



Queensland

Water Amendment Regulation (No. 1) 2009

Subordinate Legislation 2009 No. 44

made under the

Water Act 2000

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1 Short title

This regulation may be cited as the *Water Amendment Regulation (No. 1) 2009*.

2 Commencement

- (1) Section 4 commences on 30 June 2009.
- (2) Sections 6 and 7 commence on 1 July 2009.

3 Regulation amended

This regulation amends the *Water Regulation 2002*.

4 Amendment of s 3CA (Notice of works and water use—Act, s 37)

- (1) Section 3CA(1)—

omit, insert—

‘(1) This section applies to the following works for taking or interfering with subartesian water under section 20(6) of the Act—

- (a) the Bundaberg, Cooloola and Pioneer Valley area works;
- (b) the Lockyer Valley area works.’.

- (2) Section 3CA—

insert—

‘(4) In this section—

Bundaberg, Cooloola and Pioneer Valley area works means the following works of any size, in the part of the State shown on plan AP9970, AP13801 or AP19470—

- (a) existing works;
- (b) on their completion—
 - (i) works enlarging, deepening or changing existing works; and
 - (ii) works constructed in the future.

[s 5]

Lockyer Valley area works means existing works of any size, other than works that take water only for stock or domestic purposes, in the part of the State shown on plan AP14824.’.

5 Insertion of new pt 2, div 1C

Part 2—

insert—

‘Division 1C Processes for granting unallocated water

‘Subdivision 1 Preliminary

‘5A Application of div 1C

- ‘(1) This division applies if a water resource plan for a plan area, resource operations plan that implements the water resource plan or wild river declaration states that the process for granting unallocated water in the plan area or the wild river area under the declaration is a process stated under this division.
- ‘(2) A process stated under subdivision 2 or 3 applies for granting the water in the plan area or the wild river area under the declaration.
- ‘(3) Subsection (2) is subject to—
 - (a) sections 5B and 5I; and
 - (b) the water resource plan, resource operations plan or wild river declaration.

‘Subdivision 2 Competitive processes

‘5B Application of sdiv 2

- ‘(1) This subdivision states the process for granting unallocated water by public auction or tender.

-
- ‘(2) If the water is to be granted as a water allocation or interim water allocation, only a process under this subdivision may be applied.

‘5C Public notice of auction or tender

- ‘(1) The chief executive must publish a notice (a *public notice*) about the availability of the water by auction or tender in a newspaper circulating generally in the relevant plan area or wild river area.
- ‘(2) The public notice must—
- (a) be published before—
 - (i) the day the auction is held; or
 - (ii) the start of the period in which tenders may be made; and
 - (b) state—
 - (i) whether the water may be granted by public auction or tender; and
 - (ii) where the sale notice about the auction or tender can be inspected.
- ‘(3) The chief executive may amend the public notice by publishing a notice amending the public notice at any time before—
- (a) the day the auction is held; or
 - (b) the closing day for the tender.

‘5D Sale notice about auction or tender

- ‘(1) The chief executive must, before holding the auction or inviting tenders, prepare a written notice (a *sale notice*) about the auction or tender stating the following—
- (a) the following details for identifying the water—
 - (i) the water resource plan, resource operations plan or wild river declaration under which the water is available;

- (ii) the reserve from which the water is available;
 - (iii) the purpose for which the water is available;
 - (iv) the type of water entitlement under which the water is to be granted;
 - (b) other details, if any, sufficient to identify the water, including, for example—
 - (i) the volume of water that may be granted; and
 - (ii) the location from which the water may be taken;
 - (c) whether the water is to be granted by public auction or public tender;
 - (d) the requirements, if any, for eligibility to bid or tender;
 - (e) for an auction—
 - (i) the day and time when the auction will be held; and
 - (ii) the place where the auction will be held;
 - (f) for a tender—
 - (i) the day (the *closing day*) and time by which tenders must be made; and
 - (ii) the place where tenders must be lodged; and
 - (iii) the criteria, if any, for evaluating tenders or, if criteria for evaluating tenders are stated in the water resource plan, resource operations plan or wild river declaration, a reference to the criteria in the plan or declaration;
 - (g) the conditions for the auction or tender;
 - (h) the forms required for—
 - (i) taking part in the auction or tender; and
 - (ii) completing the purchase of the water made available by the auction or tender.
- ‘(2) The sale notice must be available for inspection during business hours at the department’s head office and the

regional office nearest to the relevant plan area or wild river area.

Editor's note—

The department's head office is at 41 George Street, Brisbane. A sale notice may also be available for inspection on the department's website at <www.nrw.qld.gov.au>.

'5E Conditions for auction or tender

- '(1) Without limiting section 5D(1)(g), subsections (2) to (5) state the conditions that apply to a sale by auction or tender.
- '(2) A person bidding at an auction or making a tender must—
- (a) be eligible to bid or tender in accordance with the requirements, if any, under—
 - (i) the water resource plan, resource operations plan or wild river declaration under which the water is available; and
 - (ii) the sale notice; and
 - (b) be eligible to hold the water entitlement under which the water is to be granted; and
 - (c) complete and lodge the required forms under the sale notice for taking part in the auction or tender within the period stated in the sale notice.
- '(3) If the chief executive accepts a bid or tender as the successful bid or tender, the person making the bid or tender must complete the purchase of the water as required under the sale notice, including—
- (a) paying the deposit and purchase price for the water within the period stated in the sale notice; and
 - (b) completing and lodging the required forms under the sale notice for buying the water within the period stated in the sale notice.
- '(4) For a sale by auction, the highest bid that is at least the reserve price or the reserve cash premium for the water is the successful bid.

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- ‘(5) For a sale by tender, subject to subsection (6), the successful tender is either—
 - (a) if criteria for evaluating tenders are stated in the water resource plan, resource operations plan, wild river declaration or sale notice—the tender the chief executive considers is the successful tender having regard to the criteria; or
 - (b) otherwise, the highest tender that is at least the reserve price or the reserve cash premium for the water.
- ‘(6) If there are 2 or more tenders of equal value that comply with subsection (5), the chief executive may—
 - (a) give each of the tenderers an opportunity to make an offer; and
 - (b) sell the water by accepting the best offer under paragraph (a).

‘5F Failure to complete purchase after auction or tender

- ‘(1) This section applies if—
 - (a) the chief executive accepts a bid at an auction or a tender as the successful bid or tender; and
 - (b) the person who made the bid or tender does not complete the purchase of the water in accordance with the conditions for the auction or tender for the water.
- ‘(2) Any deposit paid by the person is forfeited to the State and the chief executive may otherwise deal with the water under this subdivision.

‘5G Selling water after auction

- ‘(1) If the water is not sold at an auction under this subdivision, the chief executive may sell the water—
 - (a) by accepting the best offer made after the auction; or
 - (b) by reducing the reserve price, advertising the reduced reserve price in the newspaper in which the auction was

advertised and accepting the best offer that is at least the new reserve price or new reserve cash premium.

- ‘(2) The conditions of sale stated in the sale notice for the auction apply, to the extent they can be applied, to a sale under this section.

‘5H Sale of water may be withdrawn

- ‘(1) The chief executive may withdraw the sale of the water—
- (a) for a sale by auction—
 - (i) before the auction; or
 - (ii) if the water is not sold at the auction, after the auction; or
 - (b) for a sale by tender—before the closing day for the tender.
- ‘(2) If the sale of the water is withdrawn under subsection (1), the chief executive must publish a notice about the withdrawal in the newspaper in which the public notice about the auction or tender was published.

‘Subdivision 3 Process without competition

‘5I Application of sdiv 3

- ‘(1) This subdivision states the process for granting unallocated water, other than by public auction or tender.
- ‘(2) If the unallocated water is reserved under the water resource plan, resource operations plan or wild river declaration for a State purpose or for helping indigenous communities achieve their economic and social aspirations, only the process under this division may be applied.
- ‘(3) In this section—

project of State significance means a project declared under the *State Development and Public Works Organisation Act 1971*, section 26, to be a significant project.

State purpose means any of the following—

- (a) a project of State significance;
- (b) a town water supply;
- (c) for unallocated water reserved under a water resource plan or resource operations plan—a project of regional significance under the plan;
- (d) for unallocated water reserved under a wild river declaration—
 - (i) a project of regional significance under the declaration; or
 - (ii) ecotourism in the wild river area under the declaration.

‘5J Public notice of availability of water

- ‘(1) The chief executive must publish a notice (a **public notice**) about the availability of the water in a newspaper circulating generally in the relevant plan area or wild river area.
- ‘(2) The notice must state the following—
 - (a) the following details for identifying the water—
 - (i) the water resource plan, resource operations plan or wild river declaration under which the water is available;
 - (ii) the reserve from which the water is available;
 - (iii) the purpose for which the water is available;
 - (b) other details, if any, sufficient to identify the water, including, for example—
 - (i) the volume of water that may be granted; and
 - (ii) the location from which the water may be taken;
 - (c) if the chief executive has decided there is a purchase price for the water, the purchase price;

- (d) that the water may be granted only to a person who is granted a water licence to take water in the plan area or wild river area;
 - (e) details about making an application for the water licence, including for example, where to make the application and by when the application must be received;
 - (f) the other relevant conditions, if any, for granting the water that the chief executive considers appropriate.
- ‘(3) The chief executive may amend the public notice by publishing a notice amending the public notice.

‘5K Availability of water may be withdrawn

- ‘(1) The chief executive may withdraw the availability of the water.
- ‘(2) If the chief executive withdraws the availability of the water, the chief executive must publish a notice about the withdrawal in the newspaper in which the public notice about the availability of the water was published.’.

6 Replacement of s 14A (When water licence fee is payable)

Section 14A—

omit, insert—

‘14A Water licence fee

- ‘(1) The water licence fee mentioned in schedule 16, item 41 is payable for a water licence, other than the following—
- (a) a water licence only to take supplemented water;
 - (b) a water licence to take water for stock or domestic purposes, unless the licence is for taking underground water for stock or domestic purposes from the Great Artesian Basin.
- ‘(2) The water licence fee for a water licence—
- (a) is payable for each year the licence is in force; and

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- (b) must be paid within the period stated in a notice given to the licensee under subsection (3).
- ‘(3) The chief executive must give the licensee a notice stating—
 - (a) the amount of the water licence fee and the period to which it relates; and
 - (b) the period, of at least 20 business days after the notice is given, in which the fee must be paid.’.

7 Insertion of new pt 9, div 9

Part 9—

insert—

‘Division 9 Transitional provision for Water Amendment Regulation (No. 1) 2009

‘130 Water licence fee for existing water licences and applications

- ‘(1) This section applies to a water licence that was in force immediately before the commencement.
- ‘(2) This section also applies if—
 - (a) before the commencement—
 - (i) a person made a relevant application; and
 - (ii) if the water licence fee was payable under former section 14A(3)(a), the person paid the water licence fee for the application; and
 - (iii) the application was not decided; and
 - (b) after the commencement, the relevant application is granted and the person is given a water licence.
- ‘(3) Despite section 14A, the water licence fee is not payable for the licence.
- ‘(4) However, subsection (3) applies only until the licence—
 - (a) is renewed; or

(b) stops being in force.

‘(5) In this section—

commencement means the commencement of this section.

former section 14A(3)(a) means section 14A(3)(a) of this regulation as it was in force before the commencement.

relevant application means any of the following—

- (a) an application for a water licence under section 206 of the Act;
- (b) an application to amend a water licence under section 216 of the Act;
- (c) an application to renew a water licence under section 220 of the Act;
- (d) an application to reinstate a water licence under section 221 of the Act;
- (e) an application to amalgamate 2 or more water licences under section 224 of the Act;
- (f) an application to subdivide a water licence under section 225 of the Act;
- (g) an application for 1 or more replacement water licences under section 229 of the Act.’

8 Amendment of sch 4 (Seasonal water assignments)

Schedule 4—

insert—

‘Toowoomba City Basalts groundwater management area	water licence to take groundwater	Toowoomba City Basalts groundwater management area seasonal water assignment rules’.
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9 Amendment of sch 17 (Dictionary)

Schedule 17—

insert—

‘closing day see section 5D(1)(f)(i).

public notice—

(a) for part 2, division 1C, subdivision 2—see section 5C(1); or

(b) for part 2, division 1C, subdivision 3—see section 5J(1).

sale notice see section 5D(1).’

ENDNOTES

- 1 Made by the Governor in Council on 30 April 2009.
- 2 Notified in the gazette on 1 May 2009.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Environment and Resource Management.

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