

## Part 1 Basic landholder rights

### Division 1 Domestic and stock rights

#### 52 Domestic and stock rights

- (1) Subject to subsection (2), an owner or occupier of a landholding is entitled, without the need for an access licence, water supply work approval or water use approval—
  - (a) to take water from any river, estuary or lake to which the land has frontage or from any aquifer underlying the land, and
  - (b) to construct and use a water supply work for that purpose, and
  - (c) to use the water so taken for domestic consumption and stock watering, but not for any other purpose.
- (2) Subsection (1) does not allow a landholder—
  - (a) to take or use water in contravention of any mandatory guidelines established under section 336B, or
  - (b) to construct a dam or water bore without a water supply work approval, or
  - (c) in the case of the owner or occupier of a landholding arising from a subdivision effected on or after 1 July 2004, to take or use water in contravention of any prohibition or restriction imposed by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose), or
  - (d) to carry out a controlled activity without a controlled activity approval.

- (3) In this section—

**domestic consumption**, in relation to land, means consumption for normal household purposes in domestic premises situated on the land.

**stock watering**, in relation to land, means the watering of stock animals being raised on the land, but does not include the use of water in connection with the raising of stock animals on an intensive commercial basis that are housed or kept in feedlots or buildings for all (or a substantial part) of the period during which the stock animals are being raised.

### Division 2 Harvestable rights

#### 53 Harvestable rights

- (1) An owner or occupier of a landholding within a harvestable rights area is entitled, without the need for any access licence, water supply work approval or water use approval, to do each of the following in accordance with the harvestable rights order by which the area is constituted—
  - (a) to construct and use one or more water supply works for the purpose of capturing and storing water of a kind specified by the harvestable rights order,
  - (b) to take and use that water.
- (2) One or more water supply works may be constructed and used under subsection (1) (a) for the storage of both water that has been captured in exercise of a harvestable right and other water that has been lawfully taken from a water source if the capacity of the work or works does not exceed the maximum harvestable right volume specified by the harvestable rights order.
- (3) The following provisions apply where the capacity of the water supply work or works by means of which water is to be captured or stored in exercise of a harvestable right exceeds the maximum harvestable right volume specified by the harvestable rights order for works constructed under the authority of this section—
  - (a) an access licence or water use approval is not required for water that is captured or stored by the work or works in exercise of a harvestable right,
  - (b) if water (other than water captured or stored in exercise of a harvestable right) is also captured or stored by the work or works—an access licence and water use approval is required to authorise the taking and use of water from that source for any volume taken and stored in excess of the maximum harvestable right volume unless the water is taken under the authority of a domestic and stock right or native title right,

- (c) a water supply work approval for the water supply work or works is required despite subsection (1).
- (4) Without limiting subsection (1), a single water supply work may be used by 2 or more landholders regardless of who constructed it if the shared use is permitted by the harvestable rights order.
- (5) This section does not allow a landholder—
  - (a) to supply any other land with water that has been captured and stored in exercise of a harvestable right, or
  - (b) to construct or use a water supply work in a river unless the river is declared by the relevant harvestable rights order to be a minor stream for the purposes of this Division.
- (6) In this section—  
**capture**, in relation to a water supply work, includes pumping water for the purposes of storage in another water supply work.

#### **54 Harvestable rights orders**

- (1) The Minister, by order published on the NSW legislation website, may—
  - (a) constitute any land as a harvestable rights area, and
  - (b) name the area that is constituted, and
  - (c) fix the boundaries of the area that is constituted.

##### **Note—**

An order under this section may be amended or repealed by a subsequent order (see section 43 of the [Interpretation Act 1987](#)).

##### **Editorial note—**

For harvestable rights orders see Gazette No 110 of 1.7.2004, pp 5515, 5517 and Gazette No 40 of 31.3.2006, p 1628.

- (2) The order by which a harvestable rights area is constituted must specify—
  - (a) the kinds of water (such as overland flow water) that may be captured and stored in the area in exercise of harvestable rights, and
  - (b) the method for calculating the maximum harvestable right volume for works constructed or used in exercise of harvestable rights on landholdings in the area by reference to a proportion (not being less than 10%) of the average regional overland flow waters for that area.
- (3) Without limiting subsection (2) (b), the kinds of ways in which a maximum harvestable right volume for landholdings in a harvestable rights area may be expressed include by reference to the capacity of water supply works or volumetric limits.
- (4) The order may also deal with the following matters—
  - (a) the types and locations of water supply works that may be used by a landholder to capture and store water,
  - (b) the means by which the maximum capacity of a water supply work that may be constructed or used by a landholder to capture and store water is to be calculated,
  - (c) the arrangements that may be made by landholders for the shared use of a water supply work that straddles their landholdings,
  - (d) the method for accounting for water that is captured or stored in the circumstances referred to in section 53 (3),
  - (e) the procedures to be followed for calculating the average overland flow water for a landholding in the area,
  - (f) rules about the purposes for which water may be captured, taken, stored or used,
  - (g) such other matters as are necessary or convenient to give effect to the order.
- (5) For the purpose of calculating any matter under an order under this section, a reference in the order to an area of land is, in the case of a landholding, a reference to the area of the landholding.

- (6) An order under this section may deal with any matter by reference to a map held by the Department.
- (7) Any map that is referred to as provided by subsection (6) is to be available for public inspection, free of charge, by either or both of the following means—
  - (a) at the appropriate regional office of the Department for the area to which the relevant order relates, during normal office hours,
  - (b) on the website of the Department or any other website that the Minister considers to be readily accessible by members of the public.

## **Division 3 Native title rights**

### **55 Native title rights**

- (1) A native title holder is entitled, without the need for an access licence, water supply work approval or water use approval, to take and use water in the exercise of native title rights.
- (2) This section does not authorise a native title holder—
  - (a) to construct a dam or water bore without a water supply work approval, or
  - (b) to construct or use a water supply work otherwise than on land that he or she owns.
- (3) The maximum amount of water that can be taken or used by a native title holder in any one year for domestic and traditional purposes is the amount prescribed by the regulations.