

# South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012

## Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable M F M McArdle MP

### Title of Bill

The South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012.

### Policy objectives and the reasons for them

The *Water Fluoridation Act 2008* (the Act) imposes a mandatory obligation on a public potable water supplier to fluoridate a relevant public potable water supply for which they are responsible, if the supply services at least 1,000 members of the public.

Government has determined that in accordance with its commitment to reduce the regulatory burden and empower local communities, decisions about the fluoridation of drinking water are to be made by local government.

Local government will be given responsibility for determining whether it is in the best interests of a community within their local government area to fluoridate the drinking water supply for the community. However, before making a decision, the local government may consult with the responsible public potable water supplier about cost implications, infrastructure arrangements and the potential impact on water supply inside or outside the local government area.

If a local government determines that the drinking water supplied to a community should be fluoridated, the water supplier responsible for the supply will be obliged to add fluoride to the water supply. As currently provided for by the Act, a water supplier will be required to add fluoride to, and maintain the addition of fluoride, in accordance with the requirements of the *Water Fluoridation Regulation 2008*. The Regulation will be amended to align with the removal of the mandatory obligation under the existing section 7.

If a local government determines that a water supply for a community in their local government area is not to be fluoridated, the relevant supplier must not add, or must cease adding, fluoride to the supply. The local government will bear any cost that may be incurred by a water supplier in taking the necessary steps to comply with the decision of the local government to add, or to cease adding, fluoride.

While the proposed amendments change how the object of the Act is to be achieved, they do not change the stated objective of the Act, which is to promote good oral health in Queensland by the safe fluoridation of public potable water supplies.

## **Achievement of policy objectives**

The policy objectives of the proposed amendments will be achieved by:

- repealing section 7 which imposes the mandatory obligation on a public potable water supplier to fluoridate a relevant public potable water supply for which they are responsible, if the supply services at least 1,000 members of the public;
- inserting a new section in part 3 (Fluoridation of public potable water supplies) to empower local governments to decide whether the drinking water supplied to members of the public within a community in their local government area, should be fluoridated (new section 7);
- inserting a new section in part 3 to require that a public potable water supplier responsible for the supply of drinking water to a community within a local government area, must fluoridate, or cease fluoridating, the water supply if this is the decision of a local government (new section 7);
- setting out the transitional arrangements that will help give effect to the new arrangements, including an obligation on water suppliers currently fluoridating a relevant public potable water supply to continue to do so until such time as a decision has been made under the new section 7 as to whether the supply will continue to be fluoridated or fluoridation is to cease; and
- making consequential amendments to the Act, including the repeal of a number of provisions that will become redundant upon the omission of section 7.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

The amendments will not incur any additional costs.

## **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

The Department of the Premier and Cabinet, the Department of State Development, Infrastructure and Planning and the Department of Energy and Water Supply have been consulted.

## Consistency with legislation of other jurisdictions

Water fluoridation legislation exists in New South Wales, Tasmania, Western Australia, and Victoria (although South Australia, the Australian Capital Territory and the Northern Territory also have extensive water fluoridation).

Where fluoridation legislation has been introduced interstate, it does not specify which water supplies are to be fluoridated and the requirement to add fluoride is not applied to all water supplies in the first instance. Instead, the legislation generally requires fluoride to be added to a specific water supply if directed to do so by the Minister for Health or the Chief Executive of the Health Department, depending on where the head of power lies. The decision to make a directive to add fluoride is typically based on the recommendation from a Fluoridation Committee, which evaluates each supply against standard criteria.

## Notes on provisions

*Amendment 1* omits and replaces clauses 80 to 84 of the Bill.

*Clause 80* will amend section 4 of the Act, which sets out the object of the Act and how this object is to be achieved. Subsection (2) is to be omitted as it is no longer intended that the object of the Act be achieved by mandating that relevant public potable water supplies be fluoridated.

*Clause 81* will omit section 6, which defines the term ‘relevant public potable water supply’ for the purposes of the Act, as the amendments being made to the Act make this term redundant.

*Clause 82* will omit sections 7 to 11 of Part 3 (Fluoridation of public potable water supplies) and inserts new sections 7 to 9.

New section 7 will empower a local government to decide that it is in the best interests of the community, or part of the community, in its local government area for fluoride to be added, or not to be added, to the public potable water supply that services the community. It also requires a public potable water supplier to act on the decision of the local government. However, before making a decision, the local government may consult with the responsible public potable water supplier about cost implications, infrastructure arrangements and the potential impact on water supply inside or outside the local government area.

The relationship between a local government and a public potable water supplier is a contractual agreement. Fluoride when applied in accordance with the legislation does not pose a risk to health. These two factors mitigate the need for any new penalties or timeframes in the absence of a mandatory obligation.

New section 8 will require a public potable water supplier acting on a decision to add, or cease to add, fluoride to a water supply, not to affect another local government’s water security or water supply or the fluoridation of another local government’s water supply, without the other local government’s agreement.

New section 9 will require a local government that makes a decision to add, or cease to add, fluoride to a public potable water supply to pay the costs incurred by a water supplier, where the supplier is not the local government, in complying with the local government's decision.

The existing sections 7 to 11 are to be omitted from the Act for the following reasons.

Section 7 is to be omitted as the legislation will no longer impose an obligation on 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. Under the new arrangements for determining whether a water supply is to be fluoridated the obligation on a water supplier will be imposed by the new section 7.

Sections 8 to 10, which set out the criteria and process for the granting of an exemption from the obligation under section 7, are to be omitted as these provisions will become redundant upon the omission of section 7.

Section 11 enables a public potable water supplier for a public potable water supply, other than a relevant public potable water supply, to add fluoride to the public potable water supply. This provision is to be omitted as the decision about the fluoridation of any public potable water supply is to be made under the new section 7.

*Clause 83* replaces section 13, which currently requires a public potable water supplier to issue a notification of their intention to add fluoride to a public potable water supply.

The new section 13 will apply if:

- fluoride is to be added to a public potable water supply as a result of a decision taken by a local government that the supply should be fluoridated in the best interests of the community; or
- fluoride is no longer to be added to a public potable water supply as a result of a decision taken by a local government that the supply should not be fluoridated in the best interests of the community.

A local government will be required to give the chief executive notice of the decision it has made under the new section 7 as well as publish in a locally circulating newspaper the notice for the information of the community serviced by the water supply.

A public potable water supplier will be required to give the chief executive a fluoridation notice and to publish in a locally circulating newspaper this notice for the information of the community serviced by the water supply, at least 30 days before the supplier gives effect to the local government's decision under the new section 7. The notice must include the decision made by the local government as well as the stated day on which the water supply is to be fluoridated or will cease to be fluoridated.

*Clause 84* amends section 14, which specifies when it is an offence for a person to add fluoride to a public potable water supply. This section is to be amended to remove a redundant reference to section 21. Section 21 is omitted by clause 84A.

*Clause 84A* omits Part 4 which sets out the actions that may be taken if a public potable water supplier fails to comply with the requirement under section 7 that fluoride be added to a

relevant public potable water supply. The provisions within this part of the Act will become redundant upon the omission of section 7.

*Clause 84B* amends section 57, as a consequence of the changes to be made to section 58. The title of, and section references in, section 57 are to be amended to correct a grammatical error and to update a section reference.

*Clause 84C* amends section 58, which sets out when a remedial notice may be issued for non-compliance with the requirements of the Act. Currently, subsection (1) of this provision states that a remedial notice cannot be issued for a contravention of section 7, given that part 4 of the Act sets out what actions may be taken for failing to comply with the requirements of section 7. Given that section 7 is to be omitted, this section is to be reworded.

As currently provided for by the Act, a remedial notice will still be able to be issued 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.

*Clause 84D* omits part 7 (Queensland Fluoridation Committee), which provides for the establishment and membership of the Committee as an advisory body for the Minister of Health in relation to the administration and application of the legislation. This part is to be repealed as a consequence of the changes being made to the Act to devolve the determination of matters concerning the fluoridation of public potable water supplies to local government.

*Clause 84E* amends section 85 to remove the reference to a member of the Queensland Fluoridation Committee as a consequence of the omission of part 7 (Queensland Fluoridation Committee).

*Clause 84F* amends section 87 to remove the reference to a member of the Queensland Fluoridation Committee as a consequence of the omission of part 7 (Queensland Fluoridation Committee).

*Clause 84G* amends section 95 to remove the reference to a member of the Queensland Fluoridation Committee as a consequence of the omission of part 7 (Queensland Fluoridation Committee). As a consequence of this change the paragraphs under subsection (3) are to be renumbered.

*Clause 84H* amends section 96 which currently specifies 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 taken against the supplier as a result of complying with sections 7 and 11.

It is intended that this provision be retained but amended to reference the new section 7, under which a local government may decide that it is in the best interests of the community, or part of the community, in its local government area for fluoride to be added, or not to be added, to the public potable water supply that services the community. The provision will also be amended to indemnify local government as well as public potable water suppliers.

*Clause 84I* amends section 100, which empowers the Governor in Council to make regulations about specified matters under this Act. On the omission of part 7, paragraph 2(a) of this section will become redundant as it enables a regulation to be made about how the Queensland Fluoridation Committee is to conduct its business. As a consequence of this change the paragraphs under subsection (2) are to be renumbered.

*Amendment 2* amends clause 85 as a consequence of the changes being made to the Bill by Amendment 3. The insertion of the title for the new part 12 needs to be updated to refer to transitional provisions rather than transitional provision.

*Amendment 3* amends clause 85 to insert a number of transitional provisions for the Bill.

New section 102 defines the terms ‘amending Act’, ‘commencement’, ‘former’ and ‘relevant public potable water supply’ for the purposes of the new transitional provisions (sections 103 to 106).

New section 103 removes any doubt that a public potable water supplier that is currently adding fluoride to a water supply under their control or management must continue to do so once the amendments to the Act come into effect. This obligation will remain in place until a decision is made under the new section 7 that the addition of fluoride to the water supply is to cease.

New section 104 clarifies that an exemption given, or an exemption application made, under the former section 8 has no effect once the amendments to the Act come into effect.

New section 105 specifies that on the commencement of the amendments to the Act, the Queensland Fluoridation Committee is dissolved and that no compensation is payable to a member because they are no longer a member of the Committee.

*Amendment 4* amends *clause 86* of the Bill to further amend the Dictionary for the Act as a consequence of the changes detailed above; that is to insert new definitions, amend existing definitions and omit a number of redundant definitions.