

South Australia

# **Natural Resources Management (Financial Provisions) Regulations 2005**

under the *Natural Resources Management Act 2004*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Natural Resources Management (Financial Provisions) Regulations 2005*.

### 3—Interpretation

In these regulations—

*Act* means the *Natural Resources Management Act 2004*;

*prime bank rate* for a particular financial year means the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the first trading day of the Bank in that financial year.

## Part 2—Financial matters

### 4—Interest payable by councils

Interest accrues under section 93(1) of the Act from the date on which the instalment was payable under that section at the prime bank rate for the relevant financial year, calculated in respect of each month (or part of a month) for which the relevant amount remains unpaid.

#### 4A—Costs of councils—section 96

- (1) This regulation makes provision with respect to the operation of section 96 of the Act.
- (2) For the purposes of this regulation—
  - (a) *establishment costs* are costs directly associated with—
    - (i) a council being required to impose a regional NRM levy on rateable land within its area (or part of its area) in a particular financial year after not being required to impose such a levy in the immediately preceding financial year; or
    - (ii) a council being required to impose a regional NRM levy on rateable land within its area (or part of its area) in a particular financial year on a basis under section 95(3)(a) of the Act that is different to the basis that applied with respect to the immediately preceding financial year, other than where any additional costs incurred by the council on account of the change to the basis for the levy are not significant;
  - (b) *ongoing costs* are annual costs directly associated with a council imposing and collecting a regional NRM levy, other than costs that a council would incur in any event on account of the imposition and collection of rates under the *Local Government Act 1999*.
- (3) Subject to this regulation, the costs that a council may recover with respect to a particular financial year will be determined according to whether the council is claiming—
  - (a) establishment costs; or
  - (b) ongoing costs; or
  - (c) both establishment costs and ongoing costs.
- (4) The amount that a council may recover as establishment costs will be—
  - (a) fair costs incurred by the council with respect to—
    - (i) consulting with the relevant regional NRM board in relation to the basis for the regional NRM levy; and

- (ii) establishing the ability of the council's rating system to deal with the regional NRM levy; and
  - (iii) making any amendments to the council's rating system on account of the imposition of the regional NRM levy; and
  - (iv) conducting any tests involving the council's rating system on account of the imposition of the regional NRM levy; and
  - (v) setting up and assigning codes within the council's rating system on account of the imposition of the regional NRM levy; and
  - (vi) obtaining any new assessment or valuation information on account of the imposition of the regional NRM levy; and
  - (vii) confirming the imposition of the appropriate levy with respect to rateable land in the area of the council; or
- (b) \$7 918 (indexed), plus 52 cents (indexed) for each assessment of levy against a piece of rateable land, adjusted, if necessary, under subregulation (5),  
(on the basis that the council will decide whether it recovers its costs under paragraph (a) or under paragraph (b)).
- (5) If a council is claiming establishment costs under paragraph (b) of subregulation (4) from 2 or more regional NRM boards with respect to a particular financial year, the component under that paragraph represented by \$7 918 (indexed) will be reduced, with respect to the payment to each regional NRM board, to 60% of the amount that would otherwise apply.
- (6) The amount that a council may recover as ongoing costs will be \$1 848 (indexed), plus 18 cents (indexed) for each assessment of levy against a piece of rateable land.
- (7) A council seeking to recover any costs with respect to a particular financial year should, as a preliminary step, furnish to the relevant regional NRM board a reasonable estimate of the costs that the council expects to claim—
- (a) as establishment costs (if relevant); and
  - (b) as ongoing costs.
- (8) Any estimate under subregulation (7) should be furnished to the regional NRM board before the board finalises its draft budget for inclusion in its draft plan for the relevant financial year for the purposes of consultation under the Act.
- (9) A regional NRM board must, after taking into account any information furnished by a council under subregulation (7), include in its regional NRM plan for the relevant financial year the amounts that it considers to be appropriate for the council to receive with respect to establishment costs (if relevant) and ongoing costs.
- (10) A council must (after declaring the relevant levy) furnish to a regional NRM board from which it is seeking to recover costs an invoice that sets out the amount or amounts that the council is claiming for establishment costs (if relevant) and ongoing costs, and the calculations used by the council to determine any such amount or amounts.
- (11) A council should, except in a case involving extraordinary administrative difficulty, furnish an invoice under subregulation (10) by 31 March in the financial year with respect to which the relevant regional NRM levy is imposed.

- (12) A regional NRM board must, within 30 days after receiving an invoice from a council (treating any amount claimed as establishment costs and any amount claimed as ongoing costs separately)—
- (a) pay the amount claimed by the council; or
  - (b) if the amount claimed by the council is based on the council's determination of fair costs and is higher than the relevant amount specified by the board in its regional NRM plan under subregulation (9), and the board considers that the amount that has been claimed should be reviewed—pay the amount specified in the plan and then immediately refer the matter to the Chief Officer so that the Chief Officer can determine whether or not the outstanding amount of the council's claim should be paid (wholly or in part).
- (13) The Chief Officer must make a determination within 60 days after a matter is referred under subregulation (12) (and a determination of the Chief Officer will have effect as a determination of the fair costs of the relevant council).
- (14) An amount specified by this regulation that is followed by the word (*indexed*) must be adjusted with respect to each financial year, beginning with the 2007/2008 financial year, by multiplying the amount by a proportion obtained by dividing the CPI for the September quarter of the immediately preceding year by the CPI for the September quarter, 2005, on the basis that the quotient used for the purposes of the adjustment will be calculated to 2 decimal places and that the amount obtained from the adjustment will be rounded—
- (a) in the case of an amount expressed in dollars—to the nearest dollar;
  - (b) in the case of an amount expressed in cents—to the nearest cent.
- (15) For the purposes of the operation of subregulation (2), a levy imposed by a council under Part 8 Division 2 of the *Water Resources Act 1997* with respect to the 2005/2006 financial year will be taken to be a regional NRM levy that has been imposed under the *Natural Resources Management Act 2004* (declared on a basis that corresponds to the basis on which the levy was declared under the *Water Resources Act 1997*).

#### **4B—Exclusions from operation of section 97**

Any land that is non-rateable land under section 147 of the *Local Government Act 1999* is excluded from the operation of section 97 of the Act.

#### **5—Interest payable in cases of default**

- (1) Interest accrues on an unpaid levy and on an unpaid instalment of levy under section 110 of the Act from the date stated for payment of the levy or instalment in the notice imposing the levy or instalment.
- (2) Interest accrues on unpaid interest under section 110 of the Act at six monthly intervals from the date referred to in subregulation (1).
- (3) Any interest—
  - (a) that accrues under subregulation (1) or (2); or
  - (b) that is liable to be paid under section 123(16), 183(13), 185(4), 194(5)(a), 196(5)(a) or 197(9)(a) of the Act,

will be interest equal to the prime bank rate for the relevant financial year, calculated in respect of each month (or part of a month) for which the relevant amount remains unpaid.

## 6—Levy first charge on land

- (1) The charge created by section 112 of the Act will correspond to a mortgage in favour of the Minister over the relevant land that ranks ahead of any registered mortgage, encumbrance or charge.
- (2) For the purposes of subregulation (1), the *relevant land* is—
  - (a) in the case of an OC-NRM levy—the land in respect of which the levy has been imposed;
  - (b) in the case of an NRM water levy—the land where the water is used or applied.

## 7—Form of consent—special purpose water levy

The consent referred to in section 103(5) of the Act must be in a form determined by the Minister.

## 8—Recovery costs

- (1) The Minister may from time to time, by notice in the Gazette, determine a charge that may be imposed on account of any steps that may be taken by the Department in the administration of the Act if a person fails to pay an NRM water levy in accordance with the requirements of the Act.
- (2) The charge must not exceed the Minister's determination of the reasonable costs to the Department in taking the relevant steps.
- (3) The charge will be recoverable as a debt due to the Crown.

## 8A—Refund of levies

- (1) In this regulation—

*donation* means a gift for no consideration.

*environmental donations licence* means an environmental donations licence under the *Natural Resources Management (General) Regulations 2005*;

- (2) For the purposes of section 114 of the Act—
  - (a) the donation of the whole or a part of a water allocation of a water licence to the holder of an environmental donations licence (so that the allocation can be assigned to that licence); and
  - (b) the variation of the conditions endorsed on a water licence so that the licence will become an environmental donations licence,are recognised as natural resources management practices on which an application for a refund of a water levy may be based.
- (3) The maximum proportion of a water levy that may be subject to a refund (the *eligible levy amount*) is equal to the proportion of the allocation donated, or within the ambit of the relevant condition, in the manner contemplated by subregulation (2).

- (4) The amount of any refund will be determined according to the following table:

<b>Date within the relevant financial year on which the donation or variation of conditions takes effect</b>	<b>Percentage of eligible levy amount payable</b>
1 July—10 July	100
11 July—31 October	75
1 November—31 January	50
1 February—31 March	25
1 April—30 June	0

- (5) To avoid doubt, an application may be made under this regulation with respect to a water levy declared for the 2005/2006 financial year.

### **9—Recovery of penalty under section 115**

Pursuant to section 115(5) of the Act, the following sections of Chapter 5 of the Act are prescribed:

- (a) section 106;
- (b) section 110;
- (c) sections 112 and 113;
- (d) section 116.

### **10—NRM Fund**

For the purposes of section 117(2)(e) of the Act, the prescribed percentage is 100%.

## **Part 3—Meters**

### **11—Supply and installation of meters**

- (1) In order to determine the quantity of water taken for the purposes of the Act the Minister may—
- (a) supply, install or seal a meter; or
  - (b) by written notice, direct a person to supply or install a meter.
- (2) The Minister may require—
- (a) an owner of land on which a meter supplied by the Minister is installed; or
  - (b) the holder of a water licence under which water taken under the licence will be measured by a meter supplied by the Minister (if not an owner of the land),
- to pay any costs involved with the supply, installation or sealing of the meter, which will then become a debt due by the owner or the holder of the licence (as the case requires) to the Crown.
- (3) A meter supplied by the Minister remains the property of the Minister unless all relevant costs are paid under subregulation (2) or the Minister transfers property in the meter to another person.

## **12—Meters owned by the Minister**

- (1) The holder of a water licence in respect of which a meter owned by the Minister is used to measure the quantity of water taken under the licence is liable for rent for the meter at the rate prescribed in Schedule 1.
- (2) The Minister may enter land on which a meter owned by the Minister is installed to read, inspect, service, maintain, seal, repair or replace the meter.

## **13—Meters owned by other persons**

- (1) The Minister may enter land on which a meter owned by a person other than the Minister is installed to read, inspect or seal the meter.
- (2) The Minister may, by notice in writing, direct a person to service, maintain, repair, replace or adjust a meter being used by the person if in the Minister's opinion such action is necessary.

## **14—Provisions applying to meters generally**

- (1) Where a meter is used to measure the quantity of water taken at a particular place then—
  - (a) a person must not take water except through the meter;
  - (b) a person must not adjust or alter the meter, or tamper with a seal fixed to the meter, without the authority of the Minister;
  - (c) a person must not damage or destroy the meter;
  - (d) a person must not—
    - (i) cut through or into a pipe to which this paragraph applies;
    - (ii) install a fitting providing access to the inside of a pipe to which this paragraph applies;
    - (iii) change the configuration of, remove, or interfere in any other way with, a pipe to which this paragraph applies,without the authority of the Minister.
- (2) Subregulation (1)(d) applies to—
  - (a) the pipe connecting the water resource from which water is taken to the meter; and
  - (b) the pipe on the other side of the meter to (and including) the S bend in the pipe or, where there is no S bend, the first T junction or elbow in the pipe, or any other distance of pipe determined in accordance with a specification approved by the Minister.
- (3) A person must not—
  - (a) remove a meter without the authority of the Minister;
  - (b) replace a meter without the authority of the Minister.
- (4) In addition, any responsible person in relation to a meter—
  - (a) must not permit sand, soil or any other material to be deposited on or around the meter; and

- (b) must not permit deposits of sand, soil or any other material to build up around the meter; and
  - (c) must keep vegetation cleared away from the meter.
- (5) If a meter is damaged or destroyed, a responsible person in relation to the meter must, at the written direction of the Minister, repair or replace the meter.
- (6) In this regulation—
- responsible person** in relation to a meter means—
- (a) an owner of land on which the meter is installed, other than the Crown or an agency or instrumentality of the Crown; and
  - (b) the holder of the water licence under which water taken under the licence is measured (or supposed to be measured) by the meter.

### **15—Requirements as to installation, repair etc of meters**

- (1) If a person is required to comply with a direction under this Part to supply and install a meter or to replace a meter, the new meter must be rated by the manufacturer to an accuracy of at least plus or minus 2 per cent.
- (2) If a person is required to comply with a direction under this Part to install a meter, the meter must be installed in accordance with specifications approved by the Minister.
- (3) If a person is required to comply with a direction under this Part to service, repair, replace or adjust a meter, the person must employ a competent person approved by the Minister to do the work and the work must be done in accordance with specifications approved by the Minister.
- (4) A person who is required to comply with a direction under this Part to service or repair a meter must ensure that only parts that are supplied or approved by the manufacturer of the meter are used.
- (5) If a person is required to comply with a direction under this Part to maintain a meter, he or she must maintain the meter in accordance with specifications approved by the Minister.

### **16—Testing requirements**

- (1) The following requirements are prescribed for the purposes of section 106(5) of the Act.
- (2) The Minister must be given notice (in a manner and form determined by the Minister) at least 48 hours before the commencement of work to remove a meter for testing.
- (3) The security seals attached to the meter may only be removed by a person approved by the Minister.
- (4) The meter must be read—
  - (a) by a person approved by the Minister; or
  - (b) by the relevant person,immediately before it is removed.
- (5) The reading obtained under subregulation (4) must be provided in writing to the Minister within a period determined by the Minister.

- (6) The meter must be tested by a competent person approved by the Minister.
- (7) The meter must be tested within 5 business days after it is removed or within a longer period determined by the Minister.
- (8) The meter must be tested in accordance with any specifications determined by the Minister.
- (9) A certificate relating to the testing must be provided to the Minister within 10 business days after the meter is tested or within a longer period determined by the Minister.
- (10) The certificate must be in a form determined or approved by the Minister.
- (11) If the meter is found to be outside an accuracy rating of plus or minus 2 per cent, the meter must not be reinstalled unless or until—
  - (a) the meter is refurbished in accordance with a specification determined by the Minister; and
  - (b) the Minister is provided with a certificate of accuracy (certifying the accuracy of the meter to plus or minus 2 per cent).
- (12) The meter must be reinstalled in accordance with specifications approved by the Minister.
- (13) The meter must, on being reinstalled, be sealed by a person approved by the Minister.
- (14) The meter must be read—
  - (a) by a person approved by the Minister; or
  - (b) by the relevant person,  
immediately after it is reinstalled.
- (15) The reading obtained under subregulation (14) must be provided in writing to the Minister within a period determined by the Minister.
- (16) Despite a preceding subregulation, a meter may be tested without being removed if the Minister gives his or her approval to this course of action.
- (17) In this regulation—

*relevant person* means the person who is liable to pay the relevant levy, as contemplated by section 106(5) of the Act.

## 17—Compliance with Part

- (1) A person who fails to comply with a direction of the Minister under this Part or who contravenes or fails to comply with a provision of this Part is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$250.
- (2) Subregulation (1) does not apply in relation to regulation 16 (which is subject to enforcement under section 106(5) of the Act).

- (3) If a person fails to comply with a direction of the Minister under this Part or contravenes or fails to comply with a provision of this Part, the Minister may enter the land concerned and take such action as the Minister thinks fit to remedy the contravention or failure and the Minister's costs will be a debt due to the Crown by the person who has contravened or failed to comply with the provision or failed to comply with the direction.

## Schedule 1—Fees

1	Rent for meter for a period of 12 months or less ending on 30 June— Nominal size of meter—	
	(a) less than 50mm	\$146
	(b) 50 to 100mm	\$212
	(c) 150 to 175mm	\$314
	(d) 200 to 380mm	\$357
	(e) 407 to 610mm	\$430
2	Fee for testing meter under section 106(4) of the Act	Estimated cost determined by the Minister
3	Fee for reading meter at request of licensee	Estimated cost determined by the Minister

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2005	153	<i>Gazette 30.6.2005 p2232</i>	1.7.2005: r 2
2005	243	<i>Gazette 24.11.2005 p4018</i>	24.11.2005: r 2
<b>2006</b>	<b>18</b>	<b><i>Gazette 2.2.2006 p424</i></b>	<b>2.2.2006: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>24.11.2005</i>
Pt 2		
<b>rr 4A and 4B</b>	<b>inserted by 18/2006 r 4</b>	<b>2.2.2006</b>
r 8A	inserted by 243/2005 r 4	24.11.2005

### Historical versions

24.11.2005