

**NORTHERN TERRITORY OF AUSTRALIA**

**WATER REGULATIONS 1992**

As in force at 20 November 2020

**Table of provisions**

<b>Part 1</b>	<b>Preliminary</b>	
1	Citation .....	1
2	Commencement .....	1
2A	Definitions .....	1
3	Applications and forms .....	1
<b>Part 2</b>	<b>Review</b>	
4	Review of action or decision of Controller.....	2
<b>Part 3</b>	<b>Permits and licences</b>	
<b>Division 1</b>	<b>Permits and licences except drilling licences</b>	
5	Water investigation permit .....	2
6	Permit to interfere with waterway.....	3
7	Bore work permit .....	4
8	Surface water extraction licence.....	4
9	Groundwater extraction licence .....	4
9A	Waste discharge licence.....	4
<b>Division 2</b>	<b>Drilling Licences and Qualifications</b>	
10	Drilling licence .....	4
11	Section 53 – prescribed information and samples .....	5
12	Functions of Drillers' Qualifications Advisory Committee.....	6
13	Membership.....	6
13A	Meetings .....	7
14	Qualifications .....	7
<b>Division 3</b>	<b>General</b>	
15	Renewal of permits and licences .....	7
16	Permits or licences lost or destroyed.....	8
17	Register of water extraction licences .....	8
18	Joint interests .....	8
<b>Part 4</b>	<b>Infringement notice offences</b>	
19	Infringement notice offence and prescribed amount payable .....	10

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20	When infringement notice may be given.....	10
21	Contents of infringement notice .....	10
22	Electronic payment and payment by cheque .....	11
23	Withdrawal of infringement notice.....	11
24	Application of Part .....	11

**Part 5**                    **Transitional matters for Water Legislation  
Miscellaneous Amendments Act 2019**

25	Application of regulation 15 .....	12
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**Schedule**                **Infringement notice offences and  
prescribed amounts**

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 20 November 2020

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## WATER REGULATIONS 1992

### Regulations under the *Water Act 1992*

#### Part 1 Preliminary

##### 1 Citation

These Regulations may be cited as the *Water Regulations 1992*.

##### 2 Commencement

These Regulations shall come into operation on the commencement of the *Water Act 1992*.

##### 2A Definitions

In these Regulations:

***approved form*** means a form approved by the Controller under regulation 3(2).

***infringement notice***, see regulation 20.

***infringement notice offence***, see regulation 19(1).

***prescribed amount***, see regulation 19(2).

***relevant land***, in relation to an application made under the Act, means the land to which the application relates.

##### 3 Applications and forms

- (1) A person who makes an application under the Act must lodge the application with the Agency.
- (2) The Controller may approve the forms to be used under the Act.
- (3) An application required to be in accordance with an approved form must include, or be accompanied by, all the information required by the form that is necessary for the person to whom the application is made to make a proper decision.

- (4) If a person lodges an application with insufficient information to enable a proper decision to be made, a public sector employee of the Agency may return the application for proper completion.

## **Part 2            Review**

### **4            Review of action or decision of Controller**

- (1) An application under section 30 of the Act:
  - (a) must be in accordance with the approved form; and
  - (b) for review of a decision to give a remediation notice – must be made within 14 days after the day the notice is given; and
  - (c) for review of another decision or action – must be made within 30 days after the day the applicant is notified of the decision or action.
- (2) If a Review Panel is convened for the purpose of advising the Minister on a matter to be reviewed, the Chairperson of the Panel must, in accordance with the approved form, cause details of the date, time and place at which the Panel will meet to consider the matter to be advised to the applicant.
- (3) If 2 or more applicants seek reviews on similar grounds in respect of matters concerning land in the same general locality, the Review Panel may consider the matters together.
- (4) The Minister shall advise an applicant of the Minister's decision on any matter referred to the Review Panel within one month after the Review Panel gives its advice to the Minister.

## **Part 3            Permits and licences**

### **Division 1        Permits and licences except drilling licences**

#### **5            Water investigation permit**

- (1) An application under section 36(1) of the Act for a permit to explore for water (a ***water investigation permit***) must be in accordance with the approved form.
- (2) The Controller may publish in a newspaper circulating in the locality where it is proposed to explore a notice that the application has been made.

- (3) The newspaper notice must include the following details:
  - (a) a description of the relevant land;
  - (b) the person to whom enquiries about the application may be directed;
  - (c) the way in which objections to the granting of the water investigation permit may be made.
- (4) The costs of publishing the newspaper notice must be met by the applicant for the water investigation permit.
- (5) If a newspaper notice is published, the Controller must give a copy of the notice to the owners and occupiers of land in the vicinity of the relevant land that the Controller considers may be affected by the grant of the water investigation permit.
- (6) Subregulation (2) does not apply if the application is for the renewal of an existing water investigation permit and is made not later than 1 month before the date on which the existing permit is due to expire.
- (7) A water investigation permit must be in the approved form.

## **6 Permit to interfere with waterway**

- (1) An application under section 41(1) of the Act for a permit to interfere with a waterway must be in accordance with the approved form.
- (2) The Controller may publish notice of the application in a newspaper circulating in the locality where the interference with the waterway is proposed to occur.
- (3) The newspaper notice must include the following details:
  - (a) a description of the relevant land;
  - (b) the person to whom enquiries about the application may be directed;
  - (c) the way in which objections to the granting of the permit may be made.
- (4) The costs of publishing the newspaper notice must be met by the applicant for the permit.

- (5) If a newspaper notice is published, the Controller must give a copy of the notice to the owners and occupiers of land upstream or downstream of the relevant land that the Controller considers may be affected by the grant of the permit.
- (6) Subregulation (2) does not apply if the application is for the renewal of an existing permit and is made not later than 1 month before the date on which the existing permit is due to expire.
- (7) A permit to interfere with a waterway must be in the approved form.

#### **7 Bore work permit**

- (1) An application under section 57(1) of the Act for a permit to carry out an operation referred to in section 56(1) of the Act (a **bore work permit**) must be in accordance with the approved form.
- (2) A bore work permit must be in the approved form.

#### **8 Surface water extraction licence**

- (1) An application under section 45(1) of the Act for a water extraction licence to take water (a **surface water extraction licence**) must be in accordance with the approved form.
- (2) A surface water extraction licence must be in the approved form.

#### **9 Groundwater extraction licence**

- (1) An application under section 60(1) of the Act for a water extraction licence to take water from a bore (a **groundwater extraction licence**) must be in accordance with the approved form.
- (2) A groundwater extraction licence must be in the approved form.

#### **9A Waste discharge licence**

- (1) An application under section 74(1) of the Act for a licence to carry out an action otherwise prohibited by section 73 of the Act (a **waste discharge licence**) must be in accordance with the approved form.
- (2) A waste discharge licence must be in the approved form.

### **Division 2 Drilling Licences and Qualifications**

#### **10 Drilling licence**

- (1) An application under section 49(1) of the Act for a drilling licence must be in accordance with the approved form.

- (2) The kinds of drilling licences the Controller may grant are as follows:
  - (a) Drilling Licence Class 1;
  - (b) Drilling Licence Class 2;
  - (c) Drilling Licence Class 3.
- (3) A drilling licence must be in the approved form.

## **11 Section 53 – prescribed information and samples**

- (1) This regulation prescribes the information and samples the Controller may require the holder of a drilling licence (the *licensee*) to provide under section 53 of the Act in connection with work carried out on a bore under the licence.
- (2) The prescribed information is any of the following:
  - (a) information about the bore, including:
    - (i) the name of the bore's owner; and
    - (ii) the name of the bore; and
    - (iii) a sketch and brief description of the bore's location; and
    - (iv) the bore's final construction status (for example, whether the bore is capped, equipped, backfilled or abandoned);
  - (b) information about the work carried out, including:
    - (i) the dates on which the work started and ended; and
    - (ii) the contractor and driller carrying out the work and whether it was carried out under the supervision of the licensee; and
    - (iii) the nature of the work, including the method of drilling, the diameter of the hole drilled, and the casing and packing used;
  - (c) information about the strata and water bearing beds found in the bore;
  - (d) information necessary for the Controller to ensure the licensee has complied with the Act.

- (3) The prescribed samples are 1 or both of the following:
- (a) representative samples of strata, each of approximately 250 grams and including a sample of each change of strata observed in the bore:
    - (i) taken from the bore at intervals not exceeding 3 metres; and
    - (ii) secured in clean bags, preferably made of plastic, each at least 10cm x 15cm in size and 0.1mm thick;
  - (b) a representative sample of at least 1 litre of water:
    - (i) taken from each water cut encountered during bore drilling operations; and
    - (ii) preserved in a clean bottle that is completely filled and tightly stoppered or sealed.
- (4) A bag or bottle in which a sample is kept must be clearly marked to identify the bore from which, and the depth at which, the sample was taken.

## **12 Functions of Drillers' Qualifications Advisory Committee**

The functions of the Drillers' Qualifications Advisory Committee are to advise the Controller:

- (a) in relation to the granting, renewal or variation of drilling licences; and
- (b) in relation to the operation of Part 6, Division 2 of the Act; and
- (c) on matters referred to it by the Controller.

## **13 Membership**

- (1) The Drillers' Qualifications Advisory Committee consists of 8 members.
- (2) At least 4 members must be persons who, in the Minister's opinion, have skills, knowledge and experience in one or more of the following areas:
  - (a) hydrogeology;
  - (b) groundwater engineering;
  - (c) planning and conduct of drilling operations.

- (3) At least 2 members must be persons who are:
  - (a) representatives of users of drilling services; and
  - (b) not employed in the public sector; and
  - (c) in the Minister's opinion, not involved in the drilling industry.
- (4) Before appointing a person to be a member, the Minister must have regard to the range and level of skills, knowledge and experience required among the members of the Committee to enable it to perform its functions.

### **13A Meetings**

- (1) The chairperson must convene a meeting of the Drillers' Qualifications Advisory Committee as directed by the Controller.
- (2) At a meeting of the Committee:
  - (a) the chairperson and 3 other members constitute a quorum; and
  - (b) questions arising must be determined by the majority vote of the members present and voting; and
  - (c) subject to this regulation, the Committee must determine the procedure to be followed at or in connection with the meeting.
- (3) The Committee must keep records of its meetings.

### **14 Qualifications**

For the purposes of section 49(1)(b) of the Act, the prescribed qualifications are a pass in such examinations set or nominated by the Drillers' Qualifications Advisory Committee as the Committee thinks appropriate for the type of work proposed to be carried out under the Drilling Licence, or such other qualifications and/or experience as the Committee or the Controller considers to be equivalent to those qualifications.

## **Division 3 General**

### **15 Renewal of permits and licences**

- (1) A person who holds a permit or licence (an **existing licence**) may renew the existing licence by lodging an application in accordance with the appropriate approved form.
- (2) An application to renew an existing licence must be lodged not later than the application date.

(3) If the Controller renews an existing licence, the Controller must issue a renewed licence to the applicant.

(4) In this regulation:

**application date** means one of the following:

- (a) if the existing licence is a water extraction licence – 6 months before the date on which the licence is due to expire;
- (b) if the existing licence is any other licence or permit – 1 month before the date on which the licence is due to expire.

## **16        Permits or licences lost or destroyed**

If a permit or licence document has been lost or destroyed, the Controller may, on receipt of a statutory declaration as to the circumstances of the loss or destruction and of any other evidence the Controller considers necessary, issue a duplicate permit or licence which has the word "duplicate" endorsed on it.

## **17        Register of water extraction licences**

The register of water extraction licences must contain the following information in relation to each water extraction licence in force:

- (a) the name and address of the holder of the licence;
- (b) the date on which the licence is due to expire;
- (c) the location of the property from which the water is currently taken;
- (d) the maximum quantity of water that may be taken annually;
- (e) the source of the water that may be taken.

## **18        Joint interests**

(1) A joint application for an approval:

- (a) must be in accordance with the approved form for the application; and
- (b) must be made in the name of each joint applicant; and
- (c) must include the address of each joint applicant; and
- (d) must be signed by each joint applicant unless the applicants are using an agent in accordance with paragraph (e); and

- (e) may be made by an agent on the applicants' behalf if the agent has written authorisation to do so and lodges the authorisation with the application.
- (2) After considering the application, any objections to the application and the applicants' replies to those objections, the Controller:
  - (a) must determine whether or not to grant an approval to the applicants jointly and to which applicants to grant the approval; and
  - (b) may include special conditions on the approval that the Controller considers appropriate.
- (3) It is a condition of every joint approval that each joint holder is jointly and severally:
  - (a) bound by the terms and conditions; and
  - (b) liable for any fee or other amount payable; and
  - (c) bound to comply with all notices and directions given or served under the Act unless the notice or direction relates to any thing, measure or work on the land of one or more but not all of the joint holders.
- (4) If, under section 93(1) of the Act, the Controller, by notice, amends the terms and conditions of a joint approval, the Controller may specify in the notice the manner in which the respective entitlements of each of the joint holders are amended by the notice.
- (5) If, under section 93(2) of the Act, the Controller, by notice, revokes or suspends a joint approval, the Controller may specify in the notice the manner in which the respective entitlements of each of the holders are revoked or suspended.
- (6) If an application, notice or other document is permitted or required to be served on the joint holders of an approval, service on one joint holder is taken to be service on every joint holder.
- (7) In this regulation:

**approval** means a licence, permit or other authorisation granted under the Act.

## Part 4                    Infringement notice offences

### 19                    Infringement notice offence and prescribed amount payable

- (1) An ***infringement notice offence*** is an offence against a provision specified in the Schedule.
- (2) The ***prescribed amount*** for an infringement notice offence is the amount equal to the monetary value of the number of penalty units specified for the offence in the Schedule.

### 20                    When infringement notice may be given

If an authorised officer believes on reasonable grounds that a person has committed an infringement notice offence, the officer may give a notice (an ***infringement notice***) to the person.

### 21                    Contents of infringement notice

- (1) The infringement notice must specify the following:
  - (a) the name and address of the person, if known;
  - (b) the date the infringement notice is given to the person;
  - (c) the date, time and place of the infringement notice offence;
  - (d) a description of the offence;
  - (e) the prescribed amount payable for the offence;
  - (f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act 2001*, to which the prescribed amount is payable.
- (2) The infringement notice must include a statement to the effect of the following:
  - (a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;
  - (b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act 2001* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;

- (c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act 2001*, including (but not limited to) action for the following:
  - (i) suspending the person's licence to drive;
  - (ii) seizing personal property of the person;
  - (iii) deducting an amount from the person's wages or salary;
  - (iv) registering a statutory charge on land owned by the person;
  - (v) making a community work order for the person and imprisonment of the person if the person breaches the order.
- (3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

## **22 Electronic payment and payment by cheque**

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the Fines Recovery Unit's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

## **23 Withdrawal of infringement notice**

- (1) The Controller may withdraw the infringement notice by written notice given to the person.
- (2) The notice must be given:
  - (a) within 28 days after the infringement notice is given to the person; and
  - (b) before payment of the prescribed amount.

## **24 Application of Part**

- (1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.

- (2) Also, this Part does not:
- (a) require an infringement notice to be given; or
  - (b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or
  - (c) prevent more than one infringement notice for the same offence being given to a person.
- (3) If more than one infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

## **Part 5 Transitional matters for Water Legislation Miscellaneous Amendments Act 2019**

### **25 Application of regulation 15**

- (1) Regulation 15, as in force immediately before the commencement, continues to apply in relation to an application to renew a water extraction licence that is due to expire on a date that is earlier than 9 months after the commencement.
- (2) In this section:

**commencement** means the day on which the *Water Legislation Miscellaneous Amendments Act 2019* commences.

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**Schedule      Infringement notice offences and prescribed amounts**

regulation 19

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Provision	Prescribed amount in penalty units	
	for individual	for body corporate
<b><i>Water Act 1992</i></b>		
section 81(1)	1	3
sections 55(2), 71(1), 79(3) and 96(3)	2	5
sections 37(1), 48(1) and 50(1)	5	
sections 40(1), 42(1), 44(1), 46(1), 56(1), 58(1), 59(1), 61(1), 66(1) and 68(1)	5	10

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

**2****LIST OF LEGISLATION*****Water Regulations (SL No. 28, 1992)***

Notified	30 June 1992
Commenced	1 July 1992 (r 2, s 2 <i>Water Act 1992</i> (Act No. 19, 1992) and <i>Gaz S35</i> , 30 June 1992)

***Amendments of Water Regulations (SL No. 23, 1994)***

Notified	10 August 1994
Commenced	10 August 1994

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date	18 June 1999
Commenced	18 June 1999

***Amendment of Water Regulations (SL No. 2, 2002)***

Notified	13 February 2002
Commenced	13 February 2002

***Water Amendment Regulations (SL No. 31, 2008)***

Notified	26 November 2008
Commenced	26 November 2008 (r 2, s 2 <i>Water Amendment Act 2007</i> (Act No. 33, 2007) and <i>Gaz G47</i> , 26 November 2008, p 6)

***Water Legislation Amendment Act 2018 (Act No. 29, 2018)***

Assent date	4 December 2018
Commenced	31 December 2018 ( <i>Gaz S107</i> , 17 December 2018)

***Water Legislation Miscellaneous Amendment Act 2019 (Act No. 26, 2019)***

Assent date	2 September 2019
Commenced	25 September 2019 ( <i>Gaz G39</i> , 25 September 2019, p 2)

***Statute Law Revision Act 2020 (Act No. 26, 2020)***

Assent date	19 November 2020
Commenced	20 November 2020 (s 2)

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### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: rr 1 and 21 and sch.

### 4 LIST OF AMENDMENTS

r 2A	ins No. 31, 2008, r 4 amd Act No. 29, 2018, s 47
r 3	sub No. 31, 2008, r 5
r 4	amd No. 31, 2008, r 11; Act No. 29, 2018, s 48; Act No. 26, 2020, s 3,
pt 3	
div 1 hdg	sub No. 31, 2008, r 6
r 5	sub No. 31, 2008, r 6
r 6	sub No. 31, 2008, r 6 amd Act No. 29, 2018, s 49
r 7	sub No. 31, 2008, r 6 amd Act No. 29, 2018, s 50
r 8	sub No. 31, 2008, r 6 amd Act No. 26, 2020, s 3
r 9	sub No. 31, 2008, r 6 amd Act No. 26, 2019, s 16
r 9A	ins No. 23, 1994, r 1 sub No. 31, 2008, r 6 amd Act No. 26, 2020, s 3
r 10	sub No. 31, 2008, r 7 amd Act No. 26, 2019, s 12
r 11	sub No. 31, 2008, r 7
rr 12 – 13	sub Act No. 26, 2019, s 13
r 13A	ins Act No. 26, 2019, s 13
r 15	sub No. 31, 2008, r 8 amd Act No. 26, 2019, s 14
r 16	amd Act No. 26, 2020, s 3
r 17	amd No. 23, 1994, r 2 sub No. 31, 2008, r 9
r 18	amd No. 31, 2008, r 11 sub Act No. 29, 2018, s 51
pt 4 hdg	ins Act No. 29, 2018, s 51
rr 19 – 24	ins Act No. 29, 2018, s 51
pt 5 hdg	ins Act No. 26, 2019, s 15
r 25	ins Act No. 26, 2019, s 15
sch	amd Act No. 27, 1999, s 16; No. 2, 2002 rep No. 31, 2008, r 10 ins Act No. 29, 2018, s 51