

EV301*

Water Agencies (Powers) Act 1984

**Rights in Water and Irrigation Amendment
Regulations (No. 2) 2002**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Rights in Water and Irrigation Amendment Regulations (No. 2) 2002*.

2. The regulations amended

The amendments in these regulations are to the *Rights in Water and Irrigation Regulations 2000*.*

[* *Published 10 January 2001, p. 165-210.*

For amendments to 3 September 2002 see Gazette 14 June 2002.]

3. Regulation 12 amended

Regulation 12(2)(c) is deleted.

4. Regulation 23 amended

- (1) Regulation 23(4)(d) is deleted and the following paragraph is inserted instead —

“

- (d) that interested persons may within the time specified in the notice (which is to be not less than 14 days after the publication of the notice) make written submissions to the Commission regarding the application;

”.

- (2) Regulation 23(5) is amended by deleting “who will be affected by an activity authorised by the proposed licence” and inserting the following —

“ under subregulation (4)(d) ”.

5. Part heading inserted

After regulation 41 the following Part heading is inserted —

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Part 4A — Meters

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6. Part 5A inserted

After Part 5 of the principal regulations the following Part is inserted —

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Part 5A — Appeals

49A. Interpretation

- (1) In this Part —

“**appeals convenor**” means the appeals convenor nominated under regulation 49G(4);

“**panel**” means a panel of names from which a tribunal is to be established in accordance with clause 5 of Schedule 2 to the Act;

“**registrar**” means the registrar of appeals referred to in regulation 49G(1);

“**advisory committee**” means the committee referred to in regulation 49H.

- (2) In this Part, “**appeal**”, “**decision**” and “**tribunal**” have the same meanings as they have in clause 1 of Schedule 2 to the Act.

49B. Appointment of members to tribunal

- (1) The Minister, when —
- (a) required to establish a tribunal in accordance with clause 5(1)(a) of Schedule 2 to the Act; or
 - (b) wishing to appoint a member to a tribunal, due to the resignation of a member or a person otherwise ceasing to be a member,

is to request the appeals convenor to submit to the Minister a panel of names.

- (2) The Minister is to appoint a member of a tribunal from a panel of names submitted by the appeals convenor and that appointment is to be accompanied by written notice of the terms on which the person is appointed.
- (3) If a tribunal has 2 or 3 members, the Minister is to appoint one of those members to be the chairperson of the tribunal.

49C. Submission of panel of names to Minister

- (1) As soon as is practicable after being requested to do so by the Minister the appeals convenor is to submit to the Minister in writing —
- (a) a panel of names, in accordance with these regulations, from which a tribunal may be established; and
 - (b) any recommendation the appeals convenor has as to membership of the tribunal.
- (2) The appeals convenor may cause to be published in a daily newspaper circulating throughout the State a notice calling for expressions of interest in being selected to be a member of a tribunal.
- (3) The advisory committee may recommend to the appeals convenor for inclusion on a panel any person, or persons, who, in the opinion of the committee are suitable to be members of a tribunal.
- (4) The appeals convenor is to consider —
- (a) expressions of interest lodged in accordance with the notice under subregulation (2); and

- (b) the recommendations of the advisory committee under subregulation (3),

but may include a person's name on the panel whether or not the person has lodged an expression of interest or been recommended by the advisory committee for inclusion on the panel.

- (5) The panel is to include the names of —
 - (a) at least 5 people with expertise in the management of water resources;
 - (b) at least 2 people who are legal practitioners, as defined in the *Legal Practitioners Act 1893*, and who have each been admitted for not less than 8 years and have relevant legal expertise; and
 - (c) any person recommended by the Minister for inclusion on the panel.

49D. Provisions regarding panel

- (1) A person's name is to be removed from the panel after a period of 3 years, but may be included on the panel again on the expiry of that period.
- (2) A person's name is to be removed from the panel if the person —
 - (a) makes a written request to that effect to the appeals convenor; or
 - (b) is not eligible to be appointed to a tribunal in accordance with regulation 49E.
- (3) If a person's name is removed from the panel the registrar is to inform the person in writing of that removal as soon as is practicable.

49E. Persons not eligible to be appointed to tribunal

A person is not eligible to be appointed to a tribunal if the person is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy.

49F. Removal from tribunal

The Minister may remove a member of a tribunal from office if —

- (a) the Minister is satisfied that regulation 49E applies in relation to the member;
- (b) the member is persistently absent without leave or reasonable excuse from tribunal meetings of which the member has had notice;

- (c) the member ceases to hold the office or qualifications by virtue of which the member was appointed to the tribunal; or
- (d) extraordinary circumstances render inappropriate the continuation of the person's membership of the tribunal.

49G. Registrar and appeals convenor

- (1) There is to be appointed under Schedule 2 clause 13 to the Act a registrar of appeals.
- (2) The registrar may hold office in conjunction with any other office in the Public Service of the State.
- (3) The registrar is to —
 - (a) keep and maintain —
 - (i) a record of the names of persons on a panel and their qualifications; and
 - (ii) the notice of decisions and records given to the registrar under regulation 49L;
 - and
 - (b) carry out the functions conferred on the registrar under these regulations.
- (4) There is to be nominated in writing by the Minister an appeals convenor.
- (5) The appeals convenor is to —
 - (a) assist the Minister and the advisory committee to perform their functions under Schedule 2 to the Act and this Part; and
 - (b) carry out the functions conferred on the appeals convenor under these regulations.

49H. Advisory committee

There is to be an advisory committee comprising —

- (a) the Chairman of the Environmental Protection Authority appointed under section 7(4a) of the *Environmental Protection Act 1986*;
- (b) the chairperson of the board of management of the Water and Rivers Commission appointed under section 7 of the *Water and Rivers Commission Act 1995*; and
- (c) the chairman of the Legal Practice Board appointed under section 4(3) of the *Legal Practitioners Act 1893*,

or a person who has agreed with one of those persons to take his or her place on the committee and who, in the opinion of that person has suitable qualifications and experience to do so.

49I. Bringing an appeal

- (1) A notice of appeal is to be in the form approved by the registrar and is to be accompanied by the appropriate fee set out in Schedule 1 Part 3.
- (2) If an appeal is withdrawn before a tribunal is established to hear the appeal, the registrar may refund to the person who has paid the fee referred to in subregulation (1) half of that fee.

49J. Procedure on receipt of notice of appeals

- (1) The Minister is to ensure that a copy of each notice of appeal lodged with the Minister is forwarded to the registrar as soon as is practicable after the notice is lodged.
- (2) As soon as is practicable after receiving a copy of a notice of appeal from the Minister, the registrar is to give a copy of the notice of appeal to —
 - (a) the chief executive officer of the Commission;
 - (b) any water resources management committee established under Part III Division 3C of the Act for a locality to which the subject matter of the appeal relates;
 - (c) if the appeal is from a decision regarding an application made under the Act or these regulations, any person who made a submission in respect of the application; and
 - (d) any other person whom the Commission has advised the registrar may wish to respond to the appeal.

49K. Voting of tribunal

If the votes cast on a question are equally divided, the chairperson of the tribunal has a casting vote as well as a deliberative vote.

49L. Record of decisions

- (1) A tribunal is to ensure that an accurate record is made of proceedings before it, its decision on an appeal and the reasons for the decision.

- (2) In addition to the persons or bodies who are to be given notice of the decision on an appeal, and of the reasons for the decision, under Schedule 2 clause 5(6) to the Act the tribunal is also to give such notice to —
- (a) the Minister;
 - (b) the registrar; and
 - (c) any person who has been given the opportunity to respond to the appeal.
- (3) A tribunal is to ensure that the records made under subregulation (1) are given to the registrar.

49M. Copy of decisions and reasons

On request being made to the registrar, a person is to be given a copy of a decision, and the reasons for the decision, of a tribunal.

49N. Validity of acts of tribunal

No act, proceeding or decision of a tribunal is invalid on the ground of any vacancy in the office of any member of the tribunal or of any defect in the appointment of a member of the tribunal.

49O. Enforcement of order for costs

If any costs ordered by the tribunal to be paid by a party are not paid —

- (a) the registrar, on application made by the party entitled to such costs, is to give to the party a certificate specifying the amount of such costs; and
- (b) the party so entitled may recover the costs from the party against whom the order was made as a debt due in a court of competent jurisdiction.

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7. Schedule 1 amended

- (1) Schedule 1 Part 1 is amended by inserting after item 4 the following item —

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|----|-------------------------------|-------|
| 5. | Maximum amount for meter test | \$500 |
| | (reg. 44(4)) | |

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- (2) Schedule 1 is amended by inserting after Part 2 the following Part —

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**Part 3 — Fees relating to appeals under Part III
Division 3B of the Act**

(r. 49I)

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|-----|---|-------|
| 1. | An appeal under section 26GG(1) where the volume of water taken, or the water entitlement transferred or proposed to be taken or transferred, under the licence per year is — | |
| (a) | not more than 1 500 kilolitres | \$100 |
| (b) | more than 1 500 but less than
10 000 kilolitres | \$200 |
| (c) | more than 10 000 but less than
100 000 kilolitres | \$300 |
| (d) | more than 100 000 kilolitres | \$500 |
| 2. | (1) An appeal under section 26GH(1) regarding a direction related to the taking of water for domestic purposes, or for the watering of stock | \$100 |
| | (2) All other appeals under section 26GH(1) ... | \$200 |
| 3. | An appeal under section 26GI | \$300 |
| 4. | All other appeals under Part III Division 3B of the Act | \$300 |

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.