



Queensland

Water Legislation (Miscellaneous Provisions) Amendment Act 2014

Act No. 51 of 2014



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Water Legislation (Miscellaneous Provisions) Amendment Act 2014

Act No. 51 of 2014

An Act to amend the Water Act 2000, the Water Efficiency Labelling and Standards Act 2005 and the Water Supply (Safety and Reliability) Act 2008 for particular purposes

[Assented to 26 September 2014]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Water Legislation (Miscellaneous Provisions) Amendment Act 2014*.

Part 2 Amendment of Water Act 2000

2 Act amended

This part amends the *Water Act 2000*.

3 Amendment of s 25B (Declaration of water supply emergency)

(1) Section 25B(1), ‘prepare’—

omit, insert—

make

(2) Section 25B(2), ‘preparing’—

omit, insert—

making

(3) Section 25B(3)—

omit, insert—

(3) The water supply emergency declaration—

- (a) has effect from the time it is made by the Minister or the later day stated in the declaration; and
- (b) remains in force until the earlier of the following—
 - (i) the commencement of a regulation dealing with the matters mentioned in the declaration;
 - (ii) the end of 20 business days after the declaration takes effect.
- (4) As soon as possible after making a water supply declaration, the Minister must give a copy of the declaration to each service provider to which the declaration applies.
- (5) As soon as practicable after making a water supply declaration, the Minister must publish a copy of the declaration in the gazette.

4 Amendment of s 25CA (Amendment of water supply emergency declaration)

Section 25CA(1), ‘prepares’—

omit, insert—

makes

5 Amendment of s 25F (Regulation about water supply emergency)

Section 25F(2)(d)(vi) and (vii)—

omit, insert—

- (vi) any works that are to be carried out by the coordinator-general.

[s 6]

6 Amendment of s 25ZA (Application for approval to restrict use of subartesian water)

(1) Section 25ZA(1)—

omit.

(2) Section 25ZA(2), ‘outside the SEQ region or a designated region’—

omit.

(3) Section 25ZA(2) to (4)—

renumber as section 25ZA(1) to (3).

7 Amendment of s 25ZB (Deciding application)

Section 25ZB(1)(c), ‘commission water restrictions or’—

omit.

8 Omission of s 25ZD (Restriction of subartesian water by commission)

Section 25ZD—

omit.

9 Amendment of s 25ZE (Restriction of subartesian water by water service provider)

Section 25ZE(2), ‘outside the SEQ region or a designated region’—

omit.

10 Amendment of s 341 (What is the SEQ region)

Section 341(1)(a)—

insert—

- Noosa Shire Council

11 Amendment of s 580 (Notice of proposed significant action)

(1) Section 580(1)—

omit, insert—

(1) This section applies if—

- (a) a water authority proposes to do anything that may prevent, or have a significant adverse effect on, the authority performing its main function; or
- (b) a category 2 water authority proposes to sell or buy property for more than \$100000.

(2) Section 580(3)—

omit.

12 Amendment of s 582 (Statement of operations)

Section 582(2)—

insert—

- (e) particulars of any funding provided to the authority for community service obligations for the financial year.

13 Amendment of s 583 (Identification and disclosure of cross-subsidies)

Section 583(1)—

omit, insert—

- (1) This section applies to water authorities that charge on a volumetric basis for water the authorities manage and are prescribed by regulation.

[s 14]

14 Amendment of s 604 (Term of office for directors of water authorities other than Gladstone Area Water Board)

(1) Section 604, heading, from ‘other’—

omit.

(2) Section 604(1)—

omit.

(3) Section 604(2), ‘(3) and (4)’—

omit, insert—

(2) and (3)

(4) Section 604(2) to (4)—

renumber as section 604(1) to (3).

15 Omission of s 605 (Term of office for directors of Gladstone Area Water Board)

Section 605—

omit.

16 Amendment of s 606 (Resignation)

Section 606(1) to (4)—

omit, insert—

(1) A director on a water authority’s board may resign by signed notice of resignation given to the chairperson of the board.

(2) The chairperson of a water authority’s board may resign from office as chairperson, or as a director, by signed notice of resignation given to the other directors on the board.

17 Omission of ch 4, pt 5, div 2 (Commercialisation charter for category 1 water authorities)

Chapter 4, part 5, division 2—

omit.

18 Amendment of s 647 (Draft corporate plan)

Section 647(1) and (2)—

omit, insert—

- (1) A category 1 water authority must prepare and submit to the Minister, for the Minister's agreement, a draft corporate plan no later than 2 months before the start of each financial year.
- (2) The authority and Minister must endeavour to reach agreement on the draft plan no later than the start of the financial year to which the plan applies.

19 Amendment of s 648 (Special procedures for draft corporate plan)

(1) Section 648(3)—

omit.

(2) Section 648(4), from 'If' to '1 month'—

omit, insert—

If a draft corporate plan has not been agreed to by the Minister

(3) Section 648(5), 'or (4)'—

omit.

(4) Section 648(4) to (6)—

renumber as section 648(3) to (5).

20 Amendment of s 650 (Corporate plan pending agreement)

(1) Section 650(1) to (3)—

omit, insert—

[s 21]

- (1) This section applies if the Minister has not agreed to a draft corporate plan before the start of the financial year to which the plan applies.
- (2) Section 650(4)—
renumber as section 650(2).

21 Amendment of s 654 (Preparing draft performance plan)

- (1) Section 654(2)—
omit, insert—
 - (2) The draft must be given to the Minister no later than 2 months before the start of the financial year to which the plan applies.
- (2) Section 654(3)(b)—
omit, insert—
 - (b) no later than the start of the financial year to which the plan applies.

22 Amendment of s 655 (Special procedures for draft performance plan)

- (1) Section 655(3)—
omit.
- (2) Section 655(4), from 'If' to '1 month'—
omit, insert—

If a draft performance plan has not been agreed to by
the Minister
- (3) Section 655(5), 'or (4)'—
omit.
- (4) Section 655(4) to (6)—
renumber as section 655(3) to (5).

23 Amendment of s 657 (Performance plan pending agreement)

(1) Section 657(1) to (3)—

omit, insert—

(1) This section applies if the Minister has not agreed to a draft performance plan before the start of the financial year to which the plan applies.

(2) Section 657(4)—

renumber as section 657(2).

24 Amendment of s 660 (Payment of dividends)

(1) Section 660(1) to (5)—

omit, insert—

(1) On or after 1 May, but before 16 May, of each financial year, a category 1 water authority must recommend to the Minister that it pay a specified dividend, or not pay a dividend, to the State for the financial year.

(2) The recommendation must be accompanied by—

(a) the authority's estimate of the authority's profits (the *estimated profits*) for the financial year, after provision has been made for income tax or its equivalent; and

(b) if the authority has made any adjustment to the estimated profits in making the recommendation—a statement of the amount of, and reason for, each adjustment.

Example of an adjustment to estimated profits—

exclusion of an amount for unrealised capital gains from upwards revaluation of non-current assets

(3) Before the end of the financial year, the Minister must either—

[s 25]

- (a) approve the recommendation; or
 - (b) direct the payment to the State of a specified dividend or a dividend different from the specified dividend mentioned in the recommendation.
- (2) Section 660(8), ‘(5)(b)’—
omit, insert—
(3)(b)
- (3) Section 660(6) to (8)—
renumber as section 660(4) to (6).

25 Amendment of s 661 (Interim dividends)

Section 661(1), before ‘water authority’—

insert—

category 1

26 Omission of ss 662 and 663

Sections 662 and 663—

omit.

27 Amendment of sch 4 (Dictionary)

(1) Schedule 4—

insert—

corporate plan, for a water authority, means the authority’s corporate plan agreed to by the Minister under section 649, or taken to be agreed to by the Minister under section 650(2).

(2) Schedule 4, definition *performance plan*, ‘(2) or (4)’—

omit.

Part 3 **Amendment of Water Efficiency Labelling and Standards Act 2005**

28 Act amended

This part amends the *Water Efficiency Labelling and Standards Act 2005*.

29 Amendment of long title

Long title, from ‘provide for’—

omit, insert—

apply the *Water Efficiency Labelling and Standards Act 2005* (Cwlth) as a law of this State and for related purposes

30 Amendment of s 1 (Short title)

Section 1, before ‘Act 2005’—

insert—

(Queensland)

31 Amendment of s 2 (Commencement)

Section 2, note—

omit.

32 Replacement of s 3 (Objects of Act)

Section 3—

omit, insert—

[s 33]

3 Object of Act

- (1) The object of this Act is to adopt in this State a uniform Australian approach to the regulation of water efficiency labelling and standards.
- (2) For the purpose mentioned in subsection (1), this Act—
 - (a) applies the *Water Efficiency Labelling and Standards Act 2005* (Cwlth) as a law of this State; and
 - (b) makes provision to help ensure that the Commonwealth Act and the applied law of this State are administered on a uniform basis by the Commonwealth as if they constituted a single law of the Commonwealth.

33 Amendment of s 4 (Act binds all persons)

Section 4(2), note—

omit.

34 Replacement of ss 5–6

Sections 5 to 6—

omit, insert—

5 Definitions

- (1) In this Act—

applied provisions means the Commonwealth water efficiency laws that apply as a law of this State because of section 6, including any modification under section 7.

Commonwealth administrative laws means the following Acts and any regulations in force under those Acts—

-
- (a) the *Administrative Appeals Tribunal Act 1975* (Cwlth), other than Part IVA;
 - (b) the *Freedom of Information Act 1982* (Cwlth);
 - (c) the *Ombudsman Act 1976* (Cwlth);
 - (d) the *Privacy Act 1988* (Cwlth).

Commonwealth regulator means the WELS Regulator appointed under the *Water Efficiency Labelling and Standards Act 2005* (Cwlth).

Commonwealth water efficiency laws means—

- (a) the *Water Efficiency Labelling and Standards Act 2005* (Cwlth); and
- (b) all regulations, guidelines, principles, standards and codes of practice in force under that Act.

function includes duty.

modifications includes additions, omissions and substitutions.

- (2) If an expression is defined in the *Water Efficiency Labelling and Standards Act 2005* (Cwlth) and is also used in this Act, the expression as used in this Act has, unless the contrary intention appears, the same meaning as in that Act.
- (3) In this Act, a reference to a Commonwealth Act includes a reference to—
 - (a) that Commonwealth Act, as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act and, if it is amended, as amended and in force for the time being.

35 Replacement of pts 2–12

Parts 2 to 12—

omit, insert—

Part 2 The applied provisions

6 Application of Commonwealth water efficiency laws to this State

- (1) The Commonwealth water efficiency laws, as in force for the time being and as modified under this Act, apply as a law of this State.
- (2) The Commonwealth water efficiency laws, as applied under subsection (1), apply as if the laws extend to matters in relation to which this State may make laws—
 - (a) whether or not the Commonwealth may make laws in relation to those matters; and
 - (b) even though the Commonwealth water efficiency laws provide that they apply only to specified matters with respect to which the Commonwealth may make laws.

7 Modification of Commonwealth water efficiency laws

- (1) A regulation may modify the Commonwealth water efficiency laws for the purposes of this Act.
- (2) Without limiting subsection (1), a regulation may provide that the Commonwealth water efficiency laws apply under section 6(1) as if an amendment to the Commonwealth water efficiency laws—
 - (a) made by a law of the Commonwealth; and
 - (b) stated in the regulation;had not taken effect.

8 Interpretation of Commonwealth water efficiency laws

- (1) The *Acts Interpretation Act 1901* (Cwlth) applies—
 - (a) as a law of this State in relation to the interpretation of the applied provisions; and
 - (b) as if the applied provisions were a Commonwealth Act or regulation or other instrument under a Commonwealth Act.
- (2) The *Acts Interpretation Act 1954* does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

9 Functions and powers of Commonwealth regulator and other authorities and officers

The Commonwealth regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth.

10 Delegations by the Commonwealth regulator

Any delegation by the Commonwealth regulator under the *Water Efficiency Labelling and Standards Act 2005* (Cwlth) is taken to extend to, and have effect for the purposes of, the corresponding provision of the applied provisions.

Part 4 Offences

11 Object of pt 4

- (1) The object of this part is to further the object of this Act by providing for an offence against the applied provisions to be treated as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example, the following—
 - (a) the investigation and prosecution of offences;
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b);
 - (d) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);
 - (e) the sentencing, punishment and release of persons convicted of offences;
 - (f) fines, penalties and forfeitures;
 - (g) liability to make reparation in connection with offences;
 - (h) proceeds of crime;
 - (i) spent convictions.
- (3) For the purposes of this part, offences include contraventions for which a civil penalty may be imposed.

12 Application of Commonwealth criminal laws to offences against applied provisions

- (1) The relevant Commonwealth laws apply as laws of this State in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, an offence against the applied provisions—
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were a law of the Commonwealth; and
 - (b) is taken not to be an offence against the laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as provided by a regulation under this Act.

13 Functions and powers conferred on Commonwealth officers and authorities relating to offences

- (1) A Commonwealth law applying because of section 12 that confers on a Commonwealth officer or authority a function or power in relation to an offence against the Commonwealth water efficiency laws also confers on the officer or authority the same function or power in relation to an offence against the corresponding provision of the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the

[s 35]

corresponding provision of the Commonwealth water efficiency laws.

14 No double jeopardy for offences against applied provisions

If—

- (a) an act or omission is an offence against both the applied provisions and an offence against the Commonwealth water efficiency laws; and
- (b) the offender has been punished for that offence under the Commonwealth water efficiency laws;

the offender is not liable to be punished for the offence under the applied provisions.

Part 5 Administrative laws

15 Application of Commonwealth administrative laws to applied provisions

- (1) The Commonwealth administrative laws apply as laws of this State to any matter arising in relation to the applied provisions as if those provisions were a law of the Commonwealth and not a law of this State.
- (2) For the purposes of a law of this State, a matter arising in relation to the applied provisions—
 - (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were a law of the Commonwealth; and

- (b) is taken not to be a matter arising in relation to laws of this State.
- (3) Subsection (2) has effect for the purposes of a law of this State except as prescribed by regulation under this Act.
- (4) Any provision of a Commonwealth administrative law applying because of this section that purports to confer jurisdiction on a federal court is taken not to have that effect.
- (5) For the purposes of this section, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth), as that provision applies as a law of this jurisdiction, to the whole or any part of part IVA of that Act is taken to be a reference to the whole or any part of that part as it has effect as a law of the Commonwealth.

16 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 15 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to the applied provisions.
- (2) In performing a function or exercising a power conferred by this section, the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

Part 6 Miscellaneous

17 Things done for multiple purposes

The validity of a licence, certificate or other thing issued, given or done for the purposes of the applied provisions is not affected only because it was issued, given or done also for the purposes of the Commonwealth water efficiency laws.

18 Reference in Commonwealth law to a provision of another law

For the purposes of sections 12 and 15, a reference in a Commonwealth law to a provision of that or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

19 Fees and other money

All fees, penalties, fines and other money that, under this Act and the applied provisions, are authorised or directed to be payable by or imposed on any person, other than an amount ordered to be refunded to another person, must be paid to the Commonwealth.

20 Tabling amendments of the *Water Efficiency Labelling and Standards Act 2005* (Cwlth)

- (1) The Minister must cause a copy of an amendment of the following—
 - (a) the *Water Efficiency Labelling and Standards Act 2005* (Cwlth);
 - (b) any regulations in force under that Act;to be laid before the Legislative Assembly within 10 sitting days from the date on which the amendment commences.

- (2) Nothing in this section affects the operation of an amendment of the *Water Efficiency Labelling and Standards Act 2005* (Cwlth).

21 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 7 Transitional provision for Water Legislation (Miscellaneous Provisions) Amendment Act 2014

22 Existing WELS inspectors

- (1) This section applies to a person who—
- (a) was appointed as a WELS inspector under section 45 of this Act as in force immediately before the commencement of this section; and
 - (b) still held the appointment immediately before the commencement.
- (2) On the commencement, the person's appointment as a WELS inspector—
- (a) continues to have effect according to its terms; and
 - (b) is taken to be an appointment made under the applied provisions.

[s 36]

36 Omission of schedule (Dictionary)

Schedule—

omit.

**Part 4 Amendment of Water Supply
(Safety and Reliability) Act 2008**

37 Act amended

This part amends the *Water Supply (Safety and Reliability) Act 2008*.

38 Amendment of s 43 (Notice of service provider water restriction must be given)

(1) Section 43(2)—

omit, insert—

(2) Subsection (3) applies if the service provider water restriction is imposed because—

- (a) there is an urgent need for the restriction; or
- (b) the service provider is directed under a water supply emergency declaration to impose the restriction.

(2A) Without limiting subsection (1), an appropriate way for the service provider to give notice of the service provider water restriction is by broadcasting the restriction on radio or television or using another form of electronic communication.

(2B) The service provider water restriction has effect from—

-
- (a) ordinarily—the beginning of the day after the notice is given; or
 - (b) if the restriction is imposed because of an urgent need or water supply emergency declaration—when the restriction is imposed.
- (2) Section 43(4), ‘(5) and (6)’—
omit, insert—
(7) and (8)
- (3) Section 43(6), ‘(5)’—
omit, insert—
(7)
- (4) Section 43(2A) to (7)—
renumber as section 43(3) to (9).

39 Amendment of s 370 (Definitions for pt 2)

Section 370, definition *authorised alternative procedure*, ‘381(2)’—

omit, insert—

381(3)

40 Amendment of s 379 (Dam owner must seek authorisation for alternative procedure)

Section 379(1)(e)—

omit, insert—

- (e) the time by which the owner of the dam would need the chief executive to make a decision under section 380 for the owner to be able to respond effectively to the flood event;

[s 41]

- (f) other information to enable the chief executive to make a decision under section 380.

41 Amendment of s 381 (Authorisation to observe alternative procedure if chief executive can not be contacted)

- (1) Section 381(1)(a), ‘and’—

omit, insert—

but

- (2) Section 381—

insert—

- (1A) This section also applies if—

- (a) the owner of the dam contacts the chief executive to give the chief executive the authorisation request information for the alternative procedure; but
- (b) before the chief executive can advise the owner of the dam of the chief executive’s decision on the request, contact with the executive is lost and can not be re-established within the time by which the owner would need a decision on the request.

- (3) Section 381(3), after ‘failing to contact’—

insert—

, or losing contact with,

- (4) Section 381(1A) to (3)—

renumber as section 381(2) to (4).

- (5) Section 381—

insert—

- (5) For subsection (1)(b), contact with the chief executive is not established until the chief

executive acknowledges receipt of the
authorisation request information.

- (6) For subsection (2), contact with the chief executive is lost if the owner of the dam reasonably believes the chief executive is no longer able to respond to the owner.

42 Amendment of s 395 (Minister may declare temporary full supply level)

- (1) Section 395(1), ‘gazette notice’—

omit, insert—

notice given to the owner of the dam

- (2) Section 395—

insert—

- (5) A copy of a notice given to the owner of a dam under subsection (1) must be published in the gazette as soon as practicable after it is given.

43 Amendment of sch 3 (Dictionary)

Schedule 3, definition *authorised alternative procedure*, ‘381(2)’—

omit, insert—

381(3)