

Water Fluoridation Bill 2008

Explanatory Notes

Title of the Bill

Water Fluoridation Bill 2008

Objectives of the Amendments

The object of the *Water Fluoridation Bill 2008* is to promote good oral health in Queensland by the safe fluoridation of public potable water supplies.

Achievement of the Objectives

The object of the Bill is to be achieved by requiring the safe fluoridation of relevant public potable water supplies, and authorising the safe fluoridation of other public potable water supplies.

The *Water Fluoridation Bill 2008* ('the Bill') will repeal and replace the *Fluoridation of Public Water Supplies Act 1963* to place a statutory duty on public potable water suppliers who supply potable water to over 1000 persons to add fluoride to the public water supply under their control or management.

The population number serviced by a public potable water supply is to be determined by reference to the most recent Census of Population and Housing published by the Australian Bureau of Statistics.

In addition, public potable water suppliers that supply potable water to less than 1000 people *may* add fluoride to the water supply in accordance with the Bill. However, this is not a mandatory requirement.

All public potable water suppliers that add fluoride to a water supply will be required to ensure that the fluoride added is in a form, and complies with requirements, prescribed by regulation. These requirements will mirror those in the current *Fluoridation of Public Water Supplies Regulation 1998*.

At least 30 days before adding fluoride to the water supply, a public potable water supplier must also notify the chief executive of Queensland Health and publish a notice at least once in a newspaper circulating in the affected area stating the supplier's intention to add fluoride to the public potable water supply from a stated day.

It will be an offence for a person to add fluoride to a public potable water supply unless the person is: a public potable water supplier; employee or agent of a supplier acting under their authority; or other person acting under provisions of the Bill. The maximum penalty will be 100 penalty units (currently \$7500).

Exemption

Upon application from a public potable water supplier, the Minister must grant an exemption from the requirement to fluoridate if the Minister is reasonably satisfied that –

- the water supply contains naturally occurring fluoride at an average concentration that is within the minimum and maximum concentrations prescribed under a regulation or above that maximum concentration; or
- the natural water chemistry of the public potable water supply is such that the fluoride is unable to be maintained at an average concentration that is within the minimum and maximum concentrations prescribed by regulation; or
- the addition of fluoride to the relevant public potable water supply is unlikely to result in a substantial ongoing oral health benefit to the community, or part of the community, of the area serviced by the relevant public potable water supply, and less than 1000 persons consume water from the public potable water supply.

The Minister must consider advice from an expert committee ('the Queensland Fluoridation Committee') established under Part 7 of the Bill in deciding whether or not to grant the exemption.

An exemption will be valid for a period of five years. At the end of the five year period, a public potable water supplier must either apply for a new exemption prior to the expiry of the current exemption, or comply with the requirement to fluoridate.

The requirement to fluoridate does not apply to a public potable water supplier while an application for an exemption is pending. However, if the Minister refuses the application for an exemption, the water supplier has 12

months to comply with the obligation from the date the notice advising of the Minister's decision is given to the applicant.

Show cause notice

If a water supplier for a relevant public water supply fails to meet its duty to fluoridate, the Minister for Health may issue a show cause notice, which will propose that action be taken to cause the relevant public potable water supply to be fluoridated. The water supplier will be given the opportunity to 'show cause' within 28 days why the proposed action should not be taken.

In order for the Minister to end the show cause notice without taking action to cause the fluoridation of the water supply, the Minister must be satisfied that:

- the public potable water supplier has made reasonable progress towards complying with the obligation to add fluoride; and
- there have been extenuating circumstances preventing the public potable water supplier complying with the obligation.

However, if the Minister is not satisfied that the above two conditions have been met, the Minister may take action to cause the fluoridation of the relevant public water supply and may recover the costs of this action from the water supplier.

It will be an offence for a person to obstruct the Minister or an authorised person from taking action to fluoridate the relevant public potable water supply.

Remedial notices

The Bill will also enable an authorised person (for example, environmental health officers) to issue a remedial notice if the authorised person reasonably believes that a public potable water supplier is contravening the Bill and believes the matter can be remedied and that it is appropriate to give the supplier the opportunity to remedy the matter. For example, a remedial notice may be given to a public potable water supplier where the authorised person reasonably believes that the incorrect amount of fluoride is being added to the public potable water supply.

A remedial notice will state the time period in which the public potable water supplier must remedy the contravention and may also state the reasonable steps the authorised person considers necessary to remedy the contravention. If the public potable water supplier does not comply with

the improvement notice, the chief executive or delegate may take action to remedy the contravention.

It will be an offence to obstruct the chief executive or delegate from taking action to remedy the contravention. The maximum penalty is proposed to be 100 penalty units (\$7500).

Alternative Ways of Achieving Policy Objectives

There are no alternatives considered appropriate for achieving these policy objectives.

Estimated Cost for Government Implementation

The Government has approved 100% capital subsidies and allocated funding for the fluoridation of water treatment plants servicing populations greater than 1000 persons across all areas of Queensland at an estimated cost capital of \$35 million. This funding will include:

- reallocation of \$6 million unspent funds from the Queensland Fluoridation Assistance Program to being capital works in 2007-08; and
- \$6 million new funds for 2008-09 financial year.

This program is expected to deliver the following coverage outcomes:

Calendar Year	Percentage coverage
2008	54%
2009	80%
2010	83%
2011	92%
2012	95%

Consistency with Fundamental Legislative Principles

In response to the *Fluoridation of Public Water Supplies Amendment Bill 2004*, the Scrutiny of Legislation Committee noted that a legislative provision mandating the fluoridation of public water supplies might raise issues concerning the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992* (*Alert Digest* No.6 of 2004).

The mandatory fluoridation of public water supplies is justifiable based on the need to address Queensland's unsustainable level of tooth decay. This approach will also create certainty for communities, government and non-government and professional groups.

Fluoride is present in varying amounts in every water supply. Across Australia where fluoride is added, people are able to elect to drink water without added fluoride by choosing filtered, tank or bottled water.

The Scrutiny of Legislation Committee also noted the strength of the scientific opinion in favour of fluoridating public water supplies. Although occasionally arguments have been advanced that the ingestion of fluoride can have certain detrimental effects upon persons' health, the Committee noted that these limited detrimental effects were outweighed by the health-based arguments for the use of fluoride. It is considered that mandatory fluoridation is a matter upon which Parliament must ultimately decide.

Lack of appeal process

The Minister's decision about whether or not to grant an exemption from the requirement to add fluoride will not be reviewable or appealable. This also raises a fundamental legislative principle concerning the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

While recognising the importance of merit review processes in government decision making, it is not considered that a review or appeal process is either warranted or appropriate for the decision about whether to grant an exemption. The exemption criteria set out above require factual measurements (rather than value judgements) which, if made out, attract the exemption. In addition, the Minister must consider advice from an expert committee in deciding the application.

Fluoridation is a public health measure where the presumption is that it is to be added to the public water supply. Fluoridation is not applied individually but rather to the entire state and only suppliers of water (eg owners of treatment plants and reticulation equipment) are able to apply for an exemption from the requirement to fluoridate.

Finally, a water supplier will still have the option to seek judicial review of the Minister's decision.

Immunity from civil liability

Clause 95 specifies that the Minister, a committee member, an authorised person, a State analyst, or a person acting under the direction or authority of an authorised person is not civilly liable for an act, or omission, made honestly and without negligence under the Bill.

This clause also raises issues concerning the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation in good faith. The clause prevents civil liability from being attached to the individual. The liability instead attaches to the State. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Self-incrimination

Clause 41 makes it an offence for a person to fail to provide a document to an authorised person unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse.

Section 4(3)(f) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation provides appropriate protection against self-incrimination. Consequently, this clause may be regarded as compromising the person's protection against self-incrimination.

However, an authorised person's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the Bill. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation to improve oral health through safe fluoridation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person. This is consistent with the recommendations of the Queensland Law Reform Commission Report, *The Abrogation of the Privilege Against Self-incrimination*.

Delegation of authorities

The Bill will enable the Minister and the chief executive to delegate their functions under the Bill to an appropriately qualified person who is a public service employee or a health service employee.

This raises a fundamental legislative principle in relation the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*; specifically, section 4(3)(c) which refers to only delegating administrative power in appropriate cases and to appropriate persons.

This clause is justified on the basis that the Minister and chief executive are limited to delegating their functions and powers only to a public service employee or a health service employee who have the qualifications or standing appropriate to the exercise of the power.

Consultation

A variety of community surveys have been conducted since 2004 and the results have been fairly consistent with majority support for fluoridation in Queensland. Social research has been undertaken to further explore community views related to water fluoridation (*Enhance 2007*). This research found that:

- 75% of the people most opposed to fluoride live in rural Queensland.
- Those most opposed to water fluoridation equally use tap water (36%) or tank water (36%) as their main source of drinking water.
- 46% of the total population could be swayed in either direction.
- In general, Queensland residents perceive themselves as having limited knowledge regarding water fluoridation.
- People currently have no firm recollection of where they source their fluoride information. This lack of source inhibits them from forming strong opinions on the subject.
- 13 % believe they should have a say in any future decision.

Water fluoridation has been reviewed and is supported by peak bodies around the world. The most recent (2007) systematic review of the safety and effectiveness of fluoridation undertaken by Australia's National Health and Medical Research Council states that, "*the fluoridation of drinking water remains the most effective and socially equitable means of achieving community-wide exposure to the caries prevention effects of fluoride.*"

Queensland agreed to support the implementation of the *National Oral Health Plan* through its endorsement by the Australian Health Ministers' Conference (2004). This commitment was to *extend water fluoridation to all communities of 1000 or more population*.

The concerns of those opposed to fluoridation usually relate to claims about possible side effects of high dose levels of fluoride and issues around government 'mass medicating' or mandating to remove individual choice. There is no credible, objective evidence to support the claims of adverse effects (cancer, osteoporosis or fractures). A valid concern in relation to risks associated with fluoridation is dental fluorosis which poses less risk to individuals than tooth decay. Risks of fluorosis are usually associated with inappropriate use of fluoride toothpaste and fluoride supplements. For these reasons Queensland Health has developed a new policy on the appropriate use of fluorides and implemented a public education strategy for use of fluoride toothpaste and controlled use of fluoride supplements.

Consultation on the Bill has been undertaken with the Interdepartmental Water Fluoridation Steering Committee which includes senior representatives from the Department of Natural Resources and Water, Department of Local Government, Sport and Recreation, Department of Communities, Department of Infrastructure and Planning, the Queensland Water Commission, the Department of Employment and Industrial Relations, the Queensland Bulk Water Supply Authority and Queensland Treasury.

In addition, the Department of the Premier and Cabinet and the Department of Justice and Attorney-General, the Australian Medical Association Queensland, the Australian Dental Association Queensland and the Local Government Association Queensland were consulted and support the Bill.

Notes On Provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Clause 3 specifies that the Act binds all persons, including the State. However, nothing in the Act makes the State liable to be prosecuted for an offence.

Division 2 Object

Clause 4 sets out the objects of the Act.

Part 2 Interpretation

Clause 5 provides that the dictionary in the schedule defines particular words used in the Act.

Clause 6 defines the term relevant public potable water supply to mean a public potable water supply supplying potable water to at least 1000 members of the public. The number of members of the public being supplied is to be determined by reference to the most recent national Census of Population and Housing published by the Australian Bureau of Statistics. This applies even if the actual population number fluctuates at any time.

For example, if, based on the 2006 Census, a particular public potable water supply services a population of 850 persons, it is not a relevant public

potable water supply. However, if the next Census in 2011 indicates that the public potable water supply services a population of 1500 persons, then the water supply will be a relevant public potable water supply.

Part 3 Fluoridation of public potable water supplies

Clause 7 requires a public potable water supplier for a relevant public potable water supply to add fluoride to the relevant public potable water supply within the time prescribed under a regulation.

The Clause also notes that Part 4 sets out the consequences for contravening this clause and Clause 12 contains requirements about adding fluoride to a water supply.

Clause 8 sets out a process for public potable water suppliers for a relevant public potable water supply to apply for an exemption from the obligation to add fluoride under clause 7.

A public potable water supplier may apply to the Minister for an exemption from the obligation to fluoridate on one of the following grounds:

- the water supply contains naturally occurring fluoride at an average concentration that is within the minimum and maximum concentrations prescribed under a regulation, or is above the maximum concentration; or
- the natural water chemistry is such that the fluoride is unable to be maintained in the public potable water supply within the minimum and maximum concentrations prescribed under a regulation; or
- the addition of fluoride to the relevant public potable water supply is unlikely to result in a substantial ongoing oral health benefit to the community, or part of the community, of the area serviced by the relevant public potable water supply, and less than 1000 persons consume water from the public potable water supply. For example, this may occur where the ‘town’ water is bore water which has a pungent/overpowering taste and odour making it unpleasant (rather than unsafe) to consume, so the community all consume water from other sources.

The onus is on the public potable water supplier to provide information or evidence to demonstrate the ground exists. If the Minister is reasonably satisfied that the ground is proven, the Minister must grant the exemption.

The Minister must seek and consider advice from an expert committee ('the Queensland Fluoridation Committee') established under Part 7 of the Bill in deciding whether or not to grant the exemption, and must give notice of the decision to the applicant.

The exemption may also be given on reasonable conditions.

Clause 9 provides that an exemption will be valid for a period of five years after the notice of the Minister's decision is given to the applicant. A public potable water supplier must either apply for a new exemption prior to the expiry of the current exemption, or comply with the requirement to fluoridate before the five year period provided by the exemption finishes.

The requirement to fluoridate does not apply to a public potable water supplier while an application for an exemption is pending. However, if the Minister refuses the application for an exemption, the water supplier has 12 months to comply with the obligation from the date the notice advising of the Minister's decision is given to the applicant.

Clause 10 specifies that the Minister may refuse an application for an exemption if the Minister reasonably believes the application is vexatious. The Minister may refuse the application without referring it to the committee. In addition, the requirement of clause 7 of the Act applies to the applicant at all times. The Minister must give notice of the refusal to the applicant.

Clause 11 provides that a public potable water supplier for a public potable water supply, other than a relevant public potable water supply, may add fluoride to the public potable water supply. The clause also notes that clause 12 contains requirements about adding fluoride to a water supply.

Clause 12 specifies that a public potable water supplier for a public potable water supply that adds fluoride to the water supply, must ensure the fluoride is added in a form and complies with all the requirements prescribed under a regulation.

The clause also notes that Part 5, Division 3 sets out the consequences for contravening this provision.

Clause 13 requires a public potable water supplier to give 30 days notice of their intention to add fluoride to the public potable water supply. The notice must be given to the chief executive and published at least once in a

newspaper circulating in the area of the State serviced by the public potable water supply.

There is no penalty for a failure to comply with this provision. However, a failure to comply with this provision does not operate to exclude a public potable water supplier from meeting their obligation under clause 7.

Clause 14 specifies that a person must not add fluoride to a public potable water supply unless the person is: a public potable water supplier for the public potable water supply; an employee or agent acting under the direction of the supplier; or another person acting under clauses 21 or 60 of the Bill. A maximum penalty of 100 penalty units applies.

Part 4 Non-compliance with obligation to add fluoride to relevant public potable water supply

Clause 15 provides that the Minister may issue a notice to a public potable water supplier if the Minister believes the supplier is not complying with the obligation to fluoridate the relevant public potable water supply. The notice must invite the public potable water supplier to show cause why action should not be taken to cause the fluoridation of the water supply (the proposed action) within the stated period. The stated period must be at least 28 days from the day the show cause notice is issued.

Clause 16 provides that the public potable water supplier may make written representations about the show cause notice to the Minister within the time period stated. The Minister must consider all representations made under this clause.

Clause 17 provides that the Minister may refer the accepted representations to the committee to obtain its written advice about the merits of the representations.

Clause 18 provides that the Minister may decide not to take the proposed action if satisfied that: the public potable water supplier has made reasonable progress towards complying with the obligation to fluoridate and there have been extenuating circumstances preventing compliance with the obligation.

Clause 19 provides that if, after considering the written representations, the Minister decides not to take action to cause fluoridation, the Minister must not take any further action and must notify the supplier about this decision.

Clause 20 provides that if the Minister decides not to act under clause 19, the Minister must take action to fluoridate the public potable water supply. The Minister must also immediately give notice of this decision to the supplier.

Clause 21 specifies that in taking action to fluoridate a water supply, the Minister may authorise a person to do the things that are necessary and reasonable. This includes entering a place that contains the relevant water supply and accessing any infrastructure connected with the water supply or taking onto the place any persons, equipment or materials the person reasonably requires for taking action to fluoridate the water supply.

Clause 22 enables the State to recover from the public potable water supplier the costs and expenses of taking action to fluoridate the water supply.

Clause 23 provides that it is an offence to obstruct the Minister or a person authorised by the Minister to take action to fluoridate a water supply unless the person has a reasonable excuse. The maximum penalty is 100 penalty units.

Part 5 Monitoring and enforcement

Division 1 Authorised persons

Subdivision 1 Preliminary

Clause 24 provides that an authorised person has the powers set out in this Act. In exercising these powers, an authorised person is subject to the directions of the chief executive.

Clause 25 sets out the functions of authorised persons.

Subdivision 2 Appointment of authorised persons

Clause 26 empowers the chief executive to appoint authorised persons. The clause also states that the chief executive must be satisfied the person has the necessary expertise or experience to be an authorised person.

Clause 27 specifies that an authorised person holds office on the conditions stated in their instrument of appointment or a signed notice given to the authorised person or in a regulation. The powers of an authorised person may be limited by the instrument of appointment, the signed notice or a regulation.

Clause 28 requires the chief executive to issue an identity card to each authorised person.

Clause 29 provides that an authorised person must produce or display the authorised person's identity card if exercising a power under the Act. However, if it is not practicable in the circumstances to do so before exercising the power, the identification must be produced at the first reasonable opportunity.

Clause 30 states the ways in which an authorised person may cease to hold office. The methods detailed are not exhaustive.

Clause 31 states that an authorised person may resign by signed notice to the chief executive.

Clause 32 requires an authorised person to return the authorised person's identity card within 21 days of ceasing to be an authorised person.

Division 2 Powers of authorised persons

Subdivision 1 Entry of places

Clause 33 provides that an authorised person may enter a place if the occupier consents to the entry or where the entry is authorised by a warrant. The clause also confers on an authorised person a right to enter a place without the occupier's consent or a warrant if the place is:

- a public place and entry is made when it is open to the public; or

- it is a place that contains a public potable water supply or infrastructure connected with the supply.

Subdivision 2 Procedure for entry

Clause 34 outlines the procedures an authorised person must follow when seeking consent to enter a place. This clause also provides that, should the issue arise in a proceeding whether the occupier consented to the entry and an acknowledgement of consent is not produced in evidence, the onus of proof to prove the entry was lawful lies with the person relying on the lawfulness of the entry.

Clause 35 makes provision for an authorised person to apply to a magistrate for a warrant to enter a place. Under this provision, a magistrate may refuse to consider an application until an authorised person provides the magistrate with the information the magistrate requires.

Clause 36 sets out the grounds that a magistrate must be satisfied of before issuing a warrant and specifies the information that must be stated in the warrant.

Clause 37 makes provision for an authorised person to apply for a warrant by phone, fax, email, radio, videoconferencing or another form of electronic communication because of urgent or other special circumstances.

Clause 38 provides that a warrant issued under Clauses 35-37 is invalidated only if a defect in the warrant affects the substance of the warrant in a material particular.

Clause 39 outlines the procedures that must be followed by an authorised person prior to entering a place under a warrant.

Subdivision 3 General powers

Clause 40 specifies what powers are available to an authorised person who has entered a place for the purposes of monitoring and enforcing compliance with the Act.

Clause 41 makes it an offence for a person to fail to help an authorised person if requested under clause 40(3)(f), unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information or provide a document on the basis that complying might tend to incriminate the person.

Clause 42 makes it an offence for a person to fail to provide an authorised person with information requested under clause 40(3)(g), unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the request to give information on the basis that complying might tend to incriminate the person.

Subdivision 4 Power to seize evidence

Clause 43 provides an authorised person with the power to seize a thing at a place entered, without consent or a warrant, if the authorised person reasonably believes that the thing is evidence of an offence.

Clause 44 provides an authorised person with the power to seize a thing at a place if the authorised person:

- obtained the necessary consent to enter the place; and the authorised person reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent; or
- enters the place with a warrant and seizes evidence for which the warrant was issued; or
- reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Subdivision 5 Dealing with seized things

Clause 45 enables an authorised person to take action in relation to a thing which has been seized by either moving the thing from the place where it

was seized or leaving the thing at the place of seizure but restrict access to it.

Clause 46 makes it an offence for a person to tamper, or attempt to tamper with a seized thing or restrict access to the seized thing without an authorised person's consent.

Clause 47 makes provision for an authorised person to require the person in control of a thing to be seized to take it to a stated reasonable place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time. It is an offence for a person to fail to comply with a requirement made under this clause unless the person has a reasonable excuse.

Clause 48 specifies that an authorised person who has required a person under clause 47 to take a thing to a place may require the person to return the thing to its original place. It is an offence for a person not to comply with the requirement to return the thing to its original place.

Clause 49 requires an authorised person to issue a receipt for a seized thing to the person from whom the thing was seized. However, if this proves impractical, the authorised person must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 50 sets out the circumstances in which a seized thing will be forfeited to the State if, for example if the owner cannot be found after making reasonable inquiries, or if it cannot be returned to its owner, after making reasonable efforts. The clause also provides what actions a State may take with respect to the forfeited thing.

Clause 51 specifies when an authorised person must return a seized thing to its owner, if the thing has not been forfeited.

Clause 52 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Clause 53 enables an authorised person to destroy a thing that has been seized if the thing consists wholly or partly of contaminated or decomposed matter, or that poses an immediate risk to public health or safety.

Subdivision 6 Power to obtain information

Clause 54 makes provision for an authorised person to:

- require a person to make available for inspection or produce a document for their inspection that is required to be kept by the person under the Act;
- require a person to certify that a copy of the document or an entry in a document is a true copy; and
- keep a document until such time as a copy of the document or entry in a document is certified as a true copy.

Clause 55 makes it an offence for a person to fail to comply with a request to produce a document, unless the person has a reasonable excuse. It is not a reasonable excuse not to comply with the request on the basis that complying might tend to incriminate the person.

Clause 56 makes it an offence for a person to fail to comply with a request to certify a document, unless the person has a reasonable excuse.

Division 3 Remedial notices

Clause 57 refers to the definitions for “remedial notice”, “relevant provision” and “the contravention” for Division 3.

Clause 58 provides that this division applies if an authorised person reasonably believes: a public potable water supplier is contravening or has contravened a provision of the Act, and that it is likely the contravention will continue; that a matter relating to the contravention can be remedied; and it is appropriate to give the public potable water supplier an opportunity to remedy the matter.

For example, a remedial notice may be given to a public potable water supplier where the authorised person reasonably believes that the incorrect amount of fluoride is being added to the public potable water supply.

This division does not apply to a contravention of clause 7. Contraventions of clause 7 may be dealt with under Part 4.

Clause 59 provides that the authorised person may give the public potable water supplier a notice requiring the public potable water supplier to

remedy the contravention. The notice must state the reasonable steps that are considered necessary to remedy the contravention and avoid further contravention. For example, a remedial notice may require the supplier to alter the concentration of fluoride in the water to within the minimum and maximum concentration prescribed under a regulation and keep records of the average concentration of fluoride in the supply over a certain period of time. The public potable water supplier must comply with the notice.

The clause also provides that a prosecution may proceed if a remedial notice has not been given. However, a prosecution may not proceed if a remedial notice has been issued unless the person fails to comply with the remedial notice and does not have a reasonable excuse. That is, as long as a supplier complies with the remedial notice, the issuance of the remedial notice waives the ability to prosecute.

Clause 60 specifies that the chief executive may take the action the chief executive considers reasonably necessary to remedy the contravention of the relevant provision. The chief executive may authorise a person to do the things that are reasonable and necessary. This may include entering a place for the purpose of taking action to remedy the contravention or taking onto the place any persons, equipment or materials the person reasonably requires for taking action to remedy the contravention.

Clause 61 provides that the costs and expenses incurred by the chief executive in taking the action are a debt payable by the public potable water supplier to the State.

Clause 62 makes it an offence for a person to obstruct the chief executive, or a person authorised by the chief executive to take the action, in taking the action, unless the person has a reasonable excuse.

Division 4 General enforcement matters

Subdivision 1 Notice of damage and compensation

Clause 63 provides that if an authorised person, or a person acting under the direction or authority of an authorised person, damages property when exercising or purporting to exercise a power, the person must immediately give notice of the particulars of the damaged property to a person who appears to the authorised person to be an owner of the property.

Clause 64 specifies that if a person incurs loss or expense because of the exercise or purported exercise of a power, the person may claim compensation from the State. Compensation may be claimed for loss or expense incurred in complying with a requirement made of the person.

Subdivision 2 Other matters

Clause 65 makes it an offence for a person to obstruct an authorised person in the exercise of a power, unless the person has reasonable excuse.

Clause 66 makes it an offence for a person to state anything to an authorised person that the person knows is false or misleading.

Clause 67 makes it an offence for a person to give an authorised person a document containing information the person knows is false or misleading. This provision does not apply if the person, when giving the document: tells the authorised person how the document is false or misleading; and, if the person has or can reasonably obtain the correct information, gives the authorised person the correct information.

Clause 68 makes it an offence for a person to pretend to be an authorised person.

Part 6 Analysis of things or samples

Division 1 State analysts and approval of laboratories

Clause 69 empowers the chief executive to appoint a State analyst. The clause also states the chief executive must be satisfied the person has the necessary expertise or experience to be a State analyst.

Clause 70 specifies that a State analyst holds office on any conditions stated in their instrument of appointment, or a signed notice given to the State analyst or a regulation.

Clause 71 states the ways in which a State analyst ceases to hold office, but does not limit the ways in which a State analyst may cease to hold office.

Clause 72 states that a State analyst may resign by signed notice given to the chief executive.

Clause 73 provides that a chief executive may approve a laboratory to analyse things, or samples taken from things, if the chief executive is satisfied the laboratory has the resources and expertise to conduct the analysis and the laboratory is accredited, authorised or approved to conduct the analysis by an entity prescribed under a regulation.

Division 2 Other matters about analysis of things or samples

Clause 74 provides that if an authorised person takes a thing or a sample from a thing for analysis, the authorised person must, as soon as practicable, give it to a State analyst appointed to carry out the particular type of analysis required. The clause also provides the conditions under which a State analyst or approved laboratory must analyse things and the completion of the certificate of analysis.

Clause 75 states that the certificate of analysis must include information about the methodology used to conduct the analysis.

Part 7 Queensland Fluoridation Committee

Division 1 Establishment and functions

Clause 76 establishes the Queensland Fluoridation Committee.

Clause 77 outlines the functions of the Queensland Fluoridation Committee.

Division 2 Membership

Clause 78 outlines the membership of the Queensland Fluoridation Committee.

Clause 79 outlines the process under which an entity is to nominate a person for membership of the committee.

Clause 80 states that an appointed member is to be appointed for the term stated in the instrument of appointment. Each term must be no more than 2 years.

Clause 81 provides that a committee member is entitled to be paid the fees and allowances decided by the Governor in Council.

Clause 82 appoints the chief health officer as the committee's chairperson and the chief dental officer as the committee's deputy chairperson. The clause also provides for the deputy chairperson to act as the chairperson in the chairperson's absence.

Division 3 Committee business

Clause 83 provides for the committee to conduct its business, including its meetings, in the way it considers appropriate.

Part 8 Evidence and legal proceedings

Division 1 Application

Clause 84 provides that Part 8 applies to legal proceedings under the Act.

Division 2 Evidentiary aids

Clause 85 states that the chief executive's appointment, an authorised person's or committee member's appointment, and the authority of the Minister, the chief executive or an authorised person to do anything under the Act is presumed, unless a party to the proceeding requires proof of it.

Clause 86 provides that a signature purporting to be the signature of the Minister, chief executive or an authorised person is evidence of the signature it purports to be.

Clause 87 specifies those matters that do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Division 3 Offence proceedings

Clause 88 states that a proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

Clause 89 states that in any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was "false or misleading" without specifying which.

Clause 90 provides that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind.

Clause 91 provides that the executive officers of a corporation must ensure the corporation complies with the Act.

Part 9 Matters relating to liability and indemnity

Division 1 Liability

Clause 92 states that no provision of this Act creates a civil cause of action based on a contravention of this provision.

Clause 93 sets out that the Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise. However, compliance with the Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

Clause 94 provides that a person does not have any civil right or remedy against a supplier in relation to the fluoridation of a public potable water supply undertaken in accordance with this Act. This clause reflects that the purpose of the Bill is to require or permit the safe fluoridation of public potable water supplies.

Clause 95 states that an official is not civilly liable for an act done, or omission, made honestly and without negligence under this Act.

Division 2 Indemnity for public potable water suppliers

Clause 96 states that the State is to indemnify a public potable water supplier against all costs and expenses properly incurred, and not recovered, by it in relation to any proceeding in a court taken against it in relation to anything it is required or permitted to do under clause 7 or 11. If an Act proceeding is started against a supplier, it must immediately notify the Minister.

Clause 97 provides that the Minister, or a person nominated by the Minister, may at any time elect to be joined in the Act proceeding as a party by notice filed in the court.

Clause 98 states that the electing party may, on behalf of the supplier, do anything the supplier could do as a party to the proceeding including

settling a matter arising in the proceeding. The supplier must not do anything as a party to the proceeding unless authorised to do so by the electing party. The supplier must assist the electing party to act under sub-clause 1 by executing all documents that the electing party considers necessary for that purpose.

Part 10 Miscellaneous

Clause 99 empowers the Minister or chief executive to delegate his or her functions under this Act to an appropriately qualified person who is a public service employee of the department or a health service employee.

Clause 100 empowers the Governor in Council to make regulations about specified matters under this Act.

Part 11 Repeal and transitional provisions

Clause 101 states that the Fluoridation of Public Water Supplies Act 1963 No. 34 is repealed.

Schedule Dictionary

The Schedule defines key terms used in the Act. Important definitions include the following.

public potable water supplier, for a public potable water supply, means —

(a) if there is a water treatment plant for the water supply - the owner of the water treatment plant; or

(b) otherwise, the owner of the reticulation equipment for the water supply.

public potable water supply means a water supply at the point it supplies potable water to the public by means of a water treatment plant or reticulation equipment.

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