



# Victoria Government Gazette

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## Water Act 1989

### MINISTERIAL RULES RELATING TO THE VICTORIAN ENVIRONMENTAL WATER HOLDER

I, Ryan Smith, as environment Minister, within the meaning set out in section 3 of the **Water Act 1989**, make the following rules under section 33DZA of the **Water Act 1989** in relation to the Victorian Environmental Water Holder.

Dated 23 June 2014

THE HON. RYAN SMITH MP  
Minister for Environment and Climate Change

#### PART 1 – PRELIMINARY

1. **Title**

This Order is called the Ministerial Rules Relating to the Victorian Environmental Water Holder.

2. **Purpose**

The purpose of this Order is to set out Rules relating to specified matters within the functions of the Victorian Environmental Water Holder and include –

- (a) reporting and recording requirements;
- (b) requirements as to the content and making of corporate plans, seasonal watering plans and seasonal watering statements, including how the Water Holder is to prioritise seasonal watering proposals;
- (c) matters the Water Holder must have regard to in preparing corporate plans, seasonal watering plans and seasonal watering statements; and
- (d) requirements as to consultation to be undertaken by the Water Holder with communities and stakeholders;
- (e) information that must be made publicly available by the Water Holder;
- (f) trade by the Water Holder.

3. **Authorising provisions**

This Order is made under section 33DZA of the Act.

4. **Commencement**

This Order comes into operation on the day after the day on which it is published in the Government Gazette.

5. **Availability**

A copy of these rules can be inspected at the offices of the Environmental Water team, Department of Environment and Primary Industries, Level 10, 8 Nicholson Street, East Melbourne.

6. **Definitions**

In this Order –

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

**allocation account** means an account used in the Victorian Water Register to keep track of water available for use or trade;

**carryover** means water allocation made available under a right or entitlement in the Water Holdings that the Water Holder is entitled to take in a subsequent season;

**Commonwealth Environmental Water Holder** has the same meaning as in section 3 of the Act;

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**Department** has the same meaning as in section 3 of the Act;

**environmental water management plan** is a plan that sets out long-term environmental watering objectives and recommended flow regimes for priority environmental watering sites;

**funding period** means the multi-year period for which a particular round of funding for the Water Holder's function is provided;

**Living Murray Initiative** means the intergovernmental initiative to restore the health of the River Murray system;

**Minister** means the environment Minister as defined under section 3 of the Act;

**Murray–Darling Basin Authority** means the Murray–Darling Basin Authority established under section 171 of the **Water Act 2007** (Cth);

**Murray–Darling Basin Plan** means the plan adopted under section 44(2)(c)(ii) of the **Water Act 2007** (Cth) by the Minister administering that Act, as amended from time to time;

**seasonal watering plan** means a plan prepared by the Water Holder under section 33DX of the Act;

**seasonal watering proposal** means a proposal prepared by a waterway management authority under section 192A of the Act;

**seasonal watering statement** means a statement prepared by the Water Holder under section 33DY of the Act;

**trade** means the giving or obtaining of an assignment of a water allocation or the transfer of an entitlement or other right in the Water Holdings (not including the movement of allocation available under the Water Holdings between different allocation accounts held by the Water Holder);

**water corporation** has the same meaning as in section 3 of the Act;

**Water Holder** has the same meaning as in section 3 of the Act;

**Water Holdings** has the same meaning as in section 3 of the Act;

**watering action** means the use or application of water available under the Water Holdings as set out in a seasonal watering proposal, seasonal watering plan or seasonal watering statement;

**water season** has the same meaning as in section 3 of the Act;

**waterway management authority** means an Authority with a waterway management district under Part 10 of the Act;

## **PART 2 – REQUIREMENTS UNDER ENTITLEMENTS IN THE WATER HOLDINGS**

### **7. Requirements under entitlements**

The Water Holder is subject to the rules in this Order in addition to any requirements of –

- (a) the Act;
- (b) water entitlements held by the Water Holder; and
- (c) any other legislation or subordinate instruments.

## **PART 3 – REQUIREMENTS RELATING TO CORPORATE PLANS**

### **8. Requirements as to the preparation of corporate plans**

The Water Holder must include in its corporate plan –

- (a) a summary of rights and entitlements in the Water Holdings;
- (b) budget forecast for activities to be undertaken by the Water Holder; and
- (c) any other matters as agreed between the Water Holder and the Minister from time to time.

**PART 4 – REQUIREMENTS RELATING TO REPORTING****9. Requirements as to information to be included in annual report**

In addition to requirements under the **Financial Management Act 1994**, the Water Holder must include in its annual report the following information –

- (a) rights and entitlements in the Water Holdings at the completion of the year;
- (b) water allocation made available to the Water Holder during the year under the Water Holdings;
- (c) changes to the Water Holdings during the year as a result of the allocation, granting, amendment, cancellation, surrender or transfer of rights and entitlements in the Water Holdings;
- (d) use, application, assignment and carryover of water allocation made available to or carried over by the Water Holder under the Water Holdings;
- (e) summary of trade undertaken during the year with information as to how the trade supports the Water Holder's objectives under section 33DC of the Act;
- (f) any variation to the seasonal watering plan made under section 33DX(4) of the Act;
- (g) the composition of the Water Holder Commission and any changes to it during the year;
- (h) actual performance against performance indicators specified in the Water Holder's corporate plan; and
- (i) any direction received from the Minister under section 33DS of the Act.

**10. Information on environmental water**

10.1 The Water Holder must make publicly available on a quarterly basis, the following information for the relevant period –

- (a) list of river reaches, wetlands or floodplains where Water Holdings were used;
- (b) estimated volume of water allocation made available under the Water Holdings that was used by the Water Holder at each river reach, wetland or floodplain; and
- (c) estimated volume of water allocation made available by the Commonwealth Environmental Water Holder and the Living Murray Initiative that was used by the Water Holder at each river reach, wetland or floodplain.

10.2 The Water Holder must make publicly available an annual overview of river reaches, wetlands or floodplains where Water Holdings are used or applied and outcomes of those actions.

10.3 The Water Holder must provide to the Department on request information, where available, about environmental watering actions required to fulfil reporting requests including –

- (a) volumes of water available to the Water Holder;
- (b) use of water by the Water Holder;
- (c) river reaches (including Index of Stream Condition reaches where required), wetlands or floodplains where environmental watering actions have taken or are proposed to take place;
- (d) outcomes of environmental watering actions.

**11. Additional reporting to the environment Minister**

The Water Holder must keep the Minister informed of emerging issues and progress with implementation of the seasonal watering plan throughout the year.

**PART 5 – REQUIREMENTS RELATING TO PREPARING AND VARYING  
SEASONAL WATERING PLANS****12. Matters to be considered in preparing or varying seasonal watering plans**

- 12.1 In preparing or varying its seasonal watering plan, the Water Holder must have regard to –
- (a) the Water Holder’s corporate plan;
  - (b) the Victorian Waterway Management Strategy;
  - (c) objectives and requirements of the Murray–Darling Basin Plan and any instruments made under it;
  - (d) relevant policies contained in sustainable water strategies made under Division 1B of Part 3 of the Act;
  - (e) regional waterway strategies and environmental water management plans (or their equivalents) prepared by waterway management authorities;
  - (f) the likely availability of and ability to use water that is made available by the Commonwealth Environmental Water Holder or any other person;
  - (g) any comment made by storage operators during the process of preparing the seasonal watering plan in relation to system operating requirements and constraints;
  - (h) community consultation undertaken by waterway management authorities;
  - (i) in addition to any seasonal watering proposals submitted by Authorities, any proposals for the use of water made by a person or organisation proposing to donate water to the Water Holder; and
  - (j) implications of watering actions for the performance of the Water Holder’s functions in future years.
- 12.2 In making decisions in regards to watering actions in seasonal watering plans, the Water Holder must have regard to –
- (a) the extent and significance of the environmental benefit expected from the watering action;
  - (b) the level of certainty of achieving the environmental benefit from the watering action and ability to manage other threats;
  - (c) the ability to provide ongoing benefits at the site at which the watering action is to take place;
  - (d) the water requirements of the site at which the watering is to take place, taking into account watering history at that site and the implications of not undertaking the proposed watering action at the site;
  - (e) the feasibility of the watering action, including flexibility of timing of delivery, operational requirements and constraints, and infrastructure capacity;
  - (f) overall cost effectiveness of the watering action considering the likely benefit to be achieved against the costs of the watering action (including costs associated with delivery, risk management and carryover);
  - (g) opportunities to provide social and economic benefits, after consideration of the above matters.

**13. Completion of seasonal watering plan**

The Water Holder must ensure it has made its seasonal watering plan before issuing a seasonal watering statement for that water season.

**14. Content of seasonal watering plan**

The Water Holder must include in its seasonal watering plan –

- (a) a list of all river reaches, wetlands or floodplains which may receive environmental water during the period to which the seasonal watering plan relates;

- (b) potential watering actions under a range of seasonal scenarios including –
  - (i) potential water availability;
  - (ii) preferred watering regime; and
  - (iii) expected benefits of the watering regime.
- (c) its approach in relation to undertaking trade;
- (d) its approach in relation to engaging stakeholders.

**15. Requirements as to consultation and notifications in relation to seasonal watering plans**

15.1 Before a seasonal watering plan or variation of a seasonal watering plan is made, the Water Holder must consult with the relevant waterway management authorities.

15.2 Consultation under clause 14.1 must include –

- (a) providing a draft seasonal watering plan or relevant portions of the draft seasonal watering plan to representatives of waterway management authorities; and
- (b) providing opportunity for waterway management authority representatives to make comments in writing within a period specified by the Water Holder;

15.3 In preparing the seasonal watering plan, if the Water Holder makes a decision to deviate from actions proposed in a seasonal watering proposal submitted by a waterway management authority, the Water Holder must notify the relevant waterway management authority of the decision and provide supporting information as to why that decision was made.

**PART 6 – REQUIREMENTS RELATING TO SEASONAL WATERING STATEMENTS**

**16. Requirements as to the preparation of seasonal watering statements**

In relation to each seasonal watering statement, the Water Holder must –

- (a) request advice from an appropriate officer of the relevant waterway management authority as to whether operational and delivery requirements, including gaining the agreement of affected land managers, landowners and storage managers have been identified and managed;
- (b) confirm that arrangements are in place to undertake complementary management actions, where these are critical to the success of the watering;
- (c) have regard to time required to prepare for the scheduled use or application of water under the seasonal watering statement; and
- (d) provide sufficient flexibility to respond to changing conditions in the implementation of the seasonal watering statement.

**17. Requirements as to consultation in relation to seasonal watering statements**

In preparing a seasonal watering statement, the Water Holder must liaise with waterway management authorities including –

- (a) in relation to a decision to undertake a watering action that could materially impact on water available for use in other areas, liaise with representatives of waterway management authorities for the relevant areas; and
- (b) in relation to a decision to undertake a watering action proposed by a person or organisation other than a waterway management authority, discuss this action with the representatives of relevant waterway management authorities.

**PART 7 – RISK MANAGEMENT**

**18. General requirements as to risk management**

18.1 The Water Holder must develop and implement risk management strategies, policies and processes to address risk in all aspects of its business including financial and operational risk.

- 18.2 The Water Holder must work with other key stakeholders including waterway management authorities, water corporations and land managers as necessary to develop its risk management strategies, policies and processes.
- 18.3 The Water Holder must include an outline of its risk management strategies, policies and processes in its corporate plan.
- 18.4 The Water Holder must keep the Minister informed of any significant issues in relation to risk management or mitigation throughout the year.
- 19. Risk management in relation to environmental watering actions**
- 19.1 In preparing or varying a seasonal watering plan or seasonal watering statement, the Water Holder must identify risks relating to its watering actions, including risks to –
- (a) human safety;
  - (b) private property;
  - (c) water quality including risks to downstream drinking water supplies and salinity impacts; and
  - (d) the environment through adverse impacts.
- 19.2 Where risks are identified, the Water Holder must –
- (a) develop risk management strategies, policies and processes as necessary and implement actions relating to its functions;
  - (b) ensure that these strategies, policies and processes are communicated to the affected water corporation (or other parties as relevant); and
  - (c) have regard to risk assessments and management strategies for potential watering actions prepared by agencies involved in the delivery of environmental water.
- 19.3 The Water Holder must ensure agencies involved in the delivery of environmental water are informed of intended watering actions to enable those agencies to identify and plan for risks related to their role in those watering actions.

#### **PART 8 – REQUIREMENTS RELATING TO TRADE OF THE WATER HOLDINGS**

##### **20. Rules relating to trade by the Water Holder**

- 20.1 Any trade undertaken by the Water Holder must be consistent with the achievement of the Water Holder's objectives under section 33DC of the Act.
- 20.2 The Water Holder must upon request provide information to the Department to show in relation to its trading activities –
- (a) that any water sold by the Water Holder was not needed to fulfil environmental outcomes or that environmental outcomes were likely to be better achieved through use of revenue raised;
  - (b) that any water purchased by the Water Holder was required to address a deficit in water needed to fulfil environmental outcomes;
  - (c) how trade or revenue received from trade has contributed to better environmental outcomes;
  - (d) that within a funding period, any surplus revenue from trade has been used to offset the Water Holder's business costs.

#### **PART 9 – REQUIREMENTS AS TO BUSINESS EFFICIENCY**

##### **21. Rules relating to achieving business efficiency**

- 21.1 In performing its business functions, the Water Holder must endeavour to act as efficiently as possible consistent with sound business practices.
- 21.2 The Water Holder must upon request provide information to the Department to support funding decisions or demonstrate business efficiency efforts.

- 21.3 The Water Holder must, where consistent with its objective under section 33DC of the Act seek opportunities to undertake trade to obtain funds to support the management of the Water Holdings.

**PART 10 – GENERAL REQUIREMENTS AS TO CONSULTATION AND INTERACTION WITH KEY STAKEHOLDERS**

**22. Working with waterway management authorities**

The Water Holder must work collaboratively and constructively with waterway management authorities to achieve its objective under section 33DC of the Act, having regard to the framework of planning, management and stakeholders within which each waterway management authority operates.

**23. Working with other water holders**

- 23.1 The Water Holder must, where relevant, consult with other water holders including other states, the Commonwealth Environmental Water Holder, Murray–Darling Basin Authority and partners of the Living Murray Initiative to ensure co-ordinated watering actions by all bodies, using the seasonal watering plan as the basis for this consultation.

- 23.2 The Water Holder must work collaboratively and constructively with the Commonwealth Environmental Water Holder, Murray–Darling Basin Authority and partners of the Living Murray Initiative to –

- (a) seek mutual benefit, where possible; and
- (b) ensure its operational and policy frameworks take account of the needs of those agencies.

**24. Water Holder must consult with water corporations**

The Water Holder must –

- (a) liaise with waterway management authorities to ensure it is informed of consultation undertaken with water corporations; and
- (b) if necessary, must undertake additional consultation to ensure successful implementation of the Water Holders' management of the Water Holdings.

**25. Water Holder involvement in Department policy development**

- 25.1 The Water Holder must provide input to policy development processes related to its functions as required by the Department from time to time.

- 25.2 The Water Holder must keep the Department informed of its participation in policy implementation processes relating to its functions.

**26. Water Holder involvement in implementation of Murray–Darling Basin Plan**

- 26.1 The Water Holder must provide input as necessary to the development of the instruments relevant to environmental water management under the Murray–Darling Basin Plan.

- 26.2 The Water Holder must provide information as necessary to support the Department in meeting Victoria's obligations relating to environmental water management under the Murray–Darling Basin Plan.
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