

# Complying with New South Wales water regulations: FAQ

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The Webinar *'Learn how to comply with water laws – options for you and what has worked for other landholders'* was presented to berry growers at the end of June 2020. On hand to answer questions was Bart Kellet from the Natural Resources Access Regulator (NRAR). In this FAQ, we provide some of the key questions that were asked during this webinar as well as answers to some of the most common issues.



## What happens if your dam is not compliant, but it has been there for decades?

All your dams, their locations and history are considered when the NRAR checks your compliance with 'harvestable rights' laws. The regulator uses information collected during field inspections and analysis of satellite imagery to understand the history of your dam.

The NSW Government decided that dams constructed before 1 January 1999 could remain in place if they were bigger than the **maximum harvestable right dam capacity (MHRDC)** for the property.

However, there were a few conditions:

- the dam can only be used for stock and domestic purposes and not for irrigation of commercial crops;
- the dam must be on a minor stream; and
- water must be used on the property where the dam is located.

*For further details, please refer to Page 90, paragraph 6, Schedule 1 Excluded Works, Water Management (General) Regulation 2018.*

If your dam was built before 1 January 1999, is larger than MHRDC, and you want to continue to irrigate crops from it, then you need to license it or reduce its capacity to within the MHRDC. The alternative is to leave it in place and not use it for irrigation of crops. The storage capacity of these existing dams is considered when assessing your right to build additional dams. This means that you cannot build another dam within the harvestable right for your property to irrigate your crops and leave the old dam (which is larger than MHRDC) in place.

The NSW laws identify some types of dams that are not to be included when assessing your right to build additional dams.

*For further details, please refer to Page 1629, Schedule 2 of the Harvestable Rights Order 2006.*

If you have built a dam before 1 January 1999, but its size has been increased above the MHRDC after 1 January 1999, the dam's capacity will need to be reduced or the dam will need to be licensed. Another point to keep in mind is that a dam may be compliant with MHRDC when constructed, but may end up being too big if part of the property has subsequently been sold off. Harvestable right is based on the property area, so reducing the property area also reduces the harvestable right.

## 'The dam is used to hold and dilute recycled water.'

Recent advice from Coffs Harbour City Council is that farmers who receive recycled water from the local recycled water scheme are required to maintain three days' storage of recycled water on-site in case the supply of the recycled water is disrupted.

How you store this water is your decision, but if the water is stored in a dam that also captures surface water run-off, the dam must comply with harvestable right rules or be licensed.

If the recycled water is stored in a ring tank or turkey's nest dam that does not capture surface water run-off, then its size is not limited to the harvestable right limit for your property. As soon as the dam captures surface water runoff either directly or by pumping run-off into it, its size becomes restricted by harvestable right rules.

## Can I build a ring tank or turkey nest dam without approval and does it count towards harvestable rights? I want to fill it from roof run-off from my greenhouse and use it for irrigation.

A turkey's nest dam or ring tank is exempt from harvestable rights limits and can be constructed without approval as long as the dam is used only to store roof run-off or water delivered by pipe or truck to the property, including water from the Coffs Harbour recycled water scheme.

As soon as a newly constructed ring tank or turkey's nest dam is used to store any form of rainfall run-off then it must meet harvestable right limits or be approved.

*For more details, please refer to Page 1629, paragraph 5, Schedule 2 of the Harvestable Rights Order 2006.*

## What about shared dams? Is the maximum size calculated considering all properties that share the dam?

The water in the dam belongs to the owner of the property where the dam wall is located. If the dam wall is on two or more properties, then the water is apportioned to the properties in proportion to the surface area of the dam on each of the properties.

*For more details, please refer to Page 1629, paragraph 7 of the Harvestable Rights Order 2006.*

## In what situation would you do a Mixed Rights Dam? Is it if you have a really large dam that you don't want to make smaller, but prefer to regulate via a meter?

If your dam is larger than the harvestable right for your property you may choose to authorise it as a mixed rights dam. It is a solution for a situation where the landholder doesn't want to reduce the capacity of the dam and instead obtains entitlement to cover the shortfall between the dam's capacity and the harvestable right.

For example, the dam is 10ML, the harvestable right is 8ML, and the shortfall is covered by purchasing a water access licence. The landholder may not be able to buy much entitlement in this situation, so a mixed rights dam is an appropriate solution. However, reducing the capacity of the dam to harvestable right may significantly compromise the water security for the farm.

When you make an application to authorise a mixed rights dam, WaterNSW will advise on the size of entitlement required. If an approval is granted, conditions will be applied to the approval to ensure water use is transparent and accountable, and within the specified limit (harvestable right plus entitlement).

These conditions may include the requirement to install a meter. There are mandatory pumping logbook conditions attached to approvals and water access licences subject to the Coffs Harbour Area Unregulated and Alluvial Water Sources Water Sharing Plan 2009.

## Do you have to use a logbook if you have a pattern approved water meter?

Pumping logbooks or data loggers attached to meters are required to ensure approval and that water access licence holders are complying with important approval and water access licence conditions, including the extraction limit for the water year, and the times when pumping must cease due to low flows.

Conditions attached to approvals and water access licences subject to the *Coffs Harbour Area Unregulated and Alluvial Water Sources Water Sharing Plan 2009* and the *Clarence Unregulated and Alluvial Water Sources Water Sharing Plan 2016* require pumping logbook records to be made and kept.

Pumping logbooks are required even if a meter is installed. However, there is a condition that states that a pumping logbook is not required if a data logger is fitted with a water meter.

## What is the process if a farmer would like to purchase a Water Access Licence but is unable to find a seller?

### Option 1

Contact WaterNSW and ask if there are any sellers in the same water source as you. Also ask WaterNSW if there are other water sources from which you could purchase a water access licence.

### Option 2

You may wish to search the water register yourself to identify all the water access licences for your water source: [waterregister.waternsw.com.au/water-register-frame](http://waterregister.waternsw.com.au/water-register-frame)

You can then do a paid title search to identify the owner of each of the water access licences. This page explains how to do a title search: [www.nswlrs.com.au/Access-Titling-Information](http://www.nswlrs.com.au/Access-Titling-Information). Then search the online phone directory to find contact details for holders of the water access licences.

### Option 3

You can contact neighbours and landholders in your local area to see if anyone has a water access licence for sale.

### Option 4

Advertise online to see if you can find a seller.

### Option 5

Contact a water broker to assist you to find a seller.

### Option 6

Buy a property with an attached water access licence that can be transferred to your current property.

### Option 7

Buy or lease one or more properties adjacent to your existing property to increase your harvestable right limit.

## Can a bore licence be converted into a dam licence?

There is no provision under the Coffs Harbour Unregulated and Alluvial Water Sources Water Sharing Plan 2009 to apply to change a water access licence from a groundwater source to a surface water source.



For more information about NRAR please visit:

[www.industry.nsw.gov.au/natural-resources-access-regulator](http://www.industry.nsw.gov.au/natural-resources-access-regulator)