

Queensland



**SOUTH EAST QUEENSLAND
WATER BOARD (REFORM
FACILITATION) BILL 1999**

Queensland



**SOUTH EAST QUEENSLAND WATER
BOARD (REFORM FACILITATION)
BILL 1999**

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1999

A BILL

FOR

An Act to enable the South East Queensland Water Board to transfer its undertaking to a company wholly owned by the State and particular local governments and incorporated under the Corporations Law, to amend the *Water Resources Act 1989*, and for other purposes

*South East Queensland Water Board (Reform
Facilitation)*

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

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1. This Act may be cited as the *South East Queensland Water Board (Reform Facilitation) Act 1999*.

4

5

Commencement

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2.(1) Parts 1 to 3, sections 14, 16 and 18 and schedule 2 commence on assent.

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8

(2) The remaining provisions commence on the settlement day.

9

Purposes of Act

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3.(1) The main purposes of this Act are—

11

(a) to enable the board to transfer its undertaking to the company; and

12

(b) to provide for Ministerial powers of direction for the transfer process.

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(2) To remove any doubt, it is declared that this Act does not give the company a power to acquire the board's undertaking that it would not otherwise have under the Corporations Law.

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16

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Definitions

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4. The dictionary in schedule 2 defines particular words used in this Act.

19

PART 2—TRANSFER OF BOARD’S UNDERTAKING

Board’s power to transfer its undertaking

5.(1) The board may transfer its undertaking to the company.

(2) The board may exercise its power under subsection (1) only with the Minister’s approval and subject to any written directions of the Minister about the transfer.

(3) A transfer contrary to subsection (2) is of no effect.

(4) Also, the board may exercise a power (an “**incidental power**”) that is incidental to the exercise of the power under subsection (1).

(5) An incidental power may be exercised without the Minister’s approval.

(6) An incidental power exercised by the board before the commencement of this section is taken to be, and to always have been, as validly exercised as if it were exercised by the board after the commencement.

Minister’s approval to transfer

6.(1) The board must obtain the Minister’s approval for the exercise of the board’s power under section 5(1) before the board transfers its undertaking to the company.

(2) The Minister may approve the exercise of the power only if the Minister is satisfied—

(a) the State has obtained, or will obtain, a satisfactory indemnity for liabilities incurred by the State under sections 10(2) and 15; and

(b) the officers and employees of the board will be offered employment with the company as part of the transfer, on their existing or equivalent terms and conditions of employment.

(3) Subsection (2)(b) does not affect the *Industrial Relations Act 1999*.

(4) Subsection (2)(b) does not apply to members of the board in the capacity of members.

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Minister's directions about transfer

7.(1) Without limiting the Minister's power to give the board directions under section 5(2), the Minister may direct the board—

- (a) to exercise the power at a stated time; or
- (b) not to exercise the power until a stated time;

(2) The direction must be written and—

- (a) published in the gazette as soon as practicable after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

Settlement day

8. The Minister must, by gazette notice, declare a day to be the settlement day.

Board to ensure transfer proceeds are paid to State

9. The board must ensure the transfer proceeds are paid to the State on the settlement day.

Dissolution of board

10.(1) The board is dissolved and its members go out of office at the end of the settlement day.

(2) After the board has been dissolved, the State stands in the place of the board for the transfer contract.

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PART 3—MISCELLANEOUS

Protection from liability

11.(1) The Minister or a member of the board does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

PART 4—AMENDMENT OF WATER RESOURCES ACT 1989

Act amended in pt 4

12. This part amends the *Water Resources Act 1989*.

Insertion of new pt 10A

13. After part 10—

insert—

PART 10A—BULK WATER SUPPLY IN SOUTH-EAST QUEENSLAND

Division 1—Preliminary

Definitions for pt 10A

215A. In this part—

“**asset**”, of the board, does not include water.

“**board**” means the South East Queensland Water Board established under

*South East Queensland Water Board (Reform
Facilitation)*

the repealed Act.	1
“committee” see section 215C.	2
“company” means the company within the meaning of the <i>South East Queensland Water Board (Reform Facilitation) Act 1999</i> , schedule 2. ¹	3 4
“company reservoir” means a reservoir controlled by the company.	5
“flood mitigation manual” see section 215D.	6
“repealed Act” means the repealed <i>South East Queensland Water Board Act 1979</i> .	7 8
“reservoir” means an artificial lake, pond or basin formed by a dam.	9
“settlement day” means the settlement day under the <i>South East Queensland Water Board (Reform Facilitation) Act 1999</i> .	10 11
“undertaking” , of the board, means all the board’s assets and liabilities at the settlement day.	12 13
‘Application of pt 10A	14
‘215B. This part applies if the board transfers its undertaking to the company.	15 16
<i>‘Division 2—Flood mitigation</i>	17
‘Establishment of technical advisory committee	18
‘215C. The Minister may establish a technical advisory committee (the “committee”).	19 20

¹ *South East Queensland Water Board (Reform Facilitation) Act 1999*, schedule 2—
“company” means a company—

- (a) wholly owned by the State and the following local governments, in whatever proportions—
 - (i) Brisbane, Gold Coast, Ipswich, Logan and Redcliffe city councils;
 - (ii) Beaudesert, Caboolture, Esk, Gatton, Kilcoy, Laidley and Pine Rivers shire councils; and
- (b) formed or to be formed under the Corporations Law.

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‘Functions of committee	1
‘ 215D.(1) The committee’s functions are—	2
(a) to advise and make recommendations to the Minister on flood mitigation in south-east Queensland; and	3 4
(b) to prepare a manual (a “ flood mitigation manual ”) of operational procedures for flood mitigation for each of the company’s reservoirs.	5 6 7
‘(2) The committee may give advice or make recommendations on its own initiative or if asked by the Minister.	8 9
‘Committee meetings	10
‘ 215E. The committee may meet at the times and places it decides and conduct its business in the way it decides.	11 12
‘Minister’s approval of flood mitigation manual	13
‘ 215F.(1) The committee must give the Minister a copy of each flood mitigation manual prepared by the committee, and any proposed amendment of the manual, for the Minister’s approval.	14 15 16
‘(2) The Minister may, by gazette notice, approve the manual or amendment.	17 18
‘Protection from liability	19
‘ 215G.(1) The Minister or a member of the committee does not incur civil liability for an act done, or omission made, honestly and without negligence under this division.	20 21 22
‘(2) A company official who observes the operational procedures in a flood mitigation manual approved by the Minister does not incur civil liability for an act done, or omission made, honestly and without negligence in observing the procedures.	23 24 25 26
‘(3) If subsection (1) or (2) prevents civil liability attaching to a person, the liability attaches instead to the State.	27 28

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‘(4) In this section—	1
“company official” means—	2
(a) a director of the company; or	3
(b) an employee of the company; or	4
(c) an agent of the company.	5
<i>Division 3—Protection of water quality</i>	6
‘Purpose of div 3	7
‘215H. The purpose of this division is to protect the quality of water in a company reservoir.	8 9
‘Regulation of land use in catchment area	10
‘215I.(1) A regulation may regulate—	11
(a) the use of land in the catchment area, or a part of the catchment area, identified in the regulation for a company reservoir; and	12 13
(b) the construction and use of buildings and structures on the land.	14
‘(2) To the extent that a planning scheme under the <i>Integrated Planning Act 1997</i> or a local law is inconsistent with the regulation, the planning scheme or local law is ineffective.	15 16 17
‘(3) To the extent that a development approval under the <i>Integrated Planning Act 1997</i> is inconsistent with the regulation, the development approval is ineffective.	18 19 20
‘Effect of regulation	21
‘215J. A regulation made under section 215I does not affect a person’s power under this or another Act to take action to protect the quality of water in a company reservoir.	22 23 24

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<i>‘Division 4—Protection of existing water allocations</i>	1
‘Purpose of div 4	2
‘215K. The purpose of this division is to protect existing entitlements to water from a reservoir transferred by the board to the company.	3 4
‘Existing entitlements to water continue	5
‘215L. If a person had an entitlement to water under this Act or the repealed Act immediately before the settlement day, the entitlement is unaffected by the transfer.	6 7 8
<i>‘Division 5—Company’s power to access and maintain its facilities</i>	9
‘Definition for div 5	10
‘215M. In this division—	11
“authorised person” , of the company, means an employee or agent of the company authorised by the company for this division.	12 13
‘Appointment of authorised persons	14
‘215N. The company may appoint an employee of the company to be an authorised person only if—	15 16
(a) the company is satisfied the employee has the necessary expertise or experience to be an authorised person; or	17 18
(b) the employee has satisfactorily finished training approved by the company.	19 20
‘Identity card for company’s authorised persons	21
‘215O.(1) The company must give an identity card to each of its authorised persons.	22 23
‘(2) The identity card must—	24

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- (a) contain a recent photograph of the person; and 1
- (b) be signed by the person; and 2
- (c) identify the person as an authorised person; and 3
- (d) include an expiry date. 4

‘Failure to return identity card’ 5

‘215P. A person who ceases to be an authorised person must give the person’s identity card to the company within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse. 6
7
8

Maximum penalty—10 penalty units. 9

‘Display of authorised person’s identity card’ 10

‘215Q.(1) An authorised person may exercise a power in relation to someone else (the **“other person”**) only if the authorised person— 11
12

- (a) first produces the authorised person’s identity card for the other person’s inspection; or 13
14
- (b) has the identity card displayed so it is clearly visible to the other person. 15
16

‘(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity. 17
18
19
20

‘Power to enter places’ 21

‘215R.(1) An authorised person may enter a place to inspect, operate, change, maintain, remove, repair or replace a company facility at the place. 22
23

‘(2) However, the authorised person may enter a place at any reasonable time only if— 24
25

- (a) the company has given the occupier at least 14 days notice of the entry and the purpose of the entry; or 26
27

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(b) the company needs to take, in the interest of public health or safety, urgent action in relation to its facility at the place. 1
2

‘(3) For subsection (2), a place does not include a part of the place where a person resides. 3
4

‘(4) In this section— 5
“**facility**” means equipment or a structure. 6

‘Power to carry out activities 7

‘**215S.** After entering a place under this division, the authorised person may carry out the activity that is the purpose of the entry. 8
9

‘Compensation 10

‘**215T.(1)** A person may claim compensation from the company if the person incurs loss or expense because of the exercise or purported exercise of a power under this division. 11
12
13

‘(2) Payment of compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction. 14
15

‘(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case. 16
17
18

‘Company to give notice of damage 19

‘**215U.(1)** If the authorised person, in the exercise or purported exercise of a power under this division, damages anything, the authorised person must immediately give written notice of the particulars of the damage. 20
21
22

‘(2) The notice must be given to the person who appears to the authorised person to be the owner, or in control, of the thing. 23
24

‘(3) If, for any reason, it is not practicable to comply with subsection (2), the authorised person must— 25
26

(a) leave the notice at the place where the damage happened; and 27

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- (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.

1
2

Division 6—Information request

3

‘Chief executive’s power to require information from the company

4

‘**215V.(1)** The company must give the chief executive the information the chief executive reasonably requires to enable the chief executive to perform the chief executive’s functions.

5
6
7

‘(2) The information must be given within a reasonable time after the chief executive asks for it.

8
9

‘(3) However, this section does not require the company to give information if giving the information might tend to incriminate the company.

10
11
12

‘(4) If the company contravenes this section it commits an offence.

13

Maximum penalty—200 penalty units.

14

‘Commercially sensitive information

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‘**215W.(1)** This section applies to information the company has given to the chief executive under section 215V if the information is of a commercially sensitive nature.

16
17
18

‘(2) The chief executive must not disclose the information to any other person.

19
20

Division 7—General provisions about the company

21

‘Application of Financial Administration and Audit Act 1977

22

‘**215X.** To remove any doubt, it is declared that the company is not a statutory body for the *Financial Administration and Audit Act 1977* and that Act does not apply to the company.

23
24
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Division 8—Transitional

‘Existing approved manual of operational procedures for flood mitigation

‘**215Y.(1)** Until the Minister approves a flood mitigation manual under division 3, the flood mitigation manual for the North Pine Dam approved by the Minister under the repealed Act is taken to be the flood mitigation manual approved by the Minister under the division for the dam.

‘**(2)** Until the Minister approves a flood mitigation manual under division 3, the flood mitigation manual for the Wivenhoe Dam and the Somerset Dam approved by the Minister under the repealed Act is taken to be the flood mitigation manual approved by the Minister under the division for the dams.’.

Amendment of s 250A (Regulation-making power)

14. Section 250A—

insert—

‘**(4)** Without limiting subsection (3), a regulation may—

- (a) fix the water allocation for an entity; and
- (b) impose conditions on the allocation, including, for example, the volume of water the entity must make available to another entity each year from the allocation, and the period for which the allocation is made.’.

**PART 5—TRANSITIONAL PROVISIONS, REPEAL
AND MINOR AMENDMENTS**

State undertakes non-transferable civil liability

15.(1) This section applies only to an act done or omission made before the settlement day in relation to the board’s undertaking that gives rise to a

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Facilitation)*

civil liability that, at law, can not be transferred to the company. 1

(2) After the settlement day, the State stands in the place of the board for 2
the act or omission. 3

(3) This section is a law to which the *Acts Interpretation Act 1954*, 4
section 20A applies. 5

**Constructing authority for particular land acquired under the 6
Acquisition of Land Act 1967 7**

16.(1) This section applies to land acquired by the board as a constructing 8
authority under the *Acquisition of Land Act 1967*. 9

(2) If the State acquires the land from the board before the settlement day, 10
the State is, for section 41 of that Act, taken to be the constructing authority 11
that acquired the land on the day it was acquired. 12

(3) If the land is transferred to the company as part of the board's 13
undertaking, the company is, for section 41 of that Act, taken to be the 14
constructing authority that acquired the land on the day it was acquired. 15

South East Queensland Water Board By-law 1991 to continue in force 16

17.(1) The *South East Queensland Water Board By-law 1991*— 17

(a) continues in force despite the repeal of the SEQWB Act; and 18

(b) must be read— 19

(i) as if references in the by-law to the board were references to 20
the company; and 21

(ii) with any other changes necessary to make the by-law 22
consistent with this Act and adapt its operation for this Act. 23

(2) An authorised officer whose appointment under the by-law is in force 24
immediately before the commencement of this section is taken, on the 25
commencement, to be an authorised officer of the company for the by-law. 26

(3) Unless the by-law is sooner repealed, the by-law expires 2 years after 27
the commencement. 28

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Transitional regulations	1
18.(1) A regulation may make provision about any matter for which—	2
(a) it is necessary or convenient to make provision to allow or facilitate the doing of anything to achieve the purposes of this Act; and	3 4 5
(b) this Act does not make provision or sufficient provision.	6
(2) A regulation under this section—	7
(a) may only be made within 1 year after the commencement of this section; and	8 9
(b) expires 1 year after the regulation commences.	10
(3) This section expires 1 year after it commences.	11
Repeal of SEQWB Act	12
19. The SEQWB Act is repealed at the end of the settlement day.	13
Act amended	14
20. Schedule 1 amends the Act mentioned in it.	15

PART 6—EXPIRY

Expiry	17
21. This Act expires 2 years after the settlement day.	18 19

SCHEDULE 1

1

ACT AMENDED

2

section 20

3

**QUEENSLAND COMPETITION AUTHORITY
ACT 1997**

4

5

1. Schedule, definition “water board”, paragraph (b)—

6

omit.

7

2. Schedule definition “water board”, paragraphs (c) and (d)—

8

renumber as paragraphs (b) and (c).

9

SCHEDULE 2	1
DICTIONARY	2
section 4	3
“asset” , of the board, does not include water.	4
“board” means the South East Queensland Water Board established under the SEQWB Act.	5 6
“company” means a company—	7
(a) wholly owned by the State and the following local governments, in whatever proportions—	8 9
(i) Brisbane, Gold Coast, Ipswich, Logan and Redcliffe city councils;	10 11
(ii) Beaudesert, Caboolture, Esk, Gatton, Kilcoy, Laidley and Pine Rivers shire councils; and	12 13
(b) formed or to be formed under the Corporations Law.	14
“liability” , of the board, includes a contingent liability.	15
“transfer” means the transfer of the board’s undertaking to the company.	16
“SEQWB Act” means the <i>South East Queensland Water Board Act 1979</i> .	17
“settlement day” means the day declared under section 8.	18
“undertaking” , of the board, means all the board’s assets and liabilities at the settlement day.	19 20
	21