

Landscape South Australia

Regulations Explanatory Paper

Contents

Introduction	2
1. Boards and elections	3
2. Planning and annual reporting	3
Planning and policies.....	3
Annual reports.....	4
3. Levies, penalties and funds	4
Land levies in council areas.....	4
Council cost recovery for collecting the land levy.....	5
Refund of unpaid land levies.....	5
Land levies outside council areas.....	6
Water levies.....	6
Other levy related regulations.....	6
Levy refunds.....	6
Penalties.....	6
4. Compliance	7
Warrants and service.....	7
Environment, Resources and Development Court jurisdiction.....	7
Penalties and expiations.....	7
5. Land management	7
6. Water management	7
Flexibility in relation to separation of water rights (unbundling).....	8
Content of Water Allocation Plans.....	8
Water meter requirements.....	9
Tagged interstate water allocation trade.....	9
Water compliance.....	10
7. Control of animals and plants	10
Declared pest animal management.....	10
Exemptions.....	10

8. Fees	10
9. Other miscellaneous regulations	11

Introduction

The South Australian Government is undertaking significant reform to improve the way our landscapes and natural resources are managed. From 1 July 2020, the new *Landscape South Australia Act 2019* (the Act) will replace the *Natural Resources Management Act 2004* as the new framework for managing the state's land, water, pest animals and plants, and biodiversity. Green Adelaide has specifically been established through this legislation in recognition of the unique environmental challenges faced in urban areas.

Further information about the reforms can be found at: [Landscape SA Policy-Overview](#).

It is necessary to make landscape regulations to underpin the Act's operation. Draft regulations for stakeholder feedback include:

- *Landscape South Australia (General) Regulations 2020* (LSA (General) Regulations)
- *Landscape South Australia (Water Management) Regulations 2020* (LSA (Water Management) Regulations)
- *Landscape South Australia (Fees) Notice 2020*

These regulations will revoke the existing *Natural Resources Management (General) Regulations 2005*, *Natural Resources Management (Financial Provisions) Regulations 2005*, *Natural Resources Management (Fees) Regulations 2019* and *Natural Resources Management (Transitional Provisions—Levies) Regulations 2005*.

The draft regulations have been prepared following a review by the Department for Environment and Water, in conjunction with input from other agencies who have operational responsibilities for administering regulated matters.

Regulations will be made operational at the full commencement of the Act on 1 July 2020.

Current NRM regulations still required under the new Act will be replicated in the new regulations. The opportunity has been taken to improve the operation of some existing regulations. Some new regulations have also been created to underpin the operation of the new Act or where opportunities have been identified to better align regulations with the landscape reform policy directions such as red tape reduction, streamlining and creating a simpler and more accessible system.

Some minor updates have been made for consistency with the drafting approach and reform direction in the Act. For example requirements to provide notice of applications for permits or approvals to be printed in a newspaper have been replaced with more flexible public notification requirements.

Stakeholder feedback on the draft regulations is sought during a three week period from 3 April to 27 April 2020. Feedback will be used to support decision making and finalise regulations. A

consultation report will be produced to document how public input influenced the regulations, and will document any remaining issues, which may be addressed at a later date.

1. Boards and elections

Requirements for composition, membership and functions of regional landscape boards are comprehensively set out in the Act. It provides for eight new regional landscape boards and the Green Adelaide board to operate at arm's length from government to deliver simple, effective and clear priorities and to empower local communities to be responsible for sustainably managing their regions' natural resources. No further requirements relating to boards have been prescribed in regulations.

Under the new Act, the first elections will be held in 2022. These will align with local government elections to help achieve efficiencies in running the elections. Until then, board members will continue to be appointed by the Minister for Environment and Water. From 2022, in regions where elections are to be held, communities and landholders will be able to take part in an election process to elect three of the seven new members of the regional landscape boards. The Minister will appoint four of the seven new members. Regulations to provide for the conduct of elections will be made and consulted through a separate process in advance of the elections.

Two regulations in the LSA (General) Regulations apply to board meetings.

The Act provides that a regional landscape board must give public notice of its intention to hold a meeting in accordance with requirements prescribed by the regulations. Rather than being mandated to publish a notice in a local newspaper except in certain circumstances, flexibility is now provided for boards to provide notice in a manner determined by the board such as on the board's website (regulation 7 of the LSA (General) Regulations).

Section 23 of the Act provides that board meetings must be held in public. Meetings can only be closed to the public (i.e. in-camera) if the board considers it to be necessary and appropriate to be able to receive, discuss or consider any prescribed information or matter in confidence. The regulations replicate the same matters that boards can consider in confidence such as sensitive commercial or personal information as existing arrangements have been found to be working well (regulation 7 of the LSA (General) Regulations).

2. Planning and annual reporting

Planning and policies

Regional landscape plans will be simple and focussed on five priorities or seven for Green Adelaide so they are easy to understand and implement. No requirements for additional content of regional landscape plans or annual business plans have been prescribed. To provide greater clarity and flexibility in water planning, some new matters that water allocation plans may address following consultation with communities have been specified (see part 6 on Water Management regulations below).

The Act's provisions for consultation on regional landscape plans, annual business plans and water allocation plans and policies are simpler and less prescriptive than those in the NRM Act. While

minimum consultation requirements are included in the Act for the development or amendment of plans and policies that affect people's rights, interests or legitimate expectations, general consultation requirements for developing and amending plans and policies will primarily be addressed in consultation guidelines determined by the Minister rather than regulations. This will provide flexibility for best practice consultation requirements to be determined in the circumstances and to evolve over time.

To ensure procedural fairness, a process for notice to be given to water licence holders affected by a reduction to water rights or a change to a consumptive pool in a water allocation plan has been prescribed (regulation 5 of the LSA (Water Management) Regulations).

It is noted that, where a business plan includes a levy proposal for changes to land levies inside council areas (such as to increase the levy above the Consumer Price Index (CPI), or change the basis of levy), the regulations can prescribe the steps for consulting with councils. In response to feedback that the current minimum 21-day period is not sufficient time to consult with local councils, no mandatory consultation period has been included in the draft regulations. Going forward, guidance on the process for consultation is intended to be developed following consultation with local government and boards.

As is the case for new annual business plans, the regulations require the Minister's approval for amendments to a board's business plan, if the amendment is inconsistent with the board's regional landscape plan, or if it relates to a levy proposal (regulation 10 of the LSA (General) Regulations).

The regulations also allow for landscapes and water affecting activities control policies to be amended without formal procedures in the same circumstances as the Act provides for amendment of regional and water allocation plans (regulation 39 of the LSA (General) Regulations and regulation 44 of the LSA (Water Management) Regulations).

Annual reports

Strengthened annual reporting requirements in the Act will provide greater transparency on board spending, with regional landscape boards being required to report on expenditure of levies in their annual report. Boards will also report on grassroots grants, as well as implementation of their regional landscape plans.

To ensure transparency and accountability, the draft regulations will also require board annual reports to address business plan, water allocation plan, and policy implementation, as well as meeting attendance by board members, any changes to board functions and delegations (regulation 8 of the LSA (General) Regulations).

3. Levies, penalties and funds

The Act makes provision for land (in and outside council areas) and water levies to continue to be raised, with increases to be capped by CPI unless exceptional circumstances apply. Going forward, the regional NRM levy will be called the regional landscape levy.

Land levies in council areas

In council areas, councils will continue to set land levy rates based on the amount they are required to contribute to the relevant landscape board. Councils can recover any costs for the collection of

this levy from the relevant board. The new Act provides a simpler annual process for setting the land based levy and will reduce delays in setting council contributions. This means that councils will have their contributions confirmed earlier in each financial year, alleviating time pressures in council budget, consultation and levy declaration processes.

Council cost recovery for collecting the land levy

The Act continues arrangements for regional landscape boards to pay councils an amount, determined under a scheme set by the regulations, to reimburse councils costs for collection of the land levy, including ongoing and establishment costs.

Similar arrangements to current regulations will continue to apply, to allow councils to claim establishment costs, such as for imposing a levy for the first time or changing the levy basis, as well as ongoing costs associated with councils imposing and collecting the regional landscape levy (regulation 14 of the LSA (General) Regulations).

In furthering the Minister's commitment to create an efficient, cost effective and simplified process for councils to be reimbursed for the costs associated with levy collection or debt recovery some new measures have also been included in the regulations.

As it is anticipated that councils will incur some costs in transitioning to collect landscape levies, provision has been made for councils to claim transitional costs incurred in this transition. This will allow a council to claim costs associated with transition, such as rating system changes to reflect the change of the levy name or to accommodate landscape boundary changes. These may be claimed during up to a five year transitional period from 2020/21 to 2024/25 where fair costs can be demonstrated to have been incurred.

Existing arrangements will continue to apply to enable councils to claim indexed ongoing costs for levy collection, while continuing to provide the opportunity for councils to estimate their ongoing costs if they consider the indexed amount does not fairly cover their collection costs. Some clarifications have been made to the regulations to presume that councils will recover indexed ongoing costs, unless a council provides an estimate in order to claim fair ongoing costs by 31 January in any relevant financial year.

In practice, this will support an efficient streamlined process whereby regional landscape boards can estimate council ongoing collection costs based on the indexed rate through business planning, unless the council submits an estimate of fair costs. The relevant amount will be budgeted in the relevant board's approved business plan and may be claimed by a council through its invoice to the board.

Refund of unpaid land levies

The Act introduced a new arrangement for councils to be reimbursed for unpaid land levies by regional landscape boards in accordance with a process prescribed by regulation. Draft regulations provide an annual process for councils to apply to the relevant regional landscape board to be reimbursed for written-off levy debt, where the debt has been outstanding for a period of three years, or if a statement is provided by the council that the grounds for writing off the debt have been met under the *Local Government Act 1999* (regulation 13 of the LSA (General) Regulations). Eligible debts will be those incurred after the commencement of the Act, on 1 July 2020.

The draft regulations provide for an efficient system for refunds to be claimed. The timing for applications to be made aligns with council and board processes for reimbursement of levy collection costs. A standard form will be developed for optional use by councils to facilitate these applications.

Land levies outside council areas

Land owners outside of council areas will continue to be liable to pay a land levy, with the relevant regional landscape board responsible to set land levy rates and collect the levy, rather than the Minister. Amendments have been drafted to existing regulations to reflect this change in responsibility.

Water levies

Water levies will continue to be payable by relevant water users and collected by the Department for Environment and Water on behalf of the Minister to be paid to the relevant landscape board. Where a prescribed water resource is in more than one landscape management region, water levy amounts and income will be shared between relevant boards.

No new regulations have been prescribed in relation to water levies. Existing regulations are working well and remain unchanged in the draft regulations.

Other levy related regulations

Other existing regulations for levies, which have been determined to work well, or which do not require change or adjustment as part of the landscape reform agenda have been retained. This includes arrangements for interest to accrue on unpaid council contributions at the prime bank rate; provision for the different purposes of land that can be used as the basis for a regional landscape levy; provisions that councils are not required to apply the same general council rate rebates to land levies or that they can apply a different rebate as well as other matters.

Levy refunds

Flexibility has been provided in the draft regulations for any regional landscape board to endorse water levy refunds where a water access entitlement or water allocation will become an accredited environmental donations entitlement, to be used for environmental purposes (regulation 7 of the LSA (Water Management) Regulations). Currently only the South Australian Murray-Darling Basin NRM Board can accredit such arrangements for the purposes of providing refunds.

Penalties

In addition to existing sections, some new sections of the Act that apply to the collection of levies have been prescribed in the draft regulations relating to issuing administrative penalties that may be imposed for taking water in excess of a water allocation (regulation 8 of the LSA (Water Management) Regulations). This clarifies that a penalty may be recovered under a Notice of Liability, the date when a penalty is payable, that co-holders will be jointly liable for payment of penalties and that a water management authorisation may be cancelled for non-payment of a penalty after following certain procedures.

Regulations provide for existing arrangements to continue, whereby all penalties recovered in respect of offences under the Act must be paid into the Landscape Administration Fund, after which

they may be applied by the Minister in accordance with the Act (regulation 22 of the LSA (General) Regulations).

4. Compliance

Warrants and service

Warrants are commonly required in the exercise of authorised officer powers. Current regulations that provide the grounds and process for issuing a warrant have been retained with no changes (regulation 31 of the LSA (General) Regulations).

Notices such as to pay a penalty or for compliance purposes may need to be served on a person from time to time. Service arrangements for leaving a notice at an unattended property have been retained with no changes (regulation 33 of the LSA (General) Regulations).

Regulations that provide for applications for the review of action plans and other matters to be made in writing and include the grounds for review remain in the same terms (regulation 30 of the LSA (General) Regulations).

Environment, Resources and Development Court jurisdiction

Regulations have been drafted that replicate existing offences that the Environment, Resources and Development Court has jurisdiction to hear (regulation 34 of the LSA (General) Regulations). To simplify the legislation, the Act now provides for these to be prescribed by regulation rather than being prescribed in the Act.

Penalties and expiations

A small number of penalties and expiations in the regulations have increased in line with CPI, in line with the approach adopted in the Act.

5. Land management

The Act's regulation making powers in relation to land management are the same as those under the NRM Act. These relate to the content and enforcement of the general statutory duty to act reasonably in managing natural resources. No regulations currently apply and no new regulations have been included in the draft regulations.

6. Water management

As water reform has not been a focus in the landscape reforms, matters that may be dealt with by regulations relating to water remain largely unchanged. A number of water-related regulations that are working well have been retained in the LSA (Water Management) Regulations with no or only consequential changes for consistency with the drafting approach for the Act where necessary.

Some new regulations or changes to existing regulations that align with landscape reform principles and will improve water licensing and planning outcomes are outlined below.

A further set of draft regulations are also being prepared; the *Landscape South Australia (Water Register) Regulations 2020*. These regulations will enhance South Australia's water register and will be consulted at a later time through a separate consultation process.

Flexibility in relation to separation of water rights (unbundling)

Currently the NRM Act provides for a default approach to fully unbundle water rights for all water resources. Unbundling essentially better defines existing rights and authorisations to take and use water under a water licence on separate instruments (including a water access entitlement, water allocation, water resource works approval, site use approval and delivery capacity entitlement where relevant).

There are limited alternatives to full unbundling. This limits flexibility to tailor the extent of unbundling to the circumstances, creating unnecessary complexity in some cases. This can delay water allocation planning processes.

The draft regulations provide flexibility for simpler (partially unbundled) licensing arrangements. In particular, they allow for water allocation plans to have greater power in providing exemptions from the requirement to hold certain (unbundled) approvals (refer regulation 19 of Water Regulations).

If exempted from holding separate approvals, a licensee would be granted a separate water access entitlement and water allocation. Authorisations and conditions relating to the operation of works to take water or the use of water at a particular site could remain on a water licence.

Transitional regulations also clarify that an existing (bundled) water allocation plan may be amended or reviewed without making provision for unbundling of water rights.

This will provide flexibility for appropriate frameworks to be implemented through future water allocation planning processes in light of regional priorities, the nature of the water resource and community feedback.

Content of Water Allocation Plans

The Act provides for regulations to prescribe matters relating to the content of water allocation plans.

The following new draft regulations aim to streamline water planning and clarify the ability for appropriate water management arrangements to be adopted in water allocation plans based on stakeholder feedback:

- **Transfers between consumptive pools:** Enabling a water allocation plan to permit transfers between consumptive pools within a prescribed water resource or water resources managed under a water allocation plan. This will promote flexibility and trade opportunities being facilitated under water allocation plans, and avoid red tape and the imposition of barriers to trade in the transition of currently bundled to unbundled water allocation plans where current trade opportunities may be disallowed. Draft regulations permit the conversion or reclassification of water access entitlements to apply characteristics of a new consumptive pool to a traded entitlement (regulations 28 and 30 of the LSA (Water Management) Regulations).
- **Classification of water access entitlements:** Clarify that water access entitlements may be classified according to characteristics specified in a water allocation plan such as the priority or reliability of allocations, purpose for which water can be used, tradeability or entitlement to carryover. This will provide transparency and investment certainty to water users as to the characteristics of their water rights, and aligns with the Government's election commitment to

provide South Australian irrigators with the best information possible so that they can make informed decisions (regulation 29 of the LSA (Water Management) Regulations).

- **Water allocation frameworks:** Clarify that available water may be allocated to water users in accordance with a water allocation framework specified in a water allocation plan. The draft regulations also provide that a water allocation plan may provide for different arrangements for the allocation or management of water in management zones within a water resource, for example, in parts of an underground or surface water resource that are stressed or face particular natural resources management issues. This will facilitate maximum transparency and investment certainty to water users as to how much water will be made available under different water availability scenarios (regulation 31 of the LSA (Water Management) Regulations).
- **Joint applications to vary take or use limits:** Facilitate opportunities for water users to apply to make joint applications to vary conditions or limits on the take or use of water under a water licence or approval if permitted and subject to the assessment requirements of a water allocation plan. These arrangements aim to promote business flexibility and development opportunities through enabling access to inactivated approval limits or for approved capacity to take or use water to move to higher valued uses (regulation 33 of the LSA (Water Management) Regulations).

These arrangements will support the timely development of water allocation plans and the provision of clear and certain water management frameworks for water users in plans.

Any change to adopt the new arrangements would occur through preparation or amendment of a water allocation plans and be developed in consultation with the community. Any variation to existing water entitlements or change to the manner in which water is allocated would only occur with specific consent or consultation with affected water licensees.

Water meter requirements

Currently requirements for water meter installation and testing are set out in regulations and more regularly updated specifications from the Minister for Environment and Water (in the South Australia's Licensed Water Use Meter Specification). To clarify arrangements for customers and compliance, the regulations have been updated to align with specification requirements, in particular the Minister's power to direct that a meter be validated and prescribed timeframes and processes for accuracy testing of water meters (Part 5 of the LSA (Water Management) Regulations).

Tagged interstate water allocation trade

Red tape will be reduced with a once-off fee required to set up an interstate tagged trade arrangement in relation to water allocation, which will remain in place until removed. Tagged trade provides an alternative to interstate water allocation trade and provides for water allocation arising from a water access entitlement in one State to be "tagged" for use in another State. The current regulation only provides for this arrangement to apply within the same financial year (regulation 32 of the LSA (Water Management) Regulations).

Water compliance

Currently an expiation fee can only be issued for a breach of conditions of a water licence, while court imposed penalties can be imposed for breaches of conditions of any water management authorisation (including a water licence) or a permit. A change has been made to provide for an expiation fee to apply for breaches of conditions of any water management authorisation or permit, to provide flexibility for appropriate compliance measures to be taken (regulation 20 of the LSA (Water Management) Regulations).

7. Control of animals and plants

The Act has not substantively expanded or modified the regulation making powers with respect to pest plant and animal control. The existing NRM regulations related to pest plant and animal control concern operational matters such as the movement of equipment, plants or animals and provide specific provisions relating to deer and goats.

Some changes to existing regulations have been drafted to increase flexibility and enable more responsiveness in management or control requirements, as well as other minor updates.

Declared pest animal management

The current regulations require deer and goats to be secured or confined and permanently identified in a manner determined by the Chief Executive of the Department for Environment and Water. They also provide specific requirements which apply to deer and goats. Going forward, flexibility is provided for requirements for the control of declared pest species to be prescribed by the Chief Executive by notice in the gazette (regulation 25 of the LSA (General) Regulations). It is intended that gazetted control measures for species including goats, deer and pigs will carry over existing Ministerial policy requirements. Where new measures are proposed, they will be set following a consultation process.

A new measure requires destruction of dingoes or wild dogs south of the dog fence by baiting (regulation 24 of the LSA (General) Regulations). Baiting standards will be set by the Chief Executive by notice in the Gazette. This requirement is only intended to apply to dingoes or wild dogs south of the dog fence which will be reflected in a new declaration made to have effect under the new Act.

Exemptions

Currently, exemptions apply for the movement of pest plants that may be carried with wool or grain, where it is being transported to a place for processing. Regulations have been drafted to expand this current exemption to include other farm products or goods whereby declared plant contaminants will be destroyed via processing (regulation 28 of the LSA (General) Regulations).

Release of radio-collared animals to detect small populations of feral animals (e.g. feral goats) is an important tool to assist eradication programs. The regulations have included this as an exemption for the purposes of control (regulation 29 LSA (General) Regulations).

8. Fees

Current regulations for fees have been rolled over into the *Landscape South Australia (Fees) Notice 2020* with minor changes that are consequential to changes in the Act.

Some changes to water transaction fees have been drafted to reduce red tape for applications. This includes:

- lower cost application fees permitted for applications for transfers and variations to site use and water resource works approvals where a scientific (hydrological) assessment is not required.
- permitting a single fee, rather than a fee per application, to apply for joint applications for variation of water licences or approvals (relates to new regulation 33 of the LSA (Water Management) Regulations).

9. Other miscellaneous regulations

A number of other miscellaneous regulations carry over existing arrangements that are still required with only terminology or minor changes that are consequential to changes in the Act. This includes regulations that exempt certain areas from the operation of the Act, provide that consultation requirements do not apply to minor amendments to water resource prescription regulations to correct GRO plan references, and require water supply and sewerage suppliers to provide information to the Minister.

