



Queensland

Water Legislation Amendment Act 2016

Act No. 60 of 2016



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Queensland

Water Legislation Amendment Act 2016

Act No. 60 of 2016

An Act to amend the River Improvement Trust Act 1940, the Water Act 2000 and the Water Reform and Other Legislation Amendment Act 2014 for particular purposes

[Assented to 22 November 2016]

[s 1]

The Parliament of Queensland enacts

Part 1 Preliminary

1 Short title

This Act may be cited as the *Water Legislation Amendment Act 2016*.

Part 2 Amendment of River Improvement Trust Act 1940

2 Act amended

This part amends the *River Improvement Trust Act 1940*.

3 Amendment of s 5 (Membership of trust)

(1) Section 5(1), ‘A trust may be established as a trust’—

omit, insert—

Unless a trust’s membership is provided for under a regulation under subsection (1A), the trust’s membership is

(2) Section 5(1)(b), ‘, as stated in the regulation establishing the trust,’—

omit.

(3) Section 5(1A), ‘Alternatively, a trust may be established as a trust’—

omit, insert—

A trust’s membership may be

-
- (4) Section 5(1A), ‘the regulation establishing the trust’—
omit, insert—
a regulation
- (5) Section 5(1B), ‘establishing a trust as a trust’—
omit.
- (6) Section 5(2), ‘established under’—
omit, insert—
whose membership is provided for in

4 Amendment of s 10 (Works which trust may undertake or maintain)

- (1) Section 10(1)(a), after ‘Act’—
insert—
, other than works the chief executive directs the trust not to undertake or maintain
- (2) Section 10(1)(b)—
omit, insert—
- (b) must undertake or maintain any works the chief executive directs the trust to undertake or maintain for the purpose of achieving the object of this Act; and
 - (c) must comply with any direction the chief executive gives the trust about the undertaking or maintenance of works under paragraph (a) or (b).
- (3) Section 10(3), ‘, subject to the direction or approval of the chief executive,’—
omit.
- (4) Section 10(4), ‘The trust’—
omit, insert—

[s 5]

Without limiting section 7(2), the trust

5 Insertion of new pt 9

After section 23—

insert—

Part 9 Transitional provision for Water Legislation Amendment Act 2016

24 Continuance of areas and trusts

- (1) To remove any doubt, it is declared that each relevant area, and the trust for each relevant area, continued in existence under this Act on and after 19 December 2014.
- (2) For the appointment by the Minister, before the commencement, of a person to the membership of the trust for a relevant area, section 5(1)(b) is taken never to have required the number of persons to be appointed to be as stated in a regulation.
- (3) If a provision of this Act applies to a member of a trust as having been appointed under section 5(1)(a) or under section 5(1)(b), the reference to either provision is taken to be a reference to the provision as in force when the person was appointed to the trust.
- (4) In this section—
relevant area means a river improvement area, including the Burdekin Shire Rivers Improvement Area, in existence under this Act as a river improvement area immediately before 19 December 2014.

Part 3 Amendment of Water Act 2000

6 Act amended

This part amends the *Water Act 2000*.

7 Amendment of s 5AA (Watercourse etc. may be mapped)

- (1) Section 5AA(1)(c) to (f)—
renumber as section 5AA(1)(b) to (e).
- (2) Section 5AA(5) to (10)—
renumber as section 5AA(4) to (9).

8 Insertion of new ch 9, pt 9

Chapter 9—
insert—

Part 9 Validation provisions for Water Legislation Amendment Act 2016

1282 Validation of formation and actions of Lower Herbert Water Management Authority

- (1) This section confirms and validates—
 - (a) the formation of the Lower Herbert Water Management Authority on 16 December 2005; and
 - (b) the appointment, employment or engagement of the office holders, employees and agents of the authority since its formation on 16 December 2005 as confirmed and validated under this section; and

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- (c) the actions of the authority, its office holders, employees and agents since its formation on 16 December 2005 as confirmed and validated under this section.
- (2) It is declared that the formation of the Lower Herbert Water Management Authority is confirmed and is as valid as it would be if the *Water and Other Legislation Amendment Regulation (No. 1) 2005* SL No. 334 had provided as follows—
 - (a) the following water authorities (collectively the ***former authorities***) are amalgamated to form a new water authority—
 - (i) Foresthome Drainage Board;
 - (ii) Loder Creek Drainage Board;
 - (iii) Mandam Drainage Board;
 - (iv) Ripple Creek Drainage Board;
 - (b) the authority areas of the former authorities are dissolved;
 - (c) the former authorities are dissolved;
 - (d) the new water authority formed on the amalgamation of the former authorities is named the Lower Herbert Water Management Authority;
 - (e) the authority area of the Lower Herbert Water Management Authority is shown on plan AP4064.
- (3) Without limiting subsection (2), it is declared that the actions of the Lower Herbert Water Management Authority and the appointment, employment, engagement and actions of its office holders, employees and agents are confirmed and are as valid as they would be if the *Water and Other Legislation Amendment Regulation (No. 1)*

2005 SL No. 334 had provided for the matters mentioned in subsection (2).

(4) In this section—

actions, of the Lower Herbert Water Management Authority, its office holders, employees and agents, means anything done or omitted to be done by the Lower Herbert Water Management Authority, its office holders, employees and agents, including, for example—

- (a) the making of decisions; and
- (b) the entry into contracts and agreements; and
- (c) the receipt and expenditure of amounts.

1283 Validation of taking of, or interfering with, underground water by holders of particular mineral development licences and mining leases

- (1) This section applies to the taking of, or interfering with, underground water, before the commencement, by the holder of a mineral development licence or mining lease in the area of the licence or lease if—
 - (a) before the commencement, the holder of the licence or lease had started operations in the area of the licence or lease; and
 - (b) the taking of, or interfering with, the underground water was subject to any relevant alteration or limitation prescribed under a moratorium notice, water resource plan or regulation under section 1046; and
 - (c) the taking of, or interfering with, the underground water happened in the course of, or resulted from, the carrying out of an authorised activity for the licence or lease,

[s 8]

including, for example, either of the following activities—

- (i) mine dewatering of underground water to the extent necessary to achieve safe operating conditions in the mine;
 - (ii) taking underground water as a result of evaporation from an open mine pit; and
- (d) the holder of the licence or lease did not hold a water entitlement or permit for the taking of, or interfering with, the underground water.
- (2) The holder of the licence or lease—
- (a) is taken to have been granted a water licence that authorised the taking of, or interfering with, the underground water, before the taking or interfering happened; and
 - (b) is taken to continue to hold a water licence authorising the taking of, or interfering with, underground water on the area of the holder's licence or lease, after the commencement, if the taking or interfering happens in the course of, or results from, the carrying out of an authorised activity for the licence or lease.
- (3) The water licence continued under subsection (2)(b) attaches to the mineral development licence or mining lease.
- (4) From 6 December 2016, the provisions of chapter 3 of this Act and the *Mineral Resources Act 1989* apply to the holder of the water licence taken to be continued as if it were a water licence granted under chapter 2 of this Act.
- (5) In this section—
- authorised activity** see the *Mineral Resources Act 1989*, schedule 2.

mineral see the *Mineral Resources Act 1989*, schedule 2.

mineral development licence see the *Mineral Resources Act 1989*, schedule 2.

mining lease see the *Mineral Resources Act 1989*, schedule 2.

started operations—

- (a) for a mineral development licence, means winning a mineral from the area of the licence; or
- (b) for a mining lease, means winning a mineral in payable quantities from the area of the lease.

9 Amendment of sch 4 (Dictionary)

Schedule 4, heading, ‘section 3’—

omit, insert—

section 4

Part 4 Amendment of Water Reform and Other Legislation Amendment Act 2014

10 Act amended

This part amends the *Water Reform and Other Legislation Amendment Act 2014*, part 8.

Editor’s note—

Legislation ultimately amended—

- the *Water Act 2000*

[s 11]

11 Amendment of s 58 (Replacement of long title)

Section 58, inserted long title, ‘responsible and productive’—

omit, insert—

sustainable

12 Amendment of s 59 (Replacement of s 2 (Commencement))

Section 59, inserted section 2—

omit, insert—

2 Purposes of Act and their achievement

- (1) The main purposes of this Act are to provide a framework for the following—
 - (a) the sustainable management of Queensland’s water resources and quarry material by establishing a system for—
 - (i) the planning, allocation and use of water; and
 - (ii) the allocation of quarry material and riverine protection;
 - (b) the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions;
 - (c) the management of impacts on underground water caused by the exercise of underground water rights by the resource sector;
 - (d) the effective operation of water authorities.
- (2) For subsection (1)(a), ***sustainable management*** is management that—
 - (a) incorporates the principles of ecologically sustainable development; and

- (b) allows for the allocation and use of water resources and quarry material for the economic, physical and social wellbeing of the people of Queensland, within limits that can be sustained indefinitely; and
- (c) sustains the health of ecosystems, water quality, water-dependent ecological processes and biological diversity associated with watercourses, lakes, springs, aquifers and other natural water systems, including, where practicable, reversing degradation that has occurred; and
- (d) recognises the interests of Aboriginal people and Torres Strait Islanders and their connection with water resources; and
- (e) enables water resources and quarry material to be obtained through fair, transparent and orderly processes to support the economic development of Queensland; and
- (f) builds confidence regarding the availability, security and value of water entitlements and other authorisations; and
- (g) promotes the efficient use of water through—
 - (i) the establishment and operation of water markets; or
 - (ii) the initial allocation of water; or
 - (iii) the regulation of water use if there is a risk of land or water degradation; or
 - (iv) increasing community understanding of the need to use and manage water in a sustainable way; and
- (h) facilitates the community taking an active part in planning for the management and allocation of water.

[s 13]

- (3) For subsection (2)(g), the *efficient use of water*—
- (a) incorporates water demand management and water conservation measures; or
 - (b) considers the volume and quality of water required for particular circumstances, including release into the environment.

13 Amendment of s 64 (Insertion of new s 5AA)

- (1) Section 64, inserted section 5AA(1)(b)—
omit.
- (2) Section 64, inserted section 5AA(4)—
omit.

14 Amendment of s 65 (Insertion of new s 6)

- (1) Section 65, heading, ‘s 6’—
omit, insert—
- ss 6 and 7**
- (2) Section 65, after inserted section 6—
insert—

7 Meaning of *principles of ecologically sustainable development*

The following principles are *principles of ecologically sustainable development*—

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for

-
- postponing measures to prevent environmental degradation;
- (c) the present generation should ensure the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
 - (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
 - (e) recognition of the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection;
 - (f) decisions and actions should provide for broad community involvement on issues affecting them.

15 Amendment of s 68 (Insertion of new ch 2)

- (1) Section 68, inserted section 37, ‘responsible and productive’—
omit, insert—
sustainable
- (2) Section 68, inserted section 39(1), ‘(1) For the purpose of planning for the responsible and productive’—
omit, insert—
For the purpose of planning for the sustainable
- (3) Section 68, inserted section 39(2)—
omit.
- (4) Section 68, inserted section 41, ‘responsible and productive’—
omit, insert—
sustainable

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- (5) Section 68, inserted section 43, after subsection (2)(h)—
insert—
- (ha) state criteria and processes for deciding an application for a dealing with a water licence; and
- (6) Section 68, inserted section 43(2), paragraphs (ha) to (n)—
renumber as paragraphs (i) to (o).
- (7) Section 68, inserted section 51(2)(c)—
omit.
- (8) Section 68, inserted section 52—
omit.
- (9) Section 68, inserted section 58, ‘responsible and productive’—
omit, insert—
- sustainable
- (10) Section 68, inserted section 67, after paragraph (b)—
insert—
- (ba) if provided for in the water plan—the criteria and process for deciding applications for a seasonal water assignment or for relocation of a water licence;
- (11) Section 68, inserted section 67, paragraphs (ba) to (d)—
renumber as paragraphs (c) to (e).
- (12) Section 68, inserted section 68(2)(b), ‘objective’—
omit, insert—
- objectives
- (13) Section 68, inserted section 69(3)—
omit, insert—
- (3) If the water plan outcomes, measures or objectives are changed, the chief executive must

amend the relevant water management protocol to the extent necessary to be consistent with the water plan.

(14) Section 68, inserted section 70(1)(b)—

omit, insert—

(b) the grant of a water allocation or water licence—

(i) as a result of an unallocated water release; or

(ii) to replace a surrendered water allocation;

(15) Section 68, inserted section 73(1)(a), note, ‘section 146(4) and (5)—

omit, insert—

section 146(1)(b)

(16) Section 68, inserted chapter 2, part 2, division 7—

omit.

(17) Section 68, inserted section 101(1)(e)—

omit.

(18) Section 68, inserted section 112(3)—

omit, insert—

(3) The chief executive must give the applicant a notice requiring the applicant—

(a) to publish the information mentioned in subsection (4), for the period and in the way, stated in the notice given by the chief executive; or

(b) to publish a notice that states the application has been made and refers to the information mentioned in subsection (4) and published on the department’s website, for the period

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and in the way, stated in the notice given by the chief executive.

- (19) Section 68, inserted section 112(6), after ‘information’—

insert—

or notice referring to the information

- (20) Section 68, inserted section 116(1)—

omit, insert—

- (1) Subsection (2) applies if a water plan, water management protocol or regulation states a process for the allocation of water, or interference with the flow of water, under a water licence.

- (21) Section 68, inserted section 126(1), from ‘This section’ to ‘or water management protocol’—

omit, insert—

This section applies if, for a water licence to take water—

- (a) a regulation, water plan or water management protocol

- (22) Section 68, inserted section 129(1), after ‘water management protocol’—

insert—

, water entitlement notice

- (23) Section 68, inserted section 130(c), after ‘a regulation’—

insert—

, water plan

- (24) Section 68, inserted section 147, heading, ‘or to implement a water development option’—

omit.

- (25) Section 68, inserted section 147(1)—

omit, insert—

-
- (1) Subsection (2) applies if a water plan, water management protocol or regulation states a process for the allocation of water under a water allocation.
- (26) Section 68, inserted section 180, from ‘application—’
omit, insert—
application to either of the following named in a water plan—
- (a) for a resource operations licence—an entity mentioned in section 176(2);
 - (b) for a distribution operations licence—an entity mentioned in section 177(2).
- (27) Section 68, inserted section 182(2)(a), ‘responsible and productive’—
omit, insert—
sustainable

16 Amendment of s 73 (Amendment of s 365 (Declaring cumulative management areas))

Section 73(3), inserted section 365(3B)—

omit, insert—

- (3B) If the area of an identified resource tenure is partly within and partly outside the cumulative management area, the chief executive may decide whether the tenure, or part of the tenure, is a CMA tenure and, in deciding this, must have regard to—
- (a) the impacts on underground water caused by, or likely to be caused by, the exercise of underground water rights by the tenure holder; and
 - (b) advice from the Office of Groundwater Impact Assessment, the tenure holder and

[s 17]

any other entity the chief executive considers appropriate.

17 Amendment of s 188 (Replacement of s 1009 (Public inspection and purchase of documents))

Section 188, inserted section 1009(1)(1a)—

omit.

18 Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals))

(1) Section 201, inserted section 1250—

insert—

deferred aspect, for a resource operations plan, means a deferred aspect under section 103 of the unamended Act.

(2) Section 201, inserted section 1253(3), example—

omit, insert—

Examples—

- 1 If the Minister has published a statement of proposals to prepare a draft water resource plan under the unamended Act, the process may be continued to make a draft water plan under the amended Act.
- 2 If the Minister has published a notice about the intention to postpone the expiry of a water resource plan under the unamended Act, the process relating to the postponement may be continued to allow the Minister to decide the matter about the water plan under the amended Act.

(3) Section 201, inserted section 1256(2)(b)—

omit, insert—

- (b) the chief executive has published a notice about a draft resource operations plan to implement the water resource plan,

-
- including a notice about an amending or replacement plan, for public consultation; or
- (c) there is a deferred aspect for the resource operations plan that implements the water resource plan.
- (4) Section 201, inserted section 1256(3)(b)(ii), ‘plan, including’—
omit, insert—
plan to implement the water resource plan, including a notice about
- (5) Section 201, inserted section 1256(3)(b)—
insert—
- (iv) if there is a deferred aspect for the resource operations plan that implements the water resource plan—
- (A) on approval by the Governor in Council of an amendment to the resource operations plan about the deferred aspect; or
- (B) on the publication of a notice by the chief executive advising that the chief executive has decided not to amend the resource operations plan to include provisions about the deferred aspect.
- (6) Section 201, inserted section 1256, after subsection (3)—
insert—
- (4) For subsection (3)(b), if all or any of the provisions of the final draft of the water resource plan or the resource operations plan provide for their commencement on a particular day, the provisions are taken to commence in the water plan on the particular day.

[s 18]

- (7) Section 201, inserted section 1259(4), ‘process—’—
omit, insert—
process or for which there is a deferred aspect—
- (8) Section 201, inserted section 1259(4)(b)—
insert—
- (iv) if there is a deferred aspect for the resource operations plan that implements the water resource plan—
 - (A) the approval by the Governor in Council of an amendment to the resource operations plan about the deferred aspect; or
 - (B) the publication of a notice by the chief executive advising that the chief executive has decided not to amend the resource operations plan to include provisions about the deferred aspect.
- (9) Section 201, inserted section 1259, after subsection (4)—
insert—
- (4A) For subsection (4)(b), if all or any of the provisions of the final draft of the water resource plan or the resource operations plan provide for their commencement on a particular day, the provisions are taken to commence in the instruments mentioned in subsection (2) on the particular day.
- (9A) Section 201, inserted section 1259(10), ‘Section 51(1) does’—
omit, insert—
The consultation provisions under section 51 do
- (10) Section 201, inserted section 1260, paragraph (d)—
renumber as paragraph (e).

-
- (11) Section 201, inserted section 1260, after paragraph (c)—
insert—
(d) the environmental management rules;
- (12) Section 201, inserted section 1261, paragraph (b)—
omit.
- (13) Section 201, inserted section 1261, paragraphs (c) and (d)—
renumber as paragraphs (b) and (c).
- (14) Section 201, inserted section 1264(1)(c), after ‘licences’—
insert—
, other than the criteria and process for deciding applications for a seasonal water assignment or for relocation of a water licence
- (15) Section 201, inserted section 1264(1), ‘(1)’—
omit.
- (16) Section 201, inserted section 1265, heading, after ‘manual’—
insert—
or resource operations licence
- (17) Section 201, inserted section 1265(2) to (5)—
omit, insert—
- (2) Subsection (3) applies if there are rules in the water plan of the type mentioned in section 1261, immediately after the commencement of that section, relevant to a water supply scheme.
- (3) The rules in the water plan are taken to be included in the operations manual relevant to the water supply scheme.
- (4) Subsection (5) applies if rules under a resource operations plan relevant to the water supply scheme—
- (a) are taken to be an operations manual under section 1259(2)(b); and

[s 18]

- (b) the rules that were in the resource operations plan that are now in the operations manual deal with the same subject matter as the rules under the water plan.
 - (5) The rules under the water plan replace the rules in the operations manual for the water supply scheme.
 - (6) Subsection (7) applies if there are provisions in the water plan of the type mentioned in section 1260, immediately after the commencement of that section, relevant to a water supply scheme.
 - (7) The provisions in the water plan are taken to be included in the resource operations licence relevant to the water supply scheme.
 - (8) Subsection (9) applies if provisions under a resource operations plan relevant to the water supply scheme—
 - (a) are taken to be included in a resource operations licence under section 1259(2)(a); and
 - (b) the provisions that were in the resource operations plan that are now taken to be included in the resource operations licence deal with the same subject matter as the rules under the water plan.
 - (9) The provisions under the water plan replace the provisions in the resource operations licence for the water supply scheme.
 - (10) For the water plan, section 63, nothing in this section has the effect of requiring the amendment or subdivision of the Burnett Water allocations in the way mentioned in the water plan, section 63.
- (18) Section 201, inserted section 1268(3), after ‘licence’—
- insert—*
- if section 1272 applies to the application

-
- (19) Section 201, inserted section 1276—
omit.

19 Amendment of s 202 (Amendment of sch 4 (Dictionary))

- (1) Section 202(2), inserted definition *designated watercourse*—
omit.
- (2) Section 202(2), inserted definition *process*, paragraph (a),
'84(1),'—
omit.
- (2A) Section 202(2), inserted definition *plan area*, 'statutory water
resource'—
omit, insert—
water
- (3) Section 202(2)—
insert—
*principles of ecologically sustainable
development* see section 7.

**20 Amendment of sch 2 (Amendment of Water Resource
Plans)**

- Schedule 2, entry for *Water Resource (Whitsunday) Plan
2010*—
omit.