with the requirements of Schedule 8.

#### **238O Obligations of duly qualified persons—validation**

- (1) A duly qualified person who validates storage metering equipment for a water supply work in accordance with the storage metering equipment standards must give a certificate to the person for whom the validation is undertaken—
  - (a) confirming if the equipment complies or does not comply with the matters required to be checked in accordance with the storage metering equipment standards, and
  - (b) if the matters checked do not comply with the storage metering equipment standards—
    - (i) specifying the reasons the equipment does not comply and the modifications required for compliance, or
    - (ii) stating the equipment is not able to be modified to enable compliance.
- (2) A duly qualified person who validates a survey benchmark, in relation to a water supply work, in accordance with a survey benchmark standard must give a certificate to the person for whom the validation is undertaken—
  - (a) confirming the benchmark complies or does not comply with the matters required to be checked in accordance with the survey benchmark standard, and
  - (b) if the matters checked do not comply with the survey benchmark standard—
    - (i) specifying the reasons the benchmark does not comply and the modifications required for compliance, or
    - (ii) stating the benchmark is not able to be modified to enable compliance.

- (3) A duly qualified person who validates point-of-intake metering equipment for a water supply work in accordance with Schedule 8, clause 7 must give a certificate to the person for whom the validation is undertaken—
  - (a) confirming the equipment complies or does not comply with the matters required to be checked in accordance with AS 4747, and
  - (b) if the matters checked do not comply with AS 4747—
    - (i) specifying the reasons the equipment does not comply and the modifications required for compliance, or
    - (ii) stating the equipment is not able to be modified to enable compliance.

**238P Obligations of duly qualified persons—checking**

- (1) A duly qualified person who checks point-of-intake metering equipment for a water supply work for accuracy under Schedule 8, clause 9 must give a certificate to the person for whom the check is undertaken certifying whether or not the maximum permissible error of the metering equipment does or does not exceed plus or minus 5% in the field.
- (2) A duly qualified person who checks storage metering equipment for a water supply work for accuracy under Schedule 8, clause 9 must give a certificate to the person for whom the check is undertaken certifying whether or not the maximum permissible error of the metering equipment exceeds plus or minus 10 millimetres in the field.

**238Q Obligations of duly qualified persons—general**

- (1) A certificate referred to in clauses 238N–238P must be—
  - (a) in the approved form, and
  - (b) given to the approval holder for the water supply work within 7 days after the certification, validation or checking occurs.
- (2) A duly qualified person who installs metering equipment or carries out other work on metering equipment must notify the Minister in the approved form if the person knows or reasonably suspects the equipment has been tampered with.
- (3) The notification referred to in subclause (2) must be given to the Minister within 7 days after the duly qualified person becomes aware of, or forms the suspicion about, the tampering with the equipment.
- (4) A duly qualified person must comply with this Division.  
Maximum penalty—20 penalty units.

**238R Faulty metering equipment**

For the purposes of the Act, section 91I(3), the Act, section 91I(1)(b) and (2) do not apply if—

- (a) the water supply work has a secondary metering device installed, and
- (b) the following records are provided to the Minister—
  - (i) a record of the last available reading of the primary metering equipment before it became faulty,
  - (ii) a record of the first available reading of the secondary metering device after the primary metering equipment became faulty.

**238S Mandatory requirements for secondary metering devices**

For the purposes of the Act, section 115, an approval holder who uses a secondary measuring device due to a fault with the primary metering equipment must comply with the following requirements—

- (a) the approval holder must record the reading of the secondary device—
  - (i) if the primary metering equipment is faulty at the start of the measurement period—within 24 hours of the start of the measurement period, or
  - (ii) if the primary metering equipment becomes faulty during the measurement period—within 24 hours of becoming aware the primary metering equipment is faulty,
- (b) if water is removed from the approved work during the measurement period, the following must be recorded immediately before, and again immediately after, the water is removed—
  - (i) the reading of the secondary metering device,
  - (ii) the date and time of the reading,
- (c) the approval holder must record the reading of the secondary measuring device within 24 hours of the end of the measurement period,
- (d) the approval holder must provide records under this clause, in the approved form, to the Minister not later than 14 days after the end of the measurement period,
- (e) the approval holder must keep a record made under this clause for 5 years after the end of the measurement period.

**238T Metering records**

- (1) For the purposes of the Act, section 91J, the holder of a water supply work approval subject to the mandatory floodplains condition must keep the following metering records for a period of 5 years—
  - (a) a certificate provided under this Division by a duly qualified person in relation to the following—
    - (i) point-of-intake metering equipment,
    - (ii) storage metering equipment,
    - (iii) a survey benchmark,
    - (iv) a storage curve document,
    - (v) a secondary metering device,
  - (b) a copy of a report given to the Minister under Schedule 8, clause 8 or 9,
  - (c) a copy of a written certification given to the Minister under Schedule 8, clause 9(2)(b).
- (2) For the purposes of the Act, section 115, it is a condition of an approval subject to the mandatory floodplains condition that the approval holder must give the Minister the following within 28 days of receiving the certificate—
  - (a) a copy of a certificate provided under clause 238O(3) or 238P(1) or (2),
  - (b) a copy of a certificate referred to in subclause (1)(a).

### **Division 3D Transitional provisions**

#### **238U Transitional provision—metering equipment installed before 14 February 2020**

- (1) This clause applies to primary metering equipment installed on or before 14 February 2020 on a water supply work nominated for the purpose of measuring water taken or collected under—
  - (a) a floodplain harvesting (regulated river) access licence, or
  - (b) a floodplain harvesting (unregulated river) access licence.
- (2) The work may continue to be used for the life of the equipment despite a new condition imposed under Division 3A if—
  - (a) tamper evident seals are affixed in accordance with Schedule 8, clause 5, and
  - (b) for point-of-intake metering equipment or storage metering equipment, the equipment is fitted with a device that complies with the data logging and telemetry specifications approved by the Minister, and
  - (c) for storage metering equipment, a duly qualified person certifies—
    - (i) the equipment includes a digital measurement sensor, and
    - (ii) the equipment is fitted with a telemetry device that complies with paragraph (b), and
    - (iii) the equipment and the telemetry device are operating properly, and
    - (iv) the equipment was installed in accordance with the manufacturer's instructions, and
    - (v) the equipment was calibrated by a duly qualified person by reference to a survey benchmark installed and validated as described in clause 238L(5), and
  - (d) for storage metering equipment that does not meet the storage metering equipment standards—
    - (i) evidence from the manufacturer that the equipment operated within 10 millimetres accuracy in laboratory conditions before it was installed, or
    - (ii) a certificate from a certified storage meter installer and validator or a certified practising hydrographer that the equipment operated within 10 millimetres accuracy in the field after it was installed, or
    - (iii) evidence of whether the equipment operated within 10 millimetres in a NATA-accredited laboratory, which is accredited for the relevant test method, after the equipment was installed, and
  - (e) for point-of-intake measuring equipment installed to measure open-flow channels—
    - (i) the equipment was validated by a duly qualified person in accordance with AS 4747 not more than 12 months before the report is given to the Minister under subclause (2), and
    - (ii) the equipment was found by the duly qualified person to comply with the matters required to be checked on validation, and
  - (f) for point-of-intake measuring equipment installed to measure closed or partially closed conduit flows—

- (i) the equipment was validated by a duly qualified person in accordance with AS 4747 not more than 5 years before the report is given to the Minister under subclause (3), and
  - (ii) the equipment was found by the duly qualified person to comply with the matters required to be checked on validation.
- (3) An approval holder who intends to rely on this clause must give a report to the Minister in the approved form that—
  - (a) certifies the action taken by the approval holder to comply with the requirements of subclause (2) in relation to the metering equipment, and
  - (b) is accompanied by documents given to the approval holder by the duly qualified person reporting on or relating to the checks carried out by the duly qualified person, and
  - (c) certifies the checks were carried out not more than 5 years before the report is given to the Minister.
- (4) In this clause—  
*NATA-accredited laboratory* means a testing laboratory accredited by the National Association of Testing Authorities, Australia (NATA) or recognised by NATA either solely or with someone else.

**238V Transitional provision—metering equipment installed after 14 February 2020**

- (1) This clause applies to an approval holder who installed primary metering equipment in accordance with the requirements set out in the equipment guidelines after 14 February 2020 but before the commencement of the amending Regulation for the purpose of measuring water taken or collected under a licence on a water supply work nominated in—
  - (a) a floodplain harvesting (regulated river) access licence, or
  - (b) a floodplain harvesting (unregulated river) access licence.
- (2) The approval holder is taken to have installed the equipment in accordance with the mandatory floodplains condition if the following conditions are met—
  - (a) for point-of-intake metering equipment—a duly qualified person specified in clause 236(18) certifies in writing that—
    - (i) the equipment complies with the point-of-intake metering equipment guideline, and
    - (ii) the person installed and validated the equipment in accordance with the requirements set out in the point-of-intake metering equipment guideline,
  - (b) for storage metering equipment—a duly qualified person specified in clause 236(16) certifies in writing that—
    - (i) the equipment complies with the storage metering equipment guideline, and
    - (ii) the person installed and validated the equipment in accordance with the requirements set out in the storage metering equipment guideline.
- (3) For the avoidance of doubt, a storage curve document in relation to storage metering equipment subject to this clause does not need not be adopted until the date on which the amending Regulation commences.
- (4) In this clause—

**amending Regulation** means the *Water Management (General) Amendment Regulation 2021*.

**equipment guidelines** means the point-of-intake metering equipment guideline or the storage metering equipment guideline.

**point-of-intake metering equipment guideline** means the document titled *Floodplain Harvesting Measurement—Point-of-intake measurement method* published by the NSW Department of Planning, Industry and Environment in February 2021.

**storage metering equipment guideline** means the document titled *Floodplain Harvesting Measurement—Existing storage metering equipment* published by the NSW Department of Planning, Industry and Environment in February 2021.

**238W Transitional provision—small capacity and infrequently used water supply works**

- (1) A person is not required to comply with the mandatory floodplains condition in relation to an approved work not used to take water until the day that is 6 months after the day on which the relevant management plan relating to water sharing makes provision for floodplain harvesting.
- (2) However, the date for the purposes of subclause (1) is taken to be the day that is 12 months after the day on which the relevant management plan relating to water sharing makes provision for floodplain harvesting for the following water supply works—
  - (a) if the capacity of the work is less than 1,000 megalitres,
  - (b) if the capacity of the work is equal to or more than 1,000 megalitres and the work was used to collect or take water in less than 1 in every 7 years on average between 1987 and 2019.
- (3) Despite subclause (1), for an approved work that is used to take water before the work is required to comply with the mandatory floodplains condition, the work may be used to take water if—
  - (a) the work has a secondary metering device installed in accordance with the mandatory floodplains condition, and
  - (b) the approval holder complies with the requirements of clause 238S as if a reference to a fault with the primary metering equipment is a reference to the taking of water to which this clause applies.

**[7] Schedule 4 Exemptions**

Insert after clause 17B—

**17C Rainfall run-off**

- (1) Any landholder—in relation to the taking of water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land.
- (2) The exemption conferred by this clause does not apply during a period in which a work on the land, other than a tailwater drain, takes overland flow water.  
**Note.** Rainfall run-off is a type of overland flow water—see the Act, section 4A.
- (3) This clause does not limit the operation of this Regulation, clause 39B.
- (4) In this clause—

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

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