

Water (Tagged Water Allocations) Regulations

Exposure Draft

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Victoria

Water (Tagged Water Allocations) Regulations

Exposure Draft

1 Objective

The objective of these Regulations is to provide protection for the environment and for the reliability of water rights and entitlements by providing for the Minister to make determinations as to the taking or use of water under water allocations in certain cases.

2 Authorising provisions

These Regulations are made under sections 33F(3), 74AB(1)(b) and 324(1)(af) and (v), (2) and (3) of the **Water Act 1989**.

3 Commencement

These Regulations come into operation on 1 July 2021.

4 Revocation

The Water (Tagged Water Allocations) Interim Regulations 2020¹ are **revoked**.

5 Definitions

(1) In these Regulations—

alternate water system, in relation to a tagged water allocation, means—

- (a) for the taking of water, the different declared water system referred to in paragraph (a)(ii) of the definition of ***tagged water allocation***; or
- (b) for the use of water, the different declared water system referred to in paragraph (b)(ii) of the definition of ***tagged water allocation***;

alternate zone, in relation to a tagged water allocation, means, for the use of water, the different zone referred to in paragraph (c)(ii) of the definition of ***tagged water allocation***;

Basin Plan has the same meaning as in the Water Act 2007 of the Commonwealth;

Basin water resources has the same meaning as in the Water Act 2007 of the Commonwealth;

interstate water right means a right to take water in another State or a Territory of the Commonwealth that is equivalent to a water share;

source water system means—

- (a) in relation to an interstate water right, the water system in the State or Territory from which water is authorised to be taken under water allocations under that right; or
- (b) in relation to a water allocation under a water share, the declared water system determined to be the associated water

system for the water share under
whichever of the following applies—

- (i) a determination under section 33G of the Act;
- (ii) a variation of a determination under section 33Q of the Act; or
- (c) in relation to a water allocation under a bulk entitlement, the declared water system from which water is authorised to be taken or used under the bulk entitlement; or
- (d) in relation to a water allocation under an environmental entitlement, the declared water system from which water is authorised to be taken or used under the environmental entitlement;

source zone means—

- (a) in relation to a water allocation under a water share, the zone determined to be the zone under whichever of the following applies—
 - (i) a determination under section 33G of the Act;
 - (ii) a variation of a determination under section 33Q of the Act; or
 - (b) in relation to a water allocation under a bulk entitlement, the zone in the declared water system from which water is authorised to be taken or used under the entitlement; or
 - (c) in relation to a water allocation under an environmental entitlement, the zone in the declared water system from which water is authorised to be taken or used under the entitlement;
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tagged water allocation means a water allocation under an interstate water right, or under a water share, a bulk entitlement or an environmental entitlement—

(a) for which—

- (i) there is approval under the Act for water under the water allocation to be taken from a declared water system that is different from the source water system for the water allocation; and
- (ii) the different declared water system for that taking is recorded in the water register; or

(b) where—

- (i) there is approval under the Act for water under the water allocation to be used on land that is in a different declared water system from the source water system for the water allocation; and
- (ii) the different declared water system for that use is recorded in the water register; or

(c) where—

- (i) there is approval under section 64K of the Act for water under the water allocation to be used on land that is in a different zone from the source zone for the water allocation; and
- (ii) the different zone for that use is recorded in the water register;

the Act means the **Water Act 1989**;

Trading Rules means the Order made under sections 33AZ, 47E, 48P and 64AZ of the Act published in the Government Gazette on 28 June 2007 and titled Trading Rules for Declared Water Systems, as amended from time to time;

zone means a zone in a declared water system for which a water share may be issued under section 33G of the Act (including any zone that has been varied under section 33Q of the Act), as described in Schedule 1 to the Trading Rules.

- (2) In these Regulations, a reference to "water allocation" includes a reference to part of a water allocation.

6 Ministerial determination

- (1) The Minister may make a written determination that water cannot be taken or used under tagged water allocations from the alternate water system for those tagged water allocations if the Trading Rules provide that, in relation to the source water system for the tagged water allocations and the alternate water system for the tagged water allocations, any one of the following approvals cannot be given—
- (a) for water shares—
 - (i) approval under section 33X(1)(b) of the Act for a limited term transfer of rights to future water allocations from the source water system to the alternate water system; or
 - (ii) approval under section 33X(1)(ba) of the Act for a standing direction to transfer water allocations from the source water system to the alternate water system; or
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- (iii) approval under section 33X(1)(c) of the Act to assign water allocations from the source water system to the alternate water system; or
 - (iv) approval under section 64K of the Act to use water taken from the source water system on land situated in the alternate water system; or
 - (v) approval under section 33AI of the Act to take water under water allocations under water shares in the source water system from the alternate water system;
- (b) for interstate water rights, approval under section 33AG of the Act to take water under water allocations under interstate water rights from the alternate water system;
 - (c) for bulk entitlements, approval under section 46C of the Act to assign water allocations for the purposes of section 46 or 46A of the Act from the source water system to the alternate water system;
 - (d) for environmental entitlements, approval under section 48O of the Act to assign water allocations for the purposes of section 48L or 48M of the Act from the source water system to the alternate water system.
- (2) The Minister may make a written determination that under tagged water allocations, water cannot be used on land situated in the alternate zone for those tagged water allocations if the Trading Rules provide that, in relation to the source zone for the tagged water allocations and the alternate zone for the tagged water allocations, approval under section 64K of the Act cannot be given to use water from the source zone on land situated in the alternate zone.
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- (3) The Minister may make a determination under subregulation (1) or (2) if the Minister considers it is necessary to restrict the taking or use of water under tagged water allocations because the Minister is satisfied that any of the reasons in section 12.18 of the Basin Plan justify the restriction.
- (4) In a determination under this regulation the Minister may specify that the determination does not apply to the taking or use of water under tagged water allocations—
 - (a) from certain declared water systems, parts of declared water systems or zones specified in the determination; or
 - (b) under certain types of water shares or water use licences specified in the determination; or
 - (c) in other circumstances specified in the determination.
- (5) In a determination under this regulation, the Minister may specify that the determination applies to either one or both of the following—
 - (a) water allocations already in existence at the time of the determination;
 - (b) water allocations that come into existence after the determination is made.

7 Determination only to apply to Basin water resources

The Minister may make a determination under regulation 6 only in relation to Basin water resources.

8 Form, content and process for determinations

- (1) In a determination under regulation 6 the Minister must specify the reasons for restricting the taking or use of water under tagged water allocations.
- (2) A determination under regulation 6 commences on the day the determination is published in the Government Gazette or any later date specified in the determination.
- (3) A determination under regulation 6 must be published—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Department.

9 Effect of determination

For the purposes of the Act a person is not authorised to take or use water if the taking or use of water is prohibited by a determination under regulation 6.

10 Grounds to suspend or cancel works licence

For the purpose of section 74AB(1)(b) of the Act, prescribed circumstances are where works under a licence issued under section 67 of the Act have been used by the holder of the licence to take or use water in contravention of a determination of the Minister under these Regulations.

11 Transitional provisions

- (1) In this regulation—

relevant tagged water allocation means a tagged water allocation under a tagged water access entitlement to which section 12.23(1) of the Basin Plan does not apply because of the operation of section 12.23(2) of the Basin Plan;

tagged water access entitlement has the same meaning as in section 12.23(5) of the Basin Plan.

- (2) Subject to subregulations (3) and (4), a determination of the Minister under regulation 6 does not apply to a relevant tagged water allocation.
 - (3) A determination of the Minister under regulation 6 may apply to a relevant tagged water allocation or a class of relevant tagged water allocations that is specified in the determination if any of the following occurs on or after the making of the determination—
 - (a) a recording in the water register of a transfer of ownership of the water share for the relevant tagged water allocation under sections 33S and 33X(1)(a) or (ab) of the Act;
 - (b) a recording in the water register of a transfer, or if the transfer occurs on a later date specified in the transfer, that date, of the whole of the right to future relevant tagged water allocations under a water share for a fixed period under sections 33T and 33X(1)(b) of the Act;
 - (c) an approval by the Minister under section 33X(1)(ba) of the Act of a direction given to an Authority under which the whole of the right to future relevant tagged water allocations under a water share is transferred to the person nominated in the direction;
 - (d) an assignment of a relevant tagged water allocation under sections 33U and 33X(1)(c) of the Act.
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- (4) A determination of the Minister under regulation 6 applies to a relevant tagged water allocation if the relevant tagged water allocation is under an applicable tagged water access entitlement.
- (5) For the purposes of subregulation (4), a tagged water access entitlement is an applicable tagged water access entitlement if a previous relevant tagged water allocation under that entitlement has been a relevant tagged water allocation to which—
 - (a) a determination of the Minister under the Water (Taking and Using Water Under Tagged Allocations) Interim Regulations 2019² applied because of regulation 10 of those Regulations; or
 - (b) a determination of the Minister under the Water (Tagged Water Allocations) Interim Regulations 2020 applied because of regulation 11 of those Regulations; or
 - (c) a previous determination of the Minister under these Regulations applied.
- (6) For the purposes of determining whether or not section 12.23 of the Basin Plan applies under this regulation, taking or using water under a tagged water allocation is taken to be taking water with an order.

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Endnotes

¹ Reg. 4: S.R. No. 130/2020.

² Reg. 11(5)(a): S.R. No. 140/2019.