



Queensland

Water and Another Act Amendment Act 2009

Act No. 18 of 2009



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Water and Another Act Amendment Act 2009

Act No. 18 of 2009

An Act to amend the Water Act 2000 and to make a consequential amendment to the Public Service Act 2008

[Assented to 12 June 2009]

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Water and Another Act Amendment Act 2009*.

2 Commencement

This Act commences on the later of the following days—

- (a) the date of assent;
- (b) 19 June 2009.

3 Acts amended

- (1) This Act amends the *Water Act 2000*.
- (2) The schedule also amends the *Public Service Act 2008*.

3A Insertion of new s 343A

After section 343—

insert—

‘343A Commission not generally subject to direction

- ‘(1) Despite section 343, the commission is not subject to direction by an entity of or representing the State.
- ‘(2) Subsection (1) applies subject to any other contrary provision of this Act or a contrary provision of another Act.’.

4 Replacement of s 348 (Appointment)

Section 348—

omit, insert—

‘348 Membership of commission

‘The commission consists of 1 commissioner.

‘348A Appointment of commissioner

- ‘(1) The commissioner is to be appointed by the Governor in Council.
- ‘(2) The appointment may be full-time or part-time.’.

5 Replacement of ss 354 to 360A

Sections 354 to 360A—

omit, insert—

‘354 Conflicts of interest

- ‘(1) This section applies if—
- (a) the commissioner has a direct or indirect pecuniary interest in a matter the subject of a function of the commissioner; and
 - (b) the commissioner is performing or is proposing to perform the function; and
 - (c) the interest could conflict with the proper performance of the function.
- ‘(2) The commissioner—
- (a) must, as soon as practicable, disclose the interest to the Minister; and
 - (b) must not perform or continue to perform the function.
- ‘(3) In this section—
- function* includes power.

‘355 Acting commissioner

- ‘(1) This section applies if—
- (a) the commissioner has not been appointed; or
 - (b) the office of the commissioner is vacant; or
 - (c) the appointed commissioner (the *usual commissioner*) is absent or is unable to perform the functions or a

[s 5]

particular function of the commissioner because of illness or another reason.

Example of another reason—

performance of the function by the commissioner is prohibited under section 354(2)(b)

- ‘(2) The Minister may, by signed notice, appoint a person to act in the office of the commissioner to perform—
 - (a) generally—all of its functions; or
 - (b) for an inability to perform a particular function—that function.
- ‘(3) The appointment is under this Act and not the *Public Service Act 2008*.
- ‘(4) For the circumstances mentioned in subsection (1)(a) or (b), the appointment ends when, if the Governor in Council appoints someone else as the commissioner, the term of that appointment starts.
- ‘(5) Also, for the circumstances mentioned in subsection (1)(c) the appointment ends if the Minister gives the appointee notice that the usual commissioner has resumed the functions the subject of the appointment.
- ‘(6) The *Acts Interpretation Act 1954*, section 24B(7D) to (15) applies to the appointee as if the appointee had been appointed under that section.
- ‘(7) This section does not limit or otherwise affect the *Acts Interpretation Act 1954*, section 24B.
- ‘(8) In this section—
function includes power.

‘Division 4 Records of decisions

‘356 Records required

‘The commissioner must keep a record of the commission’s decisions.’

6 Amendment of s 360B (Commission's staff)

- (1) Section 360B(1), from ‘, including’ to ‘officer’—
omit.
- (2) Section 360B(2), ‘*Public Service Act 1996*’—
omit, insert—
‘Public Service Act 2008’.
- (3) Section 360B(3), ‘chairperson’—
omit, insert—
‘commissioner’.

6A Insertion of new ch 2A, pt 7

Chapter 2A—

insert—

‘Part 7 Minister’s reserve power**‘360ZH Public interest directions for commission’s non-advisory functions**

- ‘(1) The Minister may give the commission a written direction about the performance of its functions if satisfied that, because of exceptional circumstances, it is necessary to do so in the public interest.
- ‘(2) However—
 - (a) a direction under subsection (1) can not be given for any of the commission’s advisory functions; and
 - (b) before giving the direction the Minister must consult with the commission.
- ‘(3) The Minister may carry out the consultation in any way the Minister considers appropriate.
- ‘(4) The direction may state a period within which, or a way in which, it must be complied with.

[s 7]

- ‘(5) The stated period must be one that, in all the circumstances, is reasonable.
- ‘(6) The direction may suspend or otherwise affect the operation of another instrument made or given under this Act.
- ‘(7) The Minister must publish a copy of the direction in the gazette within 15 days after it is given.
- ‘(8) In this section—
advisory functions, for the commission, means its functions under section 345(a), 360D(1)(b), 360E, 360I, 360ZCO, 360ZCP or 1141.
functions includes powers.
instrument does not include subordinate legislation.

‘360ZI Relationship with other instruments under Act

- ‘(1) This section applies if there is an inconsistency between a direction given under section 360ZH and another instrument made or given under this Act.
- ‘(2) The direction prevails to the extent of the inconsistency.
Example of another instrument—
a regional water security program
- ‘(3) If the direction suspends or otherwise affects the operation of the other instrument, the direction does not amend the other instrument.
- ‘(4) In this section—
instrument does not include subordinate legislation.’

7 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definitions, *chairperson* and *commissioner—*
omit.
- (2) Schedule 4—
insert—

'commissioner' means the commissioner appointed under section 348A.'

Schedule Consequential amendments

section 3

Public Service Act 2008

- 1 Schedule 1, entry for Queensland Water Commission—**
omit, insert—

‘Queensland Water Commission under the *Water Act 2000* the commissioner under the *Water Act 2000*’.

Water Act 2000

- 1 Chapter 2A, part 2, division 3, heading—**
omit, insert—

‘Division 3 Membership’.

- 2 Sections 349, 350 and 353(2), ‘a commissioner’—**
omit, insert—
‘the commissioner’.

- 3 Sections 351 and 352, ‘A commissioner’—**
omit, insert—
‘The commissioner’.

4 Section 353(1), ‘a commissioner’s’—
omit, insert—
‘the commissioner’s’.

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