

South Australia

Natural Resources Management (Eastern and Western Mount Lofty Ranges—Prescribed Water Resources) (Exemption of Certain Existing Users) Regulations 2012

under the *Natural Resources Management Act 2004*

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1—Short title

These regulations may be cited as the *Natural Resources Management (Eastern and Western Mount Lofty Ranges—Prescribed Water Resources) (Exemption of Certain Existing Users) Regulations 2012*.

2—Commencement

These regulations will come into operation on 31 January 2013.

3—Application and modification of section 164N

- (1) For the purposes of section 232(1)(b) of the Act, it is declared that section 164N of the Act applies to a secondary existing user with the following variations:
 - (a) a reference in section 164N to an existing user is to be taken to include a reference to a secondary existing user;
 - (b) section 164N(1)(a) applies as if for "within 6 months after the publication in the Gazette of the regulation declaring the resource to be a prescribed resource" there were substituted "within 6 months after the commencement of the *Natural Resources Management (Eastern and Western Mount Lofty Ranges—Prescribed Water Resources) (Exemption of Certain Existing Users) Regulations 2012*";
 - (c) section 164N(1)(b) applies as if for "subsection (2)" there were substituted "subsection (2) and (2a)";
 - (d) section 164N(2) applies as if for "The water access entitlement" there were substituted "Subject to subsection (2a), the water access entitlement";
 - (e) section 164N applies as if after subsection (2) there were inserted—

- (2a) Despite subsection (2), the Minister may, in respect of an application by a secondary existing user, grant a lesser water access entitlement than the entitlement that would have been granted under subsection (2) (but for this subsection) on 1 or more of the following grounds:
- (a) on the ground that the Minister considers it appropriate to grant a lesser entitlement based on the activities conducted at the time of the application on the land to which the application relates;
 - (b) on the ground that the Minister considers it appropriate to grant a lesser entitlement because—
 - (i) the future requirements (based on subsection (2)(a) or (b) (or both)) of the secondary existing user related to land that has been divided; and
 - (ii) the application relates to a portion of that land;
 - (c) on such other ground as the Minister thinks fit.
- (f) section 164N(6) applies as if for "subsection (1) or (2)" there were substituted "subsection (1), (2) or (2a)"
- (g) the application of section 164N(11) to a secondary existing user is varied such that the person ceases to be a secondary existing user if he or she does not make the necessary applications under section 164N(1) within 6 months after the commencement of these regulations.
- (2) For the purposes of section 232(1)(b) of the Act, it is declared that section 164N of the Act applies to a successor in title treated as a secondary existing user under subregulation (4) (the *applicant*) with the following variations (in addition to the variations prescribed in subregulation (1)):
- (a) section 164N(2)(a) applies as if for "his or her reasonable requirements" there were substituted "the reasonable requirements of the secondary existing user in relation to whom the applicant is successor in title";
 - (b) section 164N(2)(b) applies as if for "he or she" wherever occurring there were substituted in each case "the secondary existing user in relation to whom the applicant is successor in title".
- (3) In this regulation—
- Act* means the *Natural Resources Management Act 2004*;
- designated area* means—
- (a) the Eastern Mount Lofty Ranges Water Resources Area within the meaning of the *Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Watercourses and Surface Water Prescribed Area) Regulations 2005*;

- (b) the Eastern Mount Lofty Ranges Prescribed Wells Area within the meaning of the *Natural Resources Management (Eastern Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005*;
- (c) the Western Mount Lofty Ranges Prescribed Watercourses within the meaning of the *Natural Resources Management (Western Mount Lofty Ranges—Prescribed Watercourses) Regulations 2005*;
- (d) the Western Mount Lofty Ranges Prescribed Wells Area within the meaning of the *Natural Resources Management (Western Mount Lofty Ranges—Prescribed Wells Area) Regulations 2005*;
- (e) the Western Mount Lofty Ranges Surface Water Area within the meaning of the *Natural Resources Management (Western Mount Lofty Ranges—Surface Water Prescribed Area) Regulations 2005*;

secondary existing user means a person—

- (a) who took water from a water resource in a designated area at any time during the establishment period within the meaning of section 164N(10) of the Act; or
- (b) who did not take any water during that period but who needs water for a development, project or undertaking to which he or she was legally committed or in respect of which he or she had, in the opinion of the Minister, committed significant financial or other resources during the establishment period,

but who did not make the necessary applications for authorisations under section 164N(1) of the Act within the period required under that section (also see subregulation (4)).

- (4) A person who satisfies the Minister that he or she is a successor in title to—
 - (a) the land; or
 - (b) a right under a lease; or
 - (c) any other interest in land, being an interest that gave access to the land and allowed water to be taken,

of a secondary existing user is to be treated as a secondary existing user for the purposes of these regulations.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 13 December 2012

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