

Queensland



# **WATER ACT 2000**

**Reprinted as in force on 20 July 2001  
(includes amendments up to Act No. 45 of 2001)**

**Reprint No. 1A**

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This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## WATER ACT 2000

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# WATER ACT 2000

[as amended by all amendments that commenced on or before 20 July 2001]

## CHAPTER 1—PRELIMINARY

### 1 Short title

This Act may be cited as the *Water Act 2000*.<sup>1</sup>

### 2 Commencement

(1) The following provisions of schedule 2 are taken to have commenced on 1 July 2000—

- (a) amendments 18 and 19 of the *Integrated Planning Act 1997*;
- (b) amendment 2 of the *Local Government Act 1993*.

(2) The following provisions of this Act commence on assent—

- chapter 1
- chapter 2, parts 1, 2 (except section 20(3)) and part 3, divisions 1 and 2
- chapter 5, parts 1, 2 and part 3, division 3
- chapter 6, parts 1, 2 and 3
- chapter 7
- chapter 8, sections 1006, 1007 and 1009 to 1014
- chapter 9, part 1, sections 1037 to 1045, 1051, 1052, 1054 and 1108 and part 5

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<sup>1</sup> Because of the size and complexity of this Act some sections numbers have been deliberately left blank at the end of each part. If the Act is amended in the future this will assist in making the amendments without the necessity of renumbering the whole Act.

- schedule 2, amendment of the *Integrated Planning Act 1997* amendments 1 and 14
- schedule 3, amendments of the *Aboriginal Land Act 1991*, the *Forestry Act 1959*, the *State Development and Public Works Organisation Act 1971*, and the *Torres Strait Islander Land Act 1991*
- schedule 3, amendment of the *Water Resources Act 1989*, amendments 1, 2, 3, 4, 5, 6 and 11.

(3) The remaining provisions of this Act commence on a day to be fixed by proclamation.

### **3 Definitions**

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

### **4 Act binds all persons**

(1) This Act binds all persons, including the State, and, in so far as the legislative power of the State permits, the Commonwealth and the other States.

(2) Subsection (1) does not apply to—

- (a) the operation of the *State Development and Public Works Organisation Act 1971*; or
- (b) the powers of the coordinator-general under the *State Development and Public Works Organisation Act 1971*.

### **5–9 Section numbers not used**

See footnote to section 1.

## CHAPTER 2—ALLOCATION AND SUSTAINABLE MANAGEMENT

### PART 1—PRELIMINARY

#### 10 Purpose of ch 2

(1) The purpose of this chapter is to advance sustainable management and efficient use of water and other resources by establishing a system for the planning, allocation and use of water.

(2) For subsection (1), “**sustainable management**” is management that—

- (a) allows for the allocation and use of water for the physical, economic and social well being of the people of Queensland and Australia within limits that can be sustained indefinitely; and
- (b) protects the biological diversity and health of natural ecosystems; and
- (c) contributes to the following—
  - (i) improving planning confidence of water users now and in the future regarding the availability and security of water entitlements;
  - (ii) the economic development of Queensland in accordance with the principles of ecologically sustainable development;
  - (iii) maintaining or improving the quality of naturally occurring water and other resources that benefit the natural resources of the State;
  - (iv) protecting water, watercourses, lakes, springs, aquifers, natural ecosystems and other resources from degradation and, if practicable, reversing degradation that has occurred;
  - (v) recognising the interests of Aboriginal people and Torres Strait Islanders and their connection with the landscape in water planning;
  - (vi) providing for the fair, orderly and efficient allocation of water to meet community needs;

- (vii) increasing community understanding of the need to use and manage water in a sustainable and cost efficient way;
- (viii) encouraging the community to take an active part in planning the allocation and management of water;
- (ix) integrating, as far as practicable, the administration of this Act and other legislation dealing with natural resources.

**(3)** For subsection (1), “**efficient use**” of water—

- (a) incorporates demand management measures that achieve permanent and reliable reductions in the demand for water; and
- (b) promotes water conservation and appropriate water quality objectives for intended use of water; and
- (c) promotes water recycling, including, for example, water reuse within a particular enterprise to gain the maximum benefit from available supply; and
- (d) takes into consideration the volume and quality of water leaving a particular application or destination to ensure it is appropriate for the next application or destination, including, for example, release into the environment.

## **11 Meaning of “principles of ecologically sustainable development”**

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

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the present generation should ensure the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making;

- (e) recognition of the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection;
- (f) decisions and actions should provide for broad community involvement on issues affecting them.

## **12 Advancing chapter's purpose**

If, under this chapter, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances this chapter's purpose.

## **13–18 Section numbers not used**

See footnote to section 1.

# **PART 2—WATER RIGHTS**

## **19 Rights in all water vests in State**

All rights to the use, flow and control of all water in Queensland are vested in the State.

## **20 Authorised taking of water without water entitlement**

- (1) This section has effect despite section 19.
- (2) A person may take water in an emergency situation, for—
  - (a) a public purpose; or
  - (b) fighting a fire destroying, or threatening to destroy, a dwelling house.
- (3) *Despite subsection (6), an owner of land adjoining a watercourse, lake or spring may take water from the watercourse, lake or spring—*
  - (a) *for domestic purposes; or*

(b) *for watering stock of a number that would normally be depastured on the land.*<sup>2</sup>

(4) Despite subsection (6), an owner of land on which there is overland flow water or overland flow water that has been collected into a dam, may take the water—

- (a) for domestic purposes; or
- (b) for watering stock of a number that would normally be depastured on the land.

(5) A person may take water from a watercourse, lake or spring—

- (a) for camping purposes; or
- (b) for watering travelling stock.

(6) A person may take or interfere with overland flow water and subartesian water for any purpose unless there is a moratorium notice or a water resource plan that limits or alters the water that may be taken or interfered with.

(7) A regulation may declare land to be land to which subsection (3)(a) does not apply if the land is subdivided after the regulation is made.

(8) For subsection (3)—

**“land”** includes any land contiguous with the land adjoining the watercourse, lake or spring if all the land is owned by the same registered owner.

## **21 Limiting taking of water under s 20(3)**

(1) If there is a shortage of water, the chief executive may limit or prohibit the taking of water under section 20(3)(a) for watering a garden, by publishing a notice.

(2) If the notice is for limiting the taking of water, the notice may be for either or both of the following—

- (a) the times when water may be taken;
- (b) the volume of water, measured or estimated, that may be taken.

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2 This subsection had not commenced on or before the reprint date.

(3) The notice remains in force for the period stated in the notice or, if no period is stated, until the chief executive publishes another notice withdrawing the first notice.

(4) A person must not take water in contravention of the notice.

Maximum penalty for subsection (4)—500 penalty units.

## **22 Limiting or prohibiting taking, or interfering with, water during emergencies**

(1) Subsection (2) applies if the Minister is satisfied urgent action should be taken because—

- (a) there is a shortage of water; or
- (b) there is a thing in harmful quantities in water.

(2) The Minister must publish a notice—

- (a) reducing, for a particular purpose or otherwise, either or both of the following—
  - (i) the volume of water a person may take;
  - (ii) the rate at which, and the times when, a person may take water; or
- (b) reducing a person's entitlement to interfere with water; or
- (c) prohibiting the taking of, or interfering with, water.

(3) The reduction or prohibition has effect despite any authority a person has under another provision of this Act.

(4) The notice remains in force until whichever of the following first happens—

- (a) the commencement of a regulation dealing with the matters mentioned in subsection (2);
- (b) the end of 21 days after the day the notice is published.

(5) The notice is subordinate legislation.

(6) Only 1 notice may be published under subsection (2) for each shortage of water or occurrence of a thing in harmful quantities in water.

(7) A person must not take water in contravention of the notice.

Maximum penalty for subsection (7)—1 665 penalty units.

**23 Regulation may limit taking or interfering with water for 1 year**

(1) This section applies if—

- (a) there is a shortage of water; or
- (b) there is a thing in harmful quantities in water.

(2) A regulation may—

- (a) reduce, for a particular purpose or otherwise, either or both of the following—
  - (i) the volume of water a person may take;
  - (ii) the rate at which, and the times when, a person may take water; or
- (b) reduce a person's entitlement to interfere with water; or
- (c) prohibit the taking of, or interfering with, water.

(3) The reduction or prohibition has effect despite any authority a person has under another provision of this Act.

(4) The regulation must state the period, not being more than 1 year, for which the regulation has effect.

(5) A person must not take water in contravention of the regulation.

Maximum penalty for subsection (5)—1 665 penalty units.

**24 Beds and banks forming boundaries of land are State property**

(1) The bed and banks of all watercourses and lakes forming all or part of the boundary of land are, and always have been, the property of the State.

(2) Subsection (1) applies despite the alienation of land by the State.

(3) However, a person (the “owner”) who may take water under section 20(3)—

- (a) may exercise a right of access for himself or herself, the owner's family, executive officers, employees, agents and stock over the bed or banks of the watercourse or lake adjoining the owner's land; and
- (b) may exercise a right of grazing for the person's stock over the bed or banks of the watercourse or lake adjoining the owner's land; and



- (c) may bring an action against a person who trespasses on the bed or banks of the watercourse or lake adjoining the owner's land as if the owner were the registered owner of the bed and banks.

### **25–34 Section numbers not used**

See footnote to section 1.

## **PART 3—WATER PLANNING**

### *Division 1—Preliminary*

### **35 Information recording and planning**

For advancing the purposes of this chapter—

- (a) the Minister must plan for the allocation and sustainable management of water to meet Queensland's future water requirements, including, for example, for the protection of natural ecosystems and security of supply to water users; and
- (b) the chief executive must provide information for planning purposes by—
  - (i) regularly measuring and keeping publicly available records of the volume and quality of water in Queensland; and
  - (ii) collecting information on the water requirements of, and impacts of water management on, natural ecosystems, including, for example, from the department responsible for administering the *Environmental Protection Act 1994*; and
  - (iii) collecting information about future water requirements; and
- (c) the chief executive must plan for the sustainable management of water use to minimise adverse impacts of water use on land and water.

### **36 Obtaining water information**

(1) For advancing the purposes of this chapter, the chief executive may give a person who is authorised, or has an entitlement, to take, or interfere with, water under this chapter a notice requiring information the person is required to keep under a condition of the person's authority.

(2) The notice—

- (a) may be given at any time; and
- (b) must state the reasonable time by which the information must be given to the chief executive.

(3) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) However, this section does not require the person to give information if giving the information might tend to incriminate the person.

### **37 Non-disclosure of commercially sensitive information**

(1) This section applies if the information a person has given to the chief executive under section 36 is of a commercially sensitive nature.

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

(3) The Minister must not disclose to any person information the Minister obtains under subsection (2).

(4) In this section—

“**commercially sensitive nature**” means reasonably expected to adversely affect a person's commercial activities.

## *Division 2—Water resource plans*

### *Subdivision 1—Preparing and approving water resource plans*

### **38 Minister may prepare water resource plans**

(1) The Minister may prepare a water resource plan for any part of Queensland to advance the sustainable management of water.

(2) Subject to subsection (6), only 1 water resource plan may have effect for the part at any time.

(3) The plan may be prepared for, but is not limited to, the following purposes—

- (a) to define the availability of water for any purpose;
- (b) to provide a framework for sustainably managing water and the taking of water;
- (c) to identify priorities and mechanisms for dealing with future water requirements;
- (d) to provide a framework for establishing water allocations;
- (e) to provide a framework for reversing, where practicable, degradation that has occurred in natural ecosystems, including, for example, stressed rivers.

(4) The plan must also regulate the taking of overland flow water if the Minister is satisfied that—

- (a) if there is an existing water resource plan—there is a risk that taking, or interfering with, overland flow water in the area may significantly impact on the plan's outcomes; or
- (b) there is a risk that taking, or interfering with, overland flow water in the area may significantly affect—
  - (i) the availability of water for existing water entitlement holders; or
  - (ii) the water requirements of natural ecosystems; or
  - (iii) beneficial flooding; or
- (c) changes in land use activities or intensification of land use in the area are significantly affecting overland flow water; or
- (d) there is a risk that proposed changes in land use activities in the area are likely to significantly affect overland flow water.

(5) The plan must also regulate the taking of subartesian water if the Minister is satisfied that—

- (a) if there is an existing water resource plan—there is a risk that taking, or interfering with, subartesian water in the area may significantly impact on the plan's outcomes; or

- (b) there is a risk that taking, or interfering with, subartesian water in the area may significantly affect—
  - (i) the availability of water for existing water entitlement holders; or
  - (ii) the water requirements of natural ecosystems; or
  - (iii) the quality of water.

(6) Two plans may have effect for the same part of Queensland at the same time if—

- (a) one of the plans applies to—
  - (i) artesian water; and
  - (ii) subartesian water connected to the artesian water; and
  - (iii) water in springs connected to the artesian water; and
- (b) the other plan does not apply to water mentioned in paragraph (a).

### **39 Minister must first prepare an information report**

Before publishing a notice under section 40 the Minister must prepare an information report about<sup>3</sup>—

- (a) water allocation and sustainable management issues in the proposed plan area; and
- (b) proposed arrangements for establishing a community reference panel to provide advice about matters relevant to the preparation of a draft water resource plan for the proposed plan area; and
- (c) proposed arrangements for technical assessment using best scientific information available and relevant to the preparation of a draft water resource plan for the proposed plan area.

### **40 Public notice of proposal to prepare draft water resource plan**

(1) The Minister must publish a notice of the Minister's intention to prepare a draft water resource plan for the proposed plan area.

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<sup>3</sup> A copy of the report is available for public inspection and purchase under section 1010.

(2) The notice must state the following—

- (a) the purpose and reasons for which the draft plan is being prepared;
- (b) the proposed plan area;
- (c) the water in the proposed plan area to which the draft plan is intended to apply;
- (d) where copies of the information report are available for inspection and purchase;
- (e) that written submissions may be made by any entity about the proposed draft plan and the establishment of a community reference panel;
- (f) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(f) must not be earlier than 30 business days after the day the notice is published.

(4) The Minister must send a copy of the notice to each local government whose local government area includes all or part of the proposed plan area.

(5) A local government receiving a copy of the notice must make the copy available for inspection by the public.

(6) The Minister may send a copy of the notice to any other entity the Minister considers appropriate.

#### **41 Community reference panels**

(1) On or after the day the notice is published under section 40, the Minister must establish a community reference panel.

(2) A panel established under subsection (1) must include representatives of cultural, economic and environmental interests in the proposed plan area.

#### **42 Moratorium notices**

(1) On or after the day the notice is published under section 40, the Minister may publish a further notice (a “**moratorium notice**”).

(2) The notice may state that an application under this Act, or the repealed Act, will not be accepted, or will be accepted but not dealt with, while the moratorium notice has effect if granting the application would have 1 or more of the following effects on the water, the subject of the proposed plan—

- (a) increase the amount of the water taken, or interfered with;
- (b) change the location from which the water may be taken, or interfered with;
- (c) change the purpose for which the water may be taken, or interfered with;
- (d) increase the maximum flow rate for taking, or interfering with, the water;
- (e) change the flow conditions under which the water may be taken.

(3) Subsection (2) applies even if the application was made before the notice was published.

(4) For water, the subject of the proposed plan, including overland flow water and subartesian water not currently regulated by a water resource plan, the notice may also state that while the moratorium notice has effect—

- (a) new works must not be started; or
- (b) completed works in existence must not be raised, enlarged or deepened; or
- (c) works that have been started may only be completed to the extent stated in the notice.

(5) Subsection (4) applies only to the extent the works would increase the taking of, or interfering with, the water.

(6) A person must not start the construction of works, or continue to construct works, in contravention of subsection (4).

Maximum penalty—1 665 penalty units.

(7) The notice has effect until—

- (a) the Minister publishes a notice under section 52; or
- (b) a final draft of the draft water resource plan, for which the notice is published, is approved.

(8) For this section, works are not started unless—

- (a) construction of the works has physically commenced, or if construction has not physically commenced, a contract has been entered into for the imminent commencement of the construction; and
- (b) an independently verifiable construction program exists for progressive construction towards completion of the works; and
- (c) detailed design plans exist showing, among other things, the extent of the works; and
- (d) if a permit under the *Local Government Act 1993*, section 940<sup>4</sup> is required for the works—the permit has been issued; and
- (e) if a development permit is required for the works—the permit has been given.

#### **43 Reviewing moratorium notices**

(1) If the Minister is satisfied a moratorium notice should have effect for more than 1 year, the Minister must review the notice within 1 year after the day the notice was published.

(2) If, on the review, the Minister is satisfied the notice should be amended, the Minister must amend the notice.

#### **44 Amending moratorium notices**

(1) The Minister may amend the moratorium notice by publishing a notice (the “**amending notice**”) amending the moratorium notice.

(2) The amending notice may amend the moratorium notice to provide for any matter for which the moratorium notice could have made provision.

(3) A person must not contravene the amended moratorium notice.

Maximum penalty—1 665 penalty units.

(4) On and after the day the amending notice is published, the moratorium notice, as amended by the amending notice, is the moratorium notice for the proposed plan area and has effect until—

- (a) the Minister publishes a notice under section 52; or

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4 *Local Government Act 1993*, section 940 (Issue of permit)

- (b) a final draft of the draft water resource plan, for which the moratorium notice is published, is approved.

(5) The amended moratorium notice applies to an application mentioned in section 42(2), even if the application was made before the amending notice was published.

#### **45 Exceptions to ss 42 and 44**

Sections 42 and 44 do not apply to the following—

- (a) the issuing of water permits;
- (b) the taking of water under section 20(2), (3), (4) or (5);
- (c) any other matter exempted by the moratorium notice.

#### **46 Content of draft water resource plans**

(1) The draft water resource plan must—

- (a) state the purpose of the draft plan; and
- (b) contain a map of the proposed plan area; and
- (c) state the water to which the draft plan is intended to apply; and
- (d) state the water and natural ecosystem monitoring requirements to assist in assessing the effectiveness of the proposed management strategies in achieving the outcomes mentioned in paragraph (e); and
- (e) state outcomes, including, without limiting the requirement to state outcomes, the ecological outcomes, for the sustainable management of the water and strategies proposed to achieve the outcomes to the extent possible from the best scientific information available; and
- (f) state the periodic reporting requirements for the draft plan; and<sup>5</sup>
- (g) include a schedule of proposed arrangements for implementing the draft plan.

(2) The draft plan may include, but is not limited to, the following—

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5 See section 54.



- (a) a map or diagram, or series of maps or diagrams, showing water information for the area;
- (b) details of areas where taking, or interfering with, overland flow water or subartesian water, or both, is intended to be regulated;
- (c) the types of works for taking overland flow water or subartesian water that are intended to be assessable or self assessable development under the *Integrated Planning Act 1997*;
- (d) information about water available for future consumptive purposes and the priorities for use or reservation of the water;
- (e) a process for granting, reserving or otherwise dealing with unallocated water to which the draft plan is intended to apply; and
- (f) criteria for sharing overland flow water;
- (g) criteria for adjusting existing water entitlements to achieve the plan outcomes;
- (h) criteria for addressing degradation that has occurred in natural ecosystems.

(3) If the draft plan provides a framework for establishing water allocations, the draft plan must state the following—

- (a) environmental flow objectives;
- (b) water allocation security objectives;
- (c) performance indicators for environmental flow objectives and water allocation security objectives;
- (d) priority areas for the conversion to or granting of water allocations.

#### **47 Matters the Minister must consider when preparing draft water resource plan**

The Minister must consider the following when preparing the draft water resource plan—

- (a) the State's water rights and the volume and quality of water;
- (b) national, State and regional objectives and priorities for promoting sustainable development;

- (c) the duration, frequency, size and timing of water flows necessary to support natural ecosystems as assessed using the best scientific information available;
- (d) the underground water levels and underground water recharge processes necessary to support natural ecosystems;
- (e) taking of water authorised under section 20;
- (f) existing water entitlements;
- (g) the State's future water requirements, including cultural, economic, environmental and social requirements;
- (h) cultural, economic and social values;
- (i) advice from the community reference panel;
- (j) technical assessments for the draft plan;
- (k) the effects the draft plan will have on water not covered by the draft plan;
- (l) the effects the taking, or interfering with, water not covered by the draft plan will have on water covered by the draft plan;
- (m) environmental values established under the *Environmental Protection (Water) Policy 1997*;
- (n) the sustainable resource management strategies and policies for the catchment or underground water basin, including, any relevant coastal zone;
- (o) all properly made submissions about the proposed draft plan;
- (p) the public interest.

## 48 Overview report

(1) On or before a notice is published under section 49, the Minister must prepare an overview report about the proposed draft plan.<sup>6</sup>

(2) The report must summarise any assessments and findings about matters mentioned in section 47 that are available at the time the report is prepared.

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<sup>6</sup> A copy of the report is available for public inspection and purchase under section 1010.

**49 Public notice about availability of draft water resource plan**

(1) The Minister must publish a notice when the draft water resource plan has been prepared.

(2) The notice must state the following—

- (a) where copies of the draft plan may be inspected and, on payment of a fee, purchased;
- (b) that written submissions may be made by any entity about the draft plan;
- (c) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(c) must not be earlier than 30 business days after the day the notice is published.

(4) The Minister must send a copy of the notice and the draft plan to each local government whose local government area includes all or part of the proposed plan area.

(5) A local government receiving a copy of the draft plan must make the copy available for inspection by the public.

(6) The Minister may send a copy of the notice to any other entity the Minister considers appropriate.

**50 Preparing and approving final draft water resource plan**

(1) In preparing the final draft water resource plan, the Minister must consider all properly made submissions about the draft plan.

(2) The Governor in Council may approve the final draft water resource plan.

(3) A plan approved under subsection (2) is—

- (a) subordinate legislation; and
- (b) a water resource plan for the plan area.<sup>7</sup>

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<sup>7</sup> For expiry of plan, see *Statutory Instruments Act 1991*, section 54 (When subordinate legislation expires).

**51 Minister must prepare report on consultation process**

(1) Within 30 business days after the water resource plan is approved, the Minister must prepare a report about the plan.<sup>8</sup>

(2) The report must include a summary of issues raised during the consultation process and how the issues have been dealt with.

**52 Public notice of intention not to proceed with making draft water resource plan**

(1) This section applies if the Minister decides not to proceed with the preparation of a final draft water resource plan.

(2) The Minister must publish a notice advising of the decision and the reasons for the decision.

(3) The Minister must send a copy of the notice to each local government or other entity to whom the Minister sent a notice—

- (a) about the proposed preparation of the draft plan; and
- (b) if a draft plan was prepared—about the draft plan.

(4) A local government receiving a copy of the notice must make the copy available for inspection by the public.

***Subdivision 2—Periodic reports and accountability matters*****53 Minister must report on all water resource plans**

(1) The Minister must prepare a report on each water resource plan.

(2) The report must be for the period, and within the time, stated in the plan.<sup>9</sup>

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8 A copy of the report is available for public inspection and purchase under section 1010.

9 A copy of each report is available for public inspection and purchase under section 1010.

**54 Matters the reports must include**

Each report must include, for the reporting period, the following matters—

- (a) a summary of the findings of research and monitoring for the plan;
- (b) an assessment of the effectiveness of the implementation of the plan in meeting the plan's objectives;
- (c) an assessment of whether the plan's objectives, having regard to any new information available about water that is the subject of the plan, are continuing to promote the purpose of this chapter;
- (d) a summary of total water entitlements covered by the plan;
- (e) information about any non-compliance with the plan and its resource operations plan;
- (f) particulars of any changes made to the plan.

***Subdivision 3—Amending or preparing new, water resource plans*****55 When water resource plans may be amended or replaced**

(1) The Minister may—

- (a) amend a water resource plan; or
- (b) prepare a new water resource plan to replace an existing water resource plan.

(2) The Minister must act under subsection (1) if the Minister is satisfied a report prepared under subdivision 2 shows a water resource plan's environmental flow objectives or water allocation security objectives are—

- (a) no longer appropriate for its plan area; or
- (b) not being met.

(3) The Minister must act under subsection (1)(b) before the existing water resource plan expires.

**56 Preparing amending or new draft water resource plan**

(1) For preparing the amending water resource plan, sections 38 to 52 apply—

- (a) as if a reference in the sections to the draft plan were a reference to the amending plan; and
- (b) with any other necessary changes.

(2) For preparing the new draft water resource plan, sections 38 to 52 also apply.

(3) Without limiting subsection (1) or (2), the amending plan or new draft plan may—

- (a) change the existing boundaries of the plan area; or
- (b) amalgamate the water resource plan with another water resource plan or part of another water resource plan; or
- (c) change or extend the stated purpose of the water resource plan.

### **57 Minor amendment of water resource plan**

Despite section 56, the Governor in Council may approve a plan to amend a water resource plan without sections 40 to 52 applying if—

- (a) the amending plan is only to correct a minor error in the water resource plan, or make another change that is not a change of substance; or
- (b) the water resource plan states that an amendment of a stated type may be made to the water resource plan by amendment under this subsection—to make an amendment of the stated type.

### ***Subdivision 4—General***

### **58 No regulatory impact statement for water resource plans**

A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for the approval of a water resource plan or a plan amending a water resource plan.

### *Division 3—Managing water use*

#### *Subdivision 1—Preliminary*

#### **59 Purpose of div 3**

The purpose of this division is to allow for the regulation of water use if there is a risk of land and water degradation.

#### *Subdivision 2—Preparing and approving water use plans*

#### **60 Minister may prepare water use plans**

(1) The Minister may prepare a water use plan for any part of Queensland if the Minister is satisfied there are risks that water use in a particular area of Queensland may cause negative effects on land and water resources, including, but not limited to, the following—

- (a) rising underground water levels;
- (b) increasing salinisation;
- (c) deteriorating water quality;
- (d) water logging of soils;
- (e) destabilisation of bed and banks of watercourses;
- (f) damage to riverine environment;
- (g) increasing soil erosion.

(2) Subject to subsection (3), only 1 water use plan may have effect for the part at any time.

(3) Two plans may have effect for the same part of Queensland at the same time if—

- (a) one of the plans applies to—
  - (i) artesian water; and
  - (ii) subartesian water connected to the artesian water; and
  - (iii) water in springs connected to the artesian water; and

- (b) the other plan does not apply to water mentioned in paragraph (a).

(4) However, before preparing a water use plan, the Minister must prepare a draft water use plan.

## **61 Public notice of proposal to prepare draft water use plan**

(1) The Minister must publish a notice of the Minister's intention to prepare a draft water use plan for the proposed plan area.

(2) The notice must state the following—

- (a) the purpose for which the draft plan is to be prepared, including, for example, the risk to natural ecosystems arising from the use of water on land;
- (b) the proposed plan area;
- (c) details of how it is intended that community and technical consultation for the preparation of the proposed draft plan will take place;
- (d) that written submissions may be made by any entity about the proposed draft plan;
- (e) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(e) must not be earlier than 30 business days after the day the notice is published.

(4) The Minister must send a copy of the notice to each local government whose local government area includes all or part of the proposed plan area.

(5) A local government receiving a copy of the notice must make the copy available for inspection by the public.

(6) The Minister may send a copy of the notice to any other entity the Minister considers appropriate.

## **62 Content of draft water use plans**

(1) The draft water use plan must—

- (a) state the purpose of the draft plan; and



- (b) contain a map of the proposed plan area; and
  - (c) state the types of water use that are subject to the plan; and
  - (d) state standards for water use practices; and
  - (e) state objectives for water use efficiency, water reuse and water quality; and
  - (f) state the monitoring requirements and responsibilities.
- (2) The draft plan may include, but is not limited to, the following—
- (a) a description of land within the proposed plan area for which a land and water management plan must be approved for the use of water for irrigation;
  - (b) schedules for the progressive implementation of the draft plan's requirements.

### **63 Matters the Minister must consider when preparing draft water use plan**

The Minister must consider the following matters when preparing the draft water use plan—

- (a) changes to water use practices that will reduce the risk to land and water resources arising from the use of water on land;
- (b) existing industry codes of practice for water use.

### **64 Public notice about availability of draft water use plan**

(1) The Minister must publish a notice when the draft water use plan has been prepared.

(2) The notice must state the following—

- (a) where copies of the draft plan may be inspected and, on payment of a fee, purchased;
- (b) that written submissions may be made by any entity about the draft plan;
- (c) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(c) must not be earlier than 30 business days after the day the notice is published.

(4) The Minister must send a copy of the notice and the draft plan to each local government whose local government area includes all or part of the proposed plan area.

(5) A local government receiving a copy of the draft plan must make the copy available for inspection by the public.

(6) The Minister may send a copy of the notice to any other entity the Minister considers appropriate.

### **65 Preparing and approving final draft water use plan**

(1) In preparing the final draft water use plan, the Minister must consider all properly made submissions about the draft plan.

(2) The Governor in Council may approve the final draft water use plan.

(3) A plan approved under subsection (2) is—

- (a) subordinate legislation; and
- (b) the water use plan for the plan area.<sup>10</sup>

### **66 Public notice of content of water use plan**

As soon as practicable after the final draft water use plan is approved, the chief executive must—

- (a) publicly notify the requirements of the plan for water users; and
- (b) conduct public meetings to explain the requirements.

### **67 Public notice of intention not to proceed with making of draft water use plan**

(1) This section applies if the Minister decides not to proceed with the preparation of a final draft water use plan.

(2) The Minister must publish a notice advising of the decision and the reasons for the decision.

(3) The Minister must send a copy of the notice to each local government or other entity to whom the Minister sent a notice—

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<sup>10</sup> For expiry of plan, see *Statutory Instruments Act 1992*, section 54 (When subordinate legislation expires).

- (a) about the proposed preparation of the draft plan; and
- (b) if a draft plan was prepared—about the draft plan.

(4) A local government receiving a copy of the notice must make the copy available for inspection by the public.

### *Subdivision 3—Amending or preparing new, water use plans*

## **68 When water use plans may be amended or replaced**

(1) The Minister may—

- (a) amend a water use plan; or
- (b) prepare a new water use plan to replace an existing water use plan.

(2) The Minister must act under subsection (1) if the Minister is satisfied a water use plan is not addressing the risk to land and water arising from the use of water on land in the plan area.

## **69 Preparing amending or new draft water use plan**

(1) For preparing the amending plan, sections 61 to 67 apply—

- (a) as if a reference in the sections to the draft plan were a reference to the amending plan; and
- (b) with any other necessary changes.

(2) For preparing the new draft water use plan, sections 61 to 67 also apply.

## **70 Minor amendment of water use plan**

Despite section 69, the Governor in Council may approve a plan to amend a water use plan without sections 61 to 67 applying—

- (a) if the amending plan is only to correct a minor error in the water use plan, or make another change that is not a change of substance; or
- (b) if the water use plan states that an amendment of a stated type may be made to the water use plan by amendment under this subsection—to make an amendment of the stated type.

**71 No regulatory impact statement for water use plans**

A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for the approval of a water use plan or a plan amending a water use plan.

***Subdivision 4—Preparing and approving land and water management plans*****72 Preparing guidelines for preparing land and water management plans**

(1) The chief executive may issue guidelines for preparing land and water management plans.

(2) Before issuing the guidelines the chief executive must—

- (a) prepare draft guidelines; and
- (b) publish a notice when the draft guidelines have been prepared.

(3) The notice must state the following—

- (a) where copies of the draft guidelines may be inspected and, on payment of a fee, purchased;
- (b) that written submissions may be made by any entity about the draft guidelines;
- (c) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(4) The day stated under subsection (3)(c) must not be earlier than 30 business days after the day the notice is published.

(5) The chief executive may send a copy of the notice to any entity the chief executive considers appropriate.

(6) The chief executive may amend any guidelines issued by following the procedures stated in subsections (2) to (5).

**73 Requirement for land and water management plans**

(1) Subsection (3) applies to the following persons—

- (a) a person proposing to use, for irrigation, water taken under a water allocation or an interim water allocation;

- (b) a person using for irrigation water on land identified in a water use plan as land on which irrigation must only be carried out under an approved land and water management plan.

(2) Subsection (1)(a) does not apply to the person—

- (a) if the person was granted a water allocation under section 121; or
- (b) if the person was granted, or taken to have been granted, an interim water allocation under section 189 or chapter 9, part 4; or
- (c) if—
  - (i) the person acquires from another person an existing enterprise comprising either land and the water allocation to irrigate the land or land to which an interim water allocation attaches; and
  - (ii) subsection (1) did not apply to the other person for the allocation or interim water allocation at the time of the acquisition; or
- (d) if—
  - (i) the person uses water for irrigating land; and
  - (ii) there is a water use plan; and
  - (iii) the water use plan does not require a land and water management plan for the land.

(3) A person to whom subsection (1) applies must not use the water from the water allocation or interim water allocation for irrigation unless the person has—

- (a) an approved land and water management plan for the use of the water on the land; or
- (b) a deferral under subdivision 6.

Maximum penalty—1 665 penalty units.

## **74 Applying for approval of land and water management plans**

(1) Any person may apply for the approval of a land and water management plan for the use of water on land.

(2) The plan must be prepared in accordance with the guidelines, if any, issued under section 72.

(3) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

## **75 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

## **76 Criteria for deciding application for approval of land and water management plan**

In deciding whether to approve or refuse to approve the plan, the chief executive must consider the following—

- (a) consistency with any guidelines for the preparation of land and water management plans issued by the chief executive;
- (b) the application and additional information given in relation to the application;
- (c) the risk to land and water arising from the use of water on the land;
- (d) existing industry codes of practice for water use;
- (e) policies developed in consultation with local communities for the use of water;
- (f) the public interest.

## **77 Deciding application for approval of land and water management plan**

(1) If the chief executive is satisfied the plan should be approved, the chief executive must—

- (a) approve the plan for a stated period of not more than 10 years; or
- (b) approve the plan, as amended by the chief executive, for a stated period of not more than 10 years.

(2) If the chief executive is not satisfied the plan should be approved, the chief executive must refuse to approve the plan.

(3) Within 30 business days after deciding the application, the chief executive must give the applicant an information notice.

(4) If the chief executive approves the plan, with or without amendment, the chief executive must, within 30 business days after approving the plan, give the applicant a copy of the approved plan.

(5) The land and water management plan has effect from the day the chief executive gives the applicant the information notice.

#### *Subdivision 5—Amending land and water management plans*

### **78 Amending land and water management plans**

(1) Any person may apply to amend a land and water management plan.

(2) The application must be dealt with under sections 74 to 77 as if it were an application for approval of a land and water management plan.

#### *Subdivision 6—Deferring requirement for approved land and water management plans*

### **79 Applying to defer requirement for an approved land and water management plan**

(1) A person required to have an approved land and water management plan may apply for a deferral of the requirement.

(2) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

**80 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

**81 Criteria for deciding application to defer requirement for an approved land and water management plan**

In deciding whether to approve or refuse the application, the chief executive must consider the following—

- (a) the hardship the applicant would suffer if the application were not granted;
- (b) the susceptibility of the land and water, the subject of the application, to degradation;
- (c) the application and additional information given in relation to the application;
- (d) the public interest.

**82 Deciding application to defer land and water management plan requirements**

(1) If the chief executive is satisfied the application should be approved, the chief executive must approve the application and defer the requirement under section 73(3) for a stated period of not more than 1 year.

(2) More than 1 application may be made under subsection (1).

(3) However, the approval of an application under subsection (1) must not defer the requirement under section 73(3) beyond 1 year after the day the applicant first applied under subsection (1).

(4) If the chief executive is not satisfied an application should be approved, the chief executive must refuse the application.

(5) Within 10 business days after deciding the application, the chief executive must give the applicant an information notice.



(6) The deferral has effect from the day the chief executive gives the applicant the information notice.

### **83–93 Section numbers not used**

See footnote to section 1.

## **PART 4—IMPLEMENTING WATER RESOURCE PLANS**

### *Division 1—Preliminary*

#### **94 Purpose of pt 4**

The purpose of this part is to—

- (a) implement water resource plans through—
  - (i) the preparation of resource operations plans; and
  - (ii) the granting of resource operations licences; and
  - (iii) the conversion of certain existing water licences and interim water allocations to water allocations; and
  - (iv) the granting of water allocations; and
- (b) allow for the registration of, and dealings with, water allocations.

### *Division 2—Resource operations plans*

#### *Subdivision 1—Preparing and approving resource operations plans*

#### **95 Chief executive may prepare resource operations plans**

(1) The chief executive may prepare a resource operations plan to implement a water resource plan for any water in the plan area in all or part of the plan area.

(2) Only 1 resource operations plan may have effect for each water resource plan at any time.

(3) However, before preparing a resource operations plan, the chief executive must prepare a draft resource operations plan.

## **96 Public notice of proposal to prepare draft resource operations plan**

(1) The chief executive must publish a notice of the chief executive's intention to prepare a draft resource operations plan.

(2) The notice must state the following—

- (a) the proposed plan area;
- (b) the water to which the draft plan is intended to apply;
- (c) details of how it is intended that community and technical consultation for the preparation of the draft plan will take place;
- (d) that written submissions may be made by any entity about the proposed draft plan;
- (e) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(e) must not be earlier than 30 business days after the day the notice is published.

(4) As soon as practicable after the notice is published, the chief executive must explain, by letter or public meetings, the implications of the notice to as many affected water entitlement holders as possible.

(5) The chief executive must send a copy of the notice to each local government whose local government area includes all or part of the proposed plan area.

(6) A local government receiving a copy of the notice must make the copy available for inspection by the public.

(7) The chief executive may send a copy of the notice to any other entity the chief executive considers appropriate.

## **97 Notice of proposal to water infrastructure operators**

(1) The chief executive must also give each holder of an interim resource operations licence, a resource operations licence or other authorisation to operate water infrastructure for the management of water to which the proposed plan is intended to apply a notice requesting the holder to provide

proposed arrangements for the management of the water, including, for example, water allocation transfer rules and water and natural ecosystem monitoring practices.

(2) The arrangements must demonstrate how the holder proposes to operate any infrastructure to which the proposed plan is intended to apply, in accordance with the water resource plan.

(3) The notice must state a day by which proposals must be made, and the person to whom, and the place where, the proposals must be made.

(4) The day stated under subsection (3) must not be earlier than 30 business days after the day the notice is given.

## **98 Content of draft resource operations plan**

(1) The draft resource operations plan must—

- (a) state the water resource plan for which the draft plan is being prepared; and
- (b) contain a map of the proposed plan area; and
- (c) state the water to which the draft plan is intended to apply; and
- (d) identify any water infrastructure to which the draft plan is intended to apply and how it will be operated; and
- (e) state how the chief executive will sustainably manage water to which the draft plan is intended to apply; and
- (f) state the water and natural ecosystem monitoring practices that will apply in the proposed plan area; and
- (g) state how the draft plan addresses water resource plan outcomes.

(2) The draft plan may include, but is not limited to, the following—

- (a) a map or diagram, or a series of maps or diagrams, showing water information for the proposed plan area; and
- (b) environmental management rules, seasonal water assignment rules and water sharing rules for the water to which the draft plan is intended to apply; and
- (c) a process for granting, reserving or otherwise dealing with unallocated water to which the draft plan is intended to apply; and

- (d) a process for meeting future water requirements in the plan area; and
- (e) details of any changes to be made to water entitlements; and
- (f) an implementation schedule setting out arrangements for progressive implementation of the requirements of the plan over a period of up to 5 years.

(3) If the draft plan provides for the regulating of overland flow water, the draft plan must set a minimum share of overland flow water that each owner of land in the proposed plan area may take.

(4) Also, if the draft plan provides for water allocations, the draft plan must state the following—

- (a) the rules for, and details of, any proposed conversions of existing water licences and interim water allocations to water allocations;
- (b) the environmental management rules, water sharing rules, water allocation transfer rules and seasonal water assignment rules for water to which the draft plan is intended to apply.

(5) The water allocation transfer rules may contain limits on the volume of water that may be transferred—

- (a) between different locations whether in or outside Queensland; or
- (b) for different purposes.

## **99 Matters the chief executive must consider when preparing draft resource operations plan**

The chief executive must consider the following for the proposed plan area when preparing the draft resource operations plan—

- (a) the—
  - (i) water resource plan or draft water resource plan; or
  - (ii) if notice of a draft amendment of the existing plan has been published under section 49—existing plan as it would be if amended by the amendment mentioned in the notice; or
  - (iii) if notice of a new draft plan has been published under section 49—new draft plan mentioned in the notice;
- (b) all properly made submissions about the proposed draft plan;

- (c) proposed operating arrangements mentioned in section 97;
- (d) the public interest.

### **100 Public notice about availability of draft resource operations plan**

(1) The chief executive must publish a notice when the draft resource operations plan has been prepared.

(2) The notice must state the following—

- (a) where copies of the draft plan are available for inspection and purchase;
- (b) that written submissions may be made by any entity about the draft plan;
- (c) a day by which submissions must be made and any notice under section 100 given, and the person to whom, and the place where, the submissions must be made or notice given.

(3) The day stated under subsection (2)(c) must not be earlier than 30 business days after the day the notice is published.

(4) As soon as practicable after the notice is published, the chief executive must explain, by letter or public meetings, the implications of the notice to as many affected water entitlement holders as possible.

(5) The chief executive must send a copy of the notice and draft plan to—

- (a) each local government whose local government area includes all or part of the proposed plan area; and
- (b) each holder who made a proposal under section 97.

(6) A local government receiving a copy of the draft plan must make the copy available for inspection by the public.

(7) The chief executive may send a copy of the notice to any other entity the chief executive considers appropriate.

### **101 Additional requirements for notices for draft resource operations plans that establish water allocations**

If the draft plan allows for water allocations to be granted, the notice published under section 100 must also state that—

- (a) any existing water entitlement holders may give the chief executive a notice in the approved form stating the holders wish to be recorded on the water allocations register other than as tenants in common in equal shares; and<sup>11</sup>
- (b) existing interest holders may give the chief executive a notice in the approved form—
  - (i) if the water entitlement holder consents to the interest being recorded on the water allocations register for the proposed water allocation—stating the interest holder wishes to have their interest recorded; or
  - (ii) stating the interest holder intends to take action to have their interest recorded on the water allocations register.

### **102 Reviewing submissions about draft resource operations plan**

(1) This section applies if a properly made submission about a draft resource operations plan requests a change be made to—

- (a) a proposed water allocation; or
- (b) an environmental management rule; or
- (c) a water sharing rule; or
- (d) an implementation schedule.

(2) After the last day for the making of submissions about the draft resource operations plan, the chief executive must—

- (a) collate information about all properly made submissions made about matters mentioned in subsection (1); and
- (b) if a referral panel has not been established under section 1004 to advise on the draft resource operations plan—establish a panel; and
- (c) give the collated information to the panel.

(3) The panel must review the draft plan and the submissions and make recommendations to the chief executive within 30 business days after receiving the collated information from the chief executive.

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11 See sections 138(2) and 139(3)

(4) However, subsection (2) does not apply for a submission if the chief executive is satisfied that—

- (a) the submission made about a matter mentioned in subsection (1) is inconsistent with the water resource plan; or
- (b) the draft resource operations plan should be amended in accordance with the submission.

### **103 Preparing and approving final draft resource operations plan**

(1) In preparing the final draft resource operations plan, the chief executive must consider—

- (a) all properly made submissions about the draft plan; and
- (b) if section 102 applies, the recommendations of the referral panel.

(2) If the final draft resource operations plan is not inconsistent with the water resource plan, the Governor in Council may approve the final draft resource operations plan.

(3) A plan approved under subsection (2)—

- (a) does not have effect until its approval is notified in the gazette; and
- (b) is the resource operations plan for the water resource plan it implements.

### **104 Public notice of intention not to proceed with making of draft resource operations plan**

(1) This section applies if the chief executive decides not to proceed with the preparation of a final draft resource operations plan.

(2) The chief executive must publish a notice advising of the decision and the reasons for the decision.

(3) The chief executive must send a copy of the notice to each local government or other entity to whom the chief executive sent a notice—

- (a) about the proposed preparation of the draft plan; and
- (b) if the draft plan was prepared—about the draft plan having been prepared.

(4) A local government receiving a copy of the notice must make the copy available for inspection by the public.

### *Subdivision 2—Amending resource operations plans*

#### **105 Amending resource operations plan**

(1) The chief executive may amend a resource operations plan.

(2) If because of an amendment to a water resource plan a resource operations plan is inconsistent with the water resource plan, the chief executive must amend the resource operations plan to ensure it is not inconsistent with the water resource plan.

(3) Sections 95 to 104 must be followed for preparing the amendment—

- (a) as if a reference in the sections to preparing a draft plan were a reference to preparing the amendment; and
- (b) with any other necessary changes.

(4) Without limiting subsections (1) or (2), the amendment may—

- (a) change the plan area; or
- (b) amalgamate the resource operations plan with another resource operations plan or part of another resource operations plan; or
- (c) change the water infrastructure operating arrangements and other requirements of the plan.

#### **106 Minor amendment of resource operations plan**

Despite section 105(3), the Governor in Council may approve an amendment of a resource operations plan without sections 95 to 104 applying if—

- (a) the amendment is only to correct a minor error in the plan, or make another change that is not a change of substance; or
- (b) if the plan states that an amendment of a stated type may be made to the plan by amendment under this subsection—to make an amendment of the stated type.



***Division 3—Resource operations licences******Subdivision 1—Granting resource operations licences*****107 Converting interim resource operations licences**

On and from the day a resource operations plan has effect—

- (a) the following interim resource operations licences cease to have effect—
  - (i) licences for the operation of water infrastructure for the management of water to which the plan applies;
  - (ii) licences for the management of water to which the plan applies; and
- (b) the chief executive must grant to each interim resource operations licence holder a resource operations licence, in the approved form and in accordance with the plan, for the water the holder manages and to which the plan applies.

**108 Granting resource operations licences**

(1) Subsection (2) applies if a resource operations plan states a process for the granting of a resource operations licence to meet future water requirements.

(2) The chief executive must follow the process and grant the licence in accordance with the process.

(3) Within 30 business days after the chief executive grants the licence, the chief executive must give the grantee the licence and an information notice about the granting of the licence.

(4) The licence has effect on the day stated in the licence.

***Subdivision 2—Content and conditions of resource operations licences*****109 Content of resource operations licence**

The licence must state, but is not limited to, the following—

- (a) details of the licence holder;

- (b) the resource operations plan to which the licence relates;
- (c) any water infrastructure to which the licence applies;
- (d) any conditions the holder must comply with, including, any operating arrangements and the supply requirements of the resource operations plan that relate to the holder.

### **110 Conditions of resource operations licence**

(1) It is a condition of a resource operations licence that the licence holder must comply with any operating arrangements and supply requirements of the resource operations plan that relate to the holder.

(2) In addition to subsection (1), a condition of a licence may—

- (a) require the holder to do all or any of the following—
  - (i) carry out and report on a stated monitoring program;
  - (ii) give the chief executive information reasonably required by the chief executive about the holder's performance under the licence and information about resource management aspects of the holder's operations for the administration or enforcement of this Act;
  - (iii) pay the fees prescribed under a regulation; and
- (b) prohibit the holder from changing, replacing or operating any water infrastructure if the change, replacement or operation of the water infrastructure is incompatible with environmental flow objectives or water allocation security objectives.

### ***Subdivision 3—Amending resource operations licences***

### **111 Amending a resource operations licence for consistency with a resource operations plan**

(1) The chief executive must amend a resource operations licence if, because of an amendment to the resource operations plan, the licence is inconsistent with the plan.

(2) As soon as possible after the amendment is approved, the chief executive must—

- (a) amend the licence to ensure it is consistent with the plan; and

- (b) give the licence holder an information notice stating the aspects of the existing licence that are inconsistent with the amended plan; and
- (c) give the holder an amended licence in the approved form.

(3) The amended licence takes effect from the day the chief executive gives the holder the notice.

### **112 Other amendments chief executive may make to resource operations licence**

(1) The chief executive may amend a condition of a resource operations licence if the chief executive is satisfied—

- (a) the licence was granted because of a materially false or misleading representation or declaration made, either orally or in writing, by the licence holder; or
- (b) the licence holder has contravened this Act.

(2) Before the chief executive acts under subsection (1), the chief executive must give the holder a show cause notice about the proposed amendment.

(3) In deciding whether to amend the condition, the chief executive must consider any properly made submission about the proposed amendment.

(4) If the chief executive is satisfied the proposed amendment should be made, the chief executive must give the holder—

- (a) an amended licence in the approved form; and
- (b) an information notice.

(5) If the chief executive is not satisfied the amendment should be made, the chief executive must give the holder notice that the licence will not be amended.

(6) The amended licence takes effect from the day the chief executive gives the holder the information notice.

### **113 Minor amendment of resource operations licence**

(1) The chief executive may amend a resource operations licence without complying with the provisions of this subdivision about amending a resource operations licence if the amendment is only—

- (a) to correct a minor error in the licence, or make another change that is not a change of substance; or
- (b) if the licence states that an amendment of a stated type may be made to the licence by amendment under this subsection—to make an amendment of the stated type; or
- (c) if the licence holder agrees to the amendment.

(2) If the chief executive amends a licence under subsection (1), the chief executive must, within 30 business days of amending the licence, give the holder an amended licence in the approved form.

#### *Subdivision 4—Transferring resource operations licences*

### **114 Applying for transfer of resource operations licence**

(1) A resource operations licence holder may apply to the chief executive to transfer the licence or a part of the licence.

(2) The application must be—

- (a) made to the chief executive by the transferor in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

### **115 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

### **116 Deciding application to transfer resource operations licence**

The chief executive must decide the application within 30 business days after the application day.

**117 Approving application to transfer resource operations licence**

(1) If the chief executive decides to approve the application, the chief executive must, within 30 business days after making the decision—

- (a) give the transferor and transferee an information notice about the approval; and
- (b) cancel the existing licence and give a new licence to the transferee.

(2) If the application was not to transfer all of a resource operations licence, the chief executive must, within 30 business days after making the decision, give the transferor an amended resource operations licence for the part not transferred.

(3) The new licence takes effect from the day the notice is given.

**118 Refusing application to transfer resource operations licence**

(1) The chief executive may refuse an application for the transfer of a resource operations licence if the chief executive is satisfied the transferee does not have the necessary expertise or experience to be a licence holder or is not a suitable person to hold the licence, including, for example—

- (a) if the transferee has been convicted of an offence against this Act or an interstate law, or has held a resource operations licence or interstate resource operations licence that has been cancelled or suspended under this Act or an interstate law; or
- (b) if the transferee is a corporation—an executive officer of the corporation—
  - (i) has been convicted of an offence against this Act or an interstate law, or has held a resource operations licence or interstate resource operations licence that has been cancelled or suspended under this Act or an interstate law; or
  - (ii) is or has been an executive officer of another corporation that has been convicted of an offence against this Act or an interstate law, or has held a resource operations licence or interstate resource operations licence that has been cancelled or suspended under this Act or an interstate law.

(2) The chief executive may also refuse the application on grounds not mentioned in subsection (1).

(3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice within 30 business days after making the decision.

(4) In this section—

“**this Act**” includes the repealed Acts.

### *Subdivision 5—Cancelling resource operations licences*

## **119 Cancelling resource operations licence**

(1) The chief executive may cancel a resource operations licence on the following grounds—

- (a) the licence holder has not complied with a condition of the licence or a requirement of the holder under this Act;
- (b) the holder has been convicted of an offence against this Act;
- (c) the licence was granted because of a materially false or misleading representation or declaration made, either orally or in writing, by the holder.

(2) Subsection (1)(a) does not apply if the holder has been convicted under section 813 for the non-compliance.

## **120 Procedure for cancelling resource operations licence**

(1) If the chief executive is satisfied a resource operations licence should be cancelled, the chief executive must give the licence holder a show cause notice about the proposed cancellation.

(2) If, after considering any properly made submission about the proposed cancellation, the chief executive is still satisfied the licence should be cancelled, the chief executive may cancel the licence.<sup>12</sup>

(3) If the chief executive decides to cancel the licence, the chief executive must give the holder an information notice within 10 business days after the chief executive makes the decision.

(4) The decision takes effect on the later of—

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<sup>12</sup> For appointment of administrator following cancellation of licence, see section 955(1)(b).

- (a) if the applicant does not appeal against the decision—the day the period for appeals ends; or
- (b) if the applicant appeals against the decision but withdraws the appeal—the day the appeal is withdrawn; or
- (c) if the applicant appeals against the decision and the appeal is dismissed—the day the appeal is decided.

(5) However, if the licence is cancelled because of the conviction of a person for an offence—

- (a) the cancellation does not take effect until the later of—
  - (i) the day the period for appeals against the conviction ends; or
  - (ii) if the appeal is made against the conviction—the appeal is finally decided; and
- (b) the cancellation has no effect if the conviction is quashed on appeal.

#### *Division 4—Water allocations*

##### *Subdivision 1—Converting water entitlements and granting water allocations*

### **121 Converting water entitlements**

(1) On the day a resource operations plan or any amendment of a resource operations plan has effect—

- (a) all water licences to be converted under the plan or the amendment expire and the chief executive must grant to the licensee of each expired water licence, a water entitlement as stated in the plan or amendment; and
- (b) all interim water allocations to be converted under the plan or the amendment expire and the chief executive must grant to each person who was the holder of an expired interim water allocation, a water allocation as stated in the plan or amendment; and

- (c) the registrar must record on the water allocations register details of each water allocation granted.

(2) However, the registrar must not act under subsection (1)(c) for a water allocation granted under subsection (1)(b) until the registrar has received from the resource operations licence holder notice of the existence of a supply contract for the allocation between the allocation holder and the resource operations licence holder.

(3) Subsection (2) does not apply if the resource operations licence holder and the allocation holder is the same person.

(4) Subsection (5) applies if the chief executive has been given a notice under section 101(a) or (b)(i).

(5) The allocation must be recorded in accordance with the notice.

(6) If more than 1 notice is given under section 101(b)(i), the interests must be recorded in accordance with the priority the interests have on the land registry, as at the day the allocation is recorded, for the land to which the former water entitlement was attached.

(7) However—

- (a) for an interest that is not an interest that was recorded under the land registry but is recorded in another register, the interest must be registered in priority according to the time the interest was recorded in the other register; or
- (b) for an interest not recorded in another register, the interest must be registered in the priority in which the interest was lodged for registration.

(8) Within 30 business days after the chief executive grants the allocation, the chief executive must give the allocation holder an information notice about the granting of the allocation.

(9) The allocation has effect the day the granting of the allocation is recorded.

## **122 Granting water allocations**

(1) Subsection (2) applies if a resource operations plan states a process for the granting of a water allocation to meet future water requirements.

(2) The chief executive must follow the process and grant the allocation in accordance with the process.



(3) On the day the allocation is granted, the registrar must record on the water allocations register details of the allocation.

(4) However, if the allocation is managed under a resource operations licence, the registrar must not act under subsection (3) until the registrar has received notice from the resource operations licence holder of the existence of a supply contract for the allocation between the allocation holder and the resource operations holder.

(5) Subsection (4) does not apply if the resource operations licence holder and the allocation holder is the same person.

(6) Within 30 business days after the chief executive grants the allocation, the chief executive must give the allocation holder an information notice about the granting of the allocation.

(7) The allocation has effect the day the registrar records the granting of the allocation in the register.

### **123 Relationship between resource operations plan and water allocation**

(1) A water allocation is subject to the resource operations plan for the plan area where the water is taken.

(2) If there is a conflict between the plan and the allocation, the plan prevails.

### **124 Security for supply and storage of water allocation**

If a water allocation is managed under a resource operations licence, the licence holder may require the allocation holder to give the licence holder reasonable security for supplying and storing the allocation.

### **125 Amending water allocations**

(1) Subsection (2) applies if a resource operations plan or amendment of a resource operations plan states that a water allocation must be amended.

(2) The chief executive must amend the water allocation in accordance with the plan and give the allocation holder an information notice about the amendment.

(3) On the day the allocation is amended, the registrar must record on the water allocations register details of the amendment.

(4) The amendment has effect the day the registrar records the amendment in the register.

### **126 Correcting water allocation when recording granting or amendment**

(1) When the registrar records a matter under this division, the registrar may make any necessary corrections to the name of the existing water entitlement holder when recording the granting of the water allocation.

(2) For subsection (1), the chief executive may require—

- (a) the applicant to give additional information about the correction; or
- (b) any information about the correction, or any additional information required under paragraph (a), to be verified by statutory declaration.

### **127 Registration details for water allocations**

(1) The entry on the water allocations register for a water allocation must state the following—

- (a) details of the person who holds, and how the person holds, the allocation;
- (b) a volume of water for the allocation;
- (c) the location from which the water may be taken;
- (d) the purpose, including, for example, agricultural, industrial or urban, for which the water may be taken;
- (e) the resource operations plan under which the water allocation is managed;
- (f) other matters prescribed under a regulation.

(2) If the water allocation is managed under a resource operations licence, the entry on the water allocations register for the allocation must also state the following—

- (a) the licence number for the resource operations licence;
- (b) the priority group to which the allocation belongs.

(3) If the water allocation is not managed under a resource operations licence, the entry on the water allocations register for the allocation must also state the following—

- (a) the maximum rate for taking water;
- (b) the flow conditions under which the water may be taken.

### *Subdivision 2—Dealings with water allocations*

#### **128 Meaning of “change to a water allocation”**

(1) For this subdivision, a “**change to a water allocation**” is a reconfiguration of any 1 or more of the following elements of the holder’s entitlement under the allocation—

- (a) the volume of water for the allocation;
- (b) the location from which the water may be taken under the allocation;
- (c) the resource operations licence holder through which the water may be supplied under the allocation;
- (d) the purpose for which the water may be taken under the allocation;
- (e) the priority group to which the allocation belongs;
- (f) maximum rate for taking water;
- (g) the flow conditions under which the water may be taken.

(2) However, the reconfiguration must not increase the holder’s entitlement under the allocation.

#### **129 Transferring or changing water allocations under water allocation transfer rules**

(1) Subsection (2) applies if a transfer of, or a change to, a water allocation is permitted under the water allocation transfer rules of a resource operations plan.

(2) The allocation holder may apply to transfer or change the allocation in accordance with the rules.

(3) The application—

- (a) must be in the approved form; and
- (b) may relate to any 1 or more elements of the allocation mentioned in section 127.

(4) If the application relates to a water allocation managed under a resource operations licence, the application must be made to the licence holder.

(5) If the application relates to a water allocation other than an allocation managed under a resource operations licence, the application must be made to the chief executive and must be accompanied by the fee prescribed under a regulation.

(6) If the transfer or change to which the application relates is permitted under the resource operations plan, the person to whom the application is made must—

- (a) give the registrar a certificate stating that the proposed transfer or change is allowed under the plan; and
- (b) give a copy of the certificate to the applicant.

(7) When the registrar receives the certificate, the registrar must record on the water allocations register details of the transfer or change.

(8) However, if the allocation is managed under a resource operations licence, the registrar must not act under subsection (7) until the registrar has received from the resource operations licence holder notice of the existence of a supply contract between the proposed allocation holder and the resource operations licence holder.

(9) The transfer or change has effect the day the registrar records the transfer or change in the register.

### **130 Other transfers of, or changes to, water allocations**

(1) Subsection (2) applies if a transfer of, or a change to, a water allocation is not provided for under a resource operations plan.

(2) The allocation holder may apply to transfer or change the allocation.

(3) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) may relate to any 1 or more elements of the allocation mentioned in section 127; and

- (c) supported by sufficient information to enable the chief executive to decide the application; and
- (d) accompanied by the fee prescribed under a regulation.

### **131 Additional information may be required**

For an application mentioned in section 130, the chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration; or
- (c) any submitter to give additional information about the submission.

### **132 Public notice of application to transfer water allocation**

(1) For an application mentioned in section 130, the chief executive must publish a notice advising the application has been made.

(2) The notice must be published within—

- (a) if the chief executive does not require further information about the application—30 business days after the application is made; or
- (b) if the chief executive requires further information about the application—30 business days after the additional information is received.

(3) The notice must state the following—

- (a) where copies of the application may be inspected and, on payment of a fee, purchased;
- (b) that written submissions may be made by any entity about the application;
- (c) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(4) The day stated under subsection (3)(c) must not be earlier than 30 business days after the day the notice is published.

(5) The chief executive must send a copy of the notice to each local government whose local government area includes the area where the allocation is located.

(6) A local government receiving a copy of the application must make the copy available for inspection by the public.

(7) The chief executive may send a copy of the notice to any other entity the chief executive considers appropriate.

### **133 Applicant to pay cost of researching and investigating application**

(1) Subsection (2) applies—

- (a) to each application made under section 130; and
- (b) if the chief executive is satisfied that there will be considerable expense in researching and investigating the application.

(2) The chief executive must estimate the likely cost of researching and investigating the application and give the applicant notice of the cost.

(3) If the applicant wishes to proceed with the application, the applicant must pay the estimated cost to the chief executive.

(4) If the actual cost of researching and investigating the application is less than the estimated cost, the chief executive must refund to the applicant the difference between the cost paid and the actual cost.

### **134 Deciding application to transfer or change water allocation**

(1) Subsection (2) applies if the chief executive is satisfied the transfer—

- (a) is compatible with environmental flow objectives and water allocation security objectives; and
- (b) is in the public interest; and
- (c) will not significantly affect water entitlement holders, resource operations licence holders or natural ecosystems in an adverse way.

(2) The chief executive must approve the application, with or without conditions.

(3) If the chief executive is not satisfied under subsection (1), the chief executive must refuse the application.

(4) Within 10 business days after deciding the application, the chief executive must—

- (a) give the applicant, the transferee and any person who gave a properly made submission an information notice; and
- (b) if the chief executive approves the application—
  - (i) give the registrar a certificate stating that the transfer or change has been approved; and
  - (ii) give a copy of the certificate to the applicant.

### **135 Registering approved application to transfer or change water allocation**

(1) When the registrar receives the certificate, the registrar must record on the water allocations register details of the transfer or change.

(2) However, if the allocation is managed under a resource operations licence, the registrar must not act under subsection (1) until the registrar has received from the resource operations licence holder notice of the existence of a supply contract between the proposed allocation holder and the resource operations licence holder.

(3) The transfer or change has effect the day the registrar records the transfer or change in the register.

### **136 Leasing a water allocation**

(1) A water allocation holder may apply to lease the allocation.

(2) If a transfer of, or a change to, a water allocation is permitted under the water allocation transfer rules of a resource operations plan, section 129 must be followed when the holder applies to lease the allocation—

- (a) as if a reference in the sections to a transfer of, or a change to, a water allocation were a reference to a lease of the allocation; and
- (b) with any other necessary changes.

(3) If a transfer of, or a change to, a water allocation is not provided for under the rules, sections 130 to 135 must be followed when the holder applies to lease the allocation—

- (a) as if a reference in the sections to a transfer of, or a change to, a water allocation were a reference to a lease of the allocation; and
- (b) with any other necessary changes.

### **137 Transferring a lease of a water allocation**

(1) The lessee of a water allocation may apply to transfer the lease of a water allocation if the lease permits a transfer of the lease.

(2) If a transfer of, or a change to, a water allocation is permitted under the water allocation transfer rules of a resource operations plan, section 129 must be followed when the lessee applies to transfer the lease of the allocation—

- (a) as if a reference in the sections to a transfer of, or a change to, a water allocation were a reference to a transfer of the lease of the allocation; and
- (b) with any other necessary changes.

(3) If a transfer of, or a change to, a water allocation is not provided for under the rules, sections 130 to 135 must be followed when the lessee applies to transfer the lease of the allocation—

- (a) as if a reference in the sections to a transfer of, or a change to, a water allocation were a reference to a transfer of the lease of the allocation; and
- (b) with any other necessary changes.

### **138 Water allocations may be forfeited**

(1) Subsection (2) applies if a water allocation holder has been convicted of an offence against this Act.

(2) The chief executive may give the holder a show cause notice as to why the allocation should not be forfeited.

(3) If, after considering any properly made submission, the chief executive is still satisfied the allocation should be forfeited, the chief executive may forfeit the allocation.

(4) If the chief executive decides to forfeit the allocation, the chief executive must give the holder an information notice within 10 business days after the chief executive makes the decision.



(5) The forfeiture takes effect on the later of—

- (a) if the holder does not appeal against the forfeiture—the day the period for appeals ends; or
- (b) if the holder appeals against the forfeiture but withdraws the appeal—the day the appeal is withdrawn; or
- (c) if the holder appeals against the forfeiture and the appeal is dismissed—the day the appeal is decided.

(6) If the allocation is forfeited, the chief executive must sell the allocation by public auction, public ballot or public tender.

(7) Any money received by the chief executive on the sale of the forfeited allocation must be applied as follows—

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceedings under this section;
- (b) secondly—in discharging any liability of the former allocation holder under this Act to the chief executive under this Act;
- (c) thirdly—in discharging the liability, if any, of the former allocation holder for any outstanding debt due to the resource operations licence holder under a supply contract;
- (d) fourthly—in discharging, in accordance with the priorities of their registered interests, any liabilities of the former allocation holder owing to a person who has a registered interest recorded over the forfeited allocation on the water allocations register;
- (e) fifthly—in payment to the former allocation holder.

(8) If the former allocation holder can not be found after making reasonable inquiries as to the holder's whereabouts, an amount payable to the holder must be dealt with as unclaimed money under the *Public Trustee Act 1978*.

(9) The purchaser of an allocation under this section takes the allocation free of all interests.

### **139 Dealing with water allocations granted or dealt with through fraud**

(1) Subsection (2) applies if a water allocation was granted, or dealt with or recorded on the water allocations register, in consequence of a false or misleading representation or declaration, made either orally or in writing.

(2) The Supreme Court may make the order it considers just to deal with the allocation.

#### **140 Priority for applying proceeds of sale of water allocations under a power of sale**

(1) In addition to any other person who may exercise a power of sale in relation to a water allocation, the following persons may exercise a power of sale in relation to a water allocation—

- (a) the chief executive under section 138(6);
- (b) if a supply contract gives a resource operations licence holder a power to sell the water allocation—the holder.

(2) The holder may only exercise the power of sale in accordance with the supply contract.

(3) Subsection (1) applies despite any registered interest in the allocation.

(4) Before exercising the power of sale, a person proposing to exercise the power must give any person who has a registered interest in the allocation, not less than 10 business days notice of the proposed exercise of the power.

(5) An amount received on the sale of the allocation must be applied in the way mentioned in section 138(7).

(6) The purchaser of an allocation under this section takes the allocation free of all interests.

#### ***Division 5—Seasonal water assignments of water allocations***

#### **141 Application of div 5**

This division applies to a water allocation—

- (a) if a water resource plan or a resource operations plan approved for an area allows seasonal water assignments; and
- (b) if the water to which the allocation applies is not water managed under a resource operations licence.

**142 Applying for a seasonal water assignment**

(1) A water allocation holder may apply for a seasonal water assignment for the water year in which the application is made.

(2) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by sufficient information to enable the chief executive to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

**143 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

**144 Deciding application for seasonal water assignment**

(1) If the application is in accordance with the seasonal water assignment rules, the chief executive must approve the application, with or without conditions.

(2) If the application is not in accordance with the rules, the chief executive must refuse the application.

(3) As soon as practicable after deciding the application, the chief executive must give the applicant an information notice.

(4) If the chief executive grants the application, with or without conditions, the chief executive must, as soon as practicable after approving the application, give the proposed assignee a water permit for the water year in the approved form.

(5) To the extent that the application is approved, the applicant is not authorised to take water under the water allocation.

(6) The assignment has effect from the day the information notice is given to the applicant.

(7) Section 150(5) does not apply to an assignment mentioned in subsection (6).

### **145 Conditions of seasonal water assignment**

The water permit is subject to the conditions—

- (a) to which the water allocation is subject; and
- (b) prescribed under a regulation; and
- (c) the chief executive may impose for a particular permit.

### **146 Application of s 243**

Section 243 applies to a water permit granted under this division.

### ***Division 6—Registering interests and dealings for water allocations***

### **147 Registrar**

- (1) There is to be a registrar of water allocations.
- (2) The registrar has a seal of office.
- (3) The registrar is to be employed under the *Public Service Act 1996*.
- (4) In acting under this Act or another Act, the registrar is subject to the chief executive.

### **148 Water allocations register**

(1) For registering water allocations and interests and dealings with water allocations the registrar must keep a water allocations register.

- (2) A regulation may prescribe—
  - (a) the locations of offices of the registry where documents may be lodged for registration; and
  - (b) the particular documents that may, or may not, be lodged at a particular office of the registry for registration or recording on the register.

(3) A person has notice of an interest in a water allocation if the interest is included in the register.

### **149 Form of register**

(1) The register may be kept in the form the registrar considers appropriate.

(2) Without limiting subsection (1), the registrar may change the form in which a register or a part of a register is kept.

### **150 Interests and dealings that may be registered**

(1) Subject to subsection (2), an interest or dealing that may be registered for land under the *Land Title Act 1994*, may be registered for a water allocation on the water allocations register.

(2) An interest or dealing, the provisions for which are excluded under section 151(1)(e), may not be registered under this Act.

(3) If the chief executive is given a notice under section 101(b)(ii), the registrar must not record a dealing for the water allocation within 20 business days after the day the water allocation was recorded unless the person giving the notice of interest consents to the dealing being recorded.

(4) If a proposed transfer is the transfer of a water allocation, the registrar must not record the transfer on the register unless the transfer is supported by a certificate given under section 129(6) or section 134(3)(b).

(5) An instrument that purports to give effect to a dealing of the type mentioned in subsection (1) does not transfer or create an interest at law until it is registered on the register.

### **151 Application of *Land Title Act 1994* to water allocations register**

(1) The *Land Title Act 1994*, other than the following provisions, applies to matters under this part—

- (a) part 2, sections 16, 18(1)(a), 18(3), 18A;
- (b) part 3, sections 27 and divisions 2, 2A and 3;
- (c) part 4;
- (d) part 5, sections 55 and 58;
- (e) part 6, sections 60(2) and 65(2) and divisions 4, 4A, 4B and 5;

- (f) part 7, section 122(3) and sections 132 to 135;
- (g) part 8, sections 154 and 165;
- (h) part 9, division 2, section 181 and subdivisions B and C;
- (i) part 11, section 193;
- (j) part 12.

(2) To the extent there is a conflict between the requirements of this Act and the requirements of the *Land Title Act 1994*, this Act prevails.

(3) An interest or dealing mentioned in section 150 may be registered in the way mentioned in the *Land Title Act 1994* and the registrar of water allocations may exercise a power and perform an obligation of the registrar of titles under the *Land Title Act 1994*—

- (a) as if a reference to the registrar of titles were a reference to the registrar appointed under this division; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

(4) An instrument executed under the authority of a power of attorney may be registered under this Act only if the power of attorney is registered under the *Land Title Act 1994*, section 133.

(5) In this section—

“*Land Title Act 1994*” does not include the *Land Title Regulation 1994*.

## **152 Application of other Acts to the water allocations register**

(1) If a provision of the *Property Law Act 1974* refers to the *Land Title Act 1994*, or land, the reference is, if the context permits, taken to be a reference to the *Land Title Act 1994*, as applied by this Act, or a water allocation.

- (2) The *Stamp Act 1894*, section 66A applies to a water allocation as if—
- (a) a reference to land included a water allocation; and
  - (b) a reference to the *Land Title Act 1994* included a reference to the *Land Title Act 1994*, as applied by this Act.

### **153 Searching water allocations register**

At any time when an office of the department is open for business and on payment of the fee prescribed under a regulation, a person may—

- (a) search and obtain a copy of—
  - (i) a water allocation; or
  - (ii) an instrument registered in relation to an allocation; or
  - (iii) an instrument that has been lodged but is not registered (whether or not it has been cancelled); or
  - (iv) information kept on the register about the allocation; and
- (b) obtain a copy of the allocation, or a registered instrument, certified by the registrar to be an accurate copy.

### **154–166 Section numbers not used**

See footnote to section 1.

## **PART 5—INTERIM ALLOCATION AND MANAGEMENT ARRANGEMENTS**

### *Division 1—Preliminary*

#### **167 Purpose of pt 5**

The purpose of this part is to provide for the functions and powers of the chief executive for water managed through—

- (a) existing water infrastructure in an area where a resource operations plan has not been approved; or
- (b) proposed water infrastructure.

### *Division 2—Interim resource operations licences*

#### *Subdivision 1—Granting interim resource operations licences for existing operations*

#### **168 Who must apply for an interim resource operations licence**

(1) A regulation may nominate a person as a person who operates water infrastructure or manages water stated in the regulation.

(2) A person nominated under the regulation must, within 60 business days after the regulation is made, apply for an interim resource operations licence to continue to operate the water infrastructure or manage the water.

Maximum penalty—1 665 penalty units.

#### **169 Applying for interim resource operations licence**

An application made under section 168 must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by details of—
  - (i) all water supplied by the applicant to entities under authorisations under the repealed Act, including, the names and addresses of the entities and details of any existing contracts for the supply of the water; and
  - (ii) the applicant's proposed operating arrangements for any water infrastructure; and
  - (iii) the applicant's proposal about the total interim water allocation that should be granted for management under the proposed interim resource operations licence; and
  - (iv) the applicant's proposal about the apportionment of the total interim water allocations between the applicant and the persons mentioned in subparagraph (i); and



- (v) the applicant's proposal about proposed supply arrangements for the entities mentioned in subparagraph (i); and
  - (vi) any other information that will enable the chief executive to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

### **170 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.

### **171 Notice of application for interim resource operations licence**

(1) The chief executive must give each entity whose details are given to the chief executive under section 169(b)(i) a notice about the making of the application.

(2) The notice must—

- (a) be given—
  - (i) if the chief executive does not require further information about the application—within 30 business days after the application is made; or
  - (ii) if the chief executive requires further information about the application—within 30 business days after the additional information is received; and
- (b) give details of the applicant's proposals mentioned in section 169(b); and
- (c) state where copies of the proposals may be inspected and, on payment of a fee, purchased; and
- (d) state that written submissions may be made by any entity who is given a copy of the notice about the applicant's proposals; and

(e) state a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(e) must not be earlier than 30 business days after the day the notice is given.

(4) The chief executive may send a copy of the notice to any other entity the chief executive considers appropriate.

### **172 Conference may be called about application**

(1) The chief executive may invite the applicant and all or any of the entities, whose details are given to the chief executive under section 169(b)(i), to a conference to help in deciding the application.

(2) The chief executive must give notice to all entities invited to attend the conference of when and where the conference is to be held.

(3) However, if the chief executive is satisfied it is impracticable to give notice to all entities invited to attend the conference, the chief executive may publish a notice about the conference.

### **173 Chief executive must make proposed decision**

(1) After the last day for both the making of submissions on the applicant's proposals and any conferences under section 172(1) have been held, the chief executive must make a proposed decision about—

- (a) the proposed contents and conditions about an interim resource operations licence; and
- (b) the proposed granting of interim water allocations managed under the interim resource operations licence.

(2) In making the proposed decision, the chief executive must consider the following—

- (a) the application and additional information given about the application;
- (b) the authorisations under the repealed Act of the entities, whose details are given to the chief executive under section 169(b)(i);
- (c) all properly made submissions made about the applicant's proposals;

- (d) the views expressed at a conference held in relation to the proposals;
- (e) the public interest.

### **174 Notice of proposed decision**

(1) The chief executive must give the applicant and each entity, whose details are given to the chief executive under section 169(b)(i), a notice about the making of the proposed decision.

(2) The notice must—

- (a) give details of the chief executive's proposed decision about—
  - (i) the proposed contents and conditions about an interim resource operations licence; and
  - (ii) the proposed granting of interim water allocations managed under the interim resource operations licence; and
- (b) state where copies of the proposed decision may be inspected and, on payment of a fee, purchased; and
- (c) state that written submissions may be made by any entity who is given a copy of the notice about the applicant's proposals; and
- (d) state a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(3) The day stated under subsection (2)(d) must not be earlier than 30 business days after the day the notice is given.

(4) The chief executive may send a copy of the notice to any other entity the chief executive considers appropriate.

### **175 Deciding application for interim resource operations licence**

(1) In making the final decision on the application, the chief executive must consider all properly made submissions made about the proposed decision.

(2) The chief executive must grant the application, with or without conditions.

(3) Within 30 business days after deciding the application, the chief executive must give—

- (a) the applicant and each entity, whose details are given to the chief executive under section 169(b)(i), an information notice; and
- (b) the applicant an interim resource operations licence.

(4) The licence takes effect from the day the applicant is given the information notice.

***Subdivision 2—Granting interim resource operations licences for proposed operations***

**176 Granting interim resource operations licences**

(1) Subsection (2) applies if a water resource plan or a resource operations plan states a process for the granting of an interim resource operations licence to meet future water requirements.

(2) The chief executive must follow the process and grant the licence in accordance with the process.

(3) Within 30 business days after the chief executive grants the licence, the chief executive must give the licence holder the licence and an information notice about the granting of the licence.

(4) The licence has effect from the day the information notice is given to the applicant.

***Subdivision 3—Content and conditions of interim resource operations licences***

**177 Content of interim resource operations licences**

Without limiting what may be included in an interim resource operations licence, the licence must state the following—

- (a) details of the licence holder;
- (b) any water infrastructure to which the licence applies;
- (c) the operating arrangements for the water infrastructure;
- (d) details of water to be managed under the licence;
- (e) details of the water sharing rules;

- (f) requirements for monitoring and reporting on water managed and water infrastructure operations.

### **178 Conditions of interim resource operations licence**

Without limiting section 175(2), a condition of an interim resource operations licence may—

- (a) require the licence holder to do all or any of the following—
  - (i) give relevant information reasonably required by the chief executive for the administration or enforcement of this Act;
  - (ii) pay the fees prescribed under a regulation; and
- (b) prohibit the holder from changing, replacing or operating water infrastructure if the change, replacement or operation would significantly affect any of the following—
  - (i) the availability of water for existing water entitlement holders;
  - (ii) the water requirements of natural ecosystems;
  - (iii) the water requirements of beneficial flooding;
  - (iv) water quality.

#### ***Subdivision 4—Amending interim resource operations licences on application of licence holder***

### **179 Applying to amend an interim resource operations licence**

(1) An interim resource operations licence holder may apply to amend an interim resource operations licence.

- (2) The application must be—
- (a) made to the chief executive in the approved form; and
  - (b) supported by sufficient information to enable the chief executive to decide the application; and
  - (c) accompanied by a fee prescribed under a regulation.

**180 Additional information may be required**

The chief executive may require—

- (a) the applicant to give additional information about the application; or
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration; or
- (c) any submitter to give additional information about the submission.

**181 Public notice of application to amend interim resource operations licence**

(1) Subsection (2) applies when the chief executive is satisfied the application to amend the interim resource operations licence has been properly made and the applicant has given the chief executive any additional information requested about the application.

(2) The chief executive must give the applicant a notice the applicant must publish within the time and in the newspaper or newspapers stated by the chief executive.

(3) The notice must include at least the following—

- (a) a summary of the proposed amendments to the licence;
- (b) where copies of the application are available for inspection and purchase;
- (c) that written submissions may be made by any entity about the application;
- (d) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(4) The day stated under subsection (3)(d) must not be earlier than 30 business days after the day the notice is published.

(5) Within 10 business days after the day the notice is published, the applicant must give the chief executive a copy of the page of the newspaper containing the published notice.

(6) If the notice has been published within the time and in the newspaper or newspapers stated by the chief executive—

- (a) the chief executive may send a copy of the notice to any other entity the chief executive considers appropriate; and
- (b) the chief executive may decide the application after the day mentioned in subsection (3)(d).

### **182 Matters chief executive must consider when deciding applications**

For deciding the application, the chief executive must consider the following—

- (a) the application and additional information given about the application;
- (b) all properly made submissions about the application;
- (c) all additional information given about a submission;
- (d) existing water entitlements and authorisations to take or interfere with water;
- (e) any information about the effects on natural ecosystems;
- (f) any information about the effects on the physical integrity of watercourses, lakes, springs or aquifers;
- (g) policies developed in consultation with local communities for the sustainable management of local water;
- (h) whether the applicant has been convicted of an offence against this Act, the repealed Act or an interstate law;
- (i) the public interest.

### **183 Deciding application to amend an interim resource operations licence**

(1) If the chief executive is satisfied the application should be approved, the chief executive must approve the application, with or without conditions.

(2) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.

(3) Within 30 business days after deciding the application, the chief executive must give the applicant and any person who gave a properly made submission about the application an information notice.

(4) If the chief executive approves the application, with or without conditions, the chief executive must, within 30 business days after approving the application, give the applicant an amended interim resource operations licence in the approved form.

(5) The amended licence takes effect from the day the applicant is given the information notice.

***Subdivision 5—Amending interim resource operations licences by chief executive***

**184 Amending interim resource operations licences on notice**

(1) The chief executive may amend an interim resource operations licence if the chief executive is satisfied the licence should be amended.

(2) However, the amendment must not—

- (a) increase the volume, rate or times when water may be taken under the licence; or
- (b) increase the interference with the flow of the water; or
- (c) change the location from which water may be taken, or interfered with, under the licence; or
- (d) cause a significant adverse effect on—
  - (i) the availability of water for the requirements of natural ecosystems; or
  - (ii) the quality of water; or
  - (iii) availability of water for existing water entitlement holders; or
  - (iv) beneficial flooding.

(3) Before the chief executive acts under subsection (1), the chief executive must give the licence holder a show cause notice about the proposed amendment.

(4) In deciding whether to amend the licence, the chief executive must consider any properly made submission about the proposed amendment.

(5) If the chief executive is satisfied the proposed amendment should be made, the chief executive must give the licence holder an amended licence in the approved form and an information notice.



(6) If the chief executive is not satisfied the amendment should be made, the chief executive must give the holder notice that the licence will not be amended.

(7) The amended licence takes effect from the day the information notice is given to the holder.

### **185 Minor amendment of interim resource operations licence**

(1) The chief executive may amend the licence without complying with the provisions of this division about amending a licence if the amendment is only to correct a minor error in the licence, or make another change that is not a change of substance.

(2) If the chief executive amends a licence under subsection (1), the chief executive must give the licence holder an amended licence in the approved form.

### ***Subdivision 6—Transferring and cancelling interim resource operations licences***

### **186 Transferring or cancelling interim resource operations licence**

An interim resource operations licence may be transferred or cancelled under part 4, division 3, as if it were an application for the transfer or cancellation of a resource operations licence.<sup>13</sup>

### ***Division 3—Interim water allocations***

### ***Subdivision 1—Interim water allocations managed through existing water infrastructure***

### **187 Granting interim water allocations**

(1) When the chief executive grants an interim resource operations licence under division 2, subdivision 1, the chief executive must grant

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<sup>13</sup> For appointment of administrator following cancellation of licence, see section 955(1)(b).

interim water allocations in accordance with the chief executive's decision under section 175(2).

(2) The interim water allocation replaces any authorisation mentioned in section 169(b)(i) the entity had immediately before the interim water allocation was granted.

(3) The chief executive must, within 30 business days after the allocation is granted, give the grantee—

- (a) an information notice; and
- (b) an interim water allocation in the approved form.

(4) An interim water allocation attaches to the land of the grantee unless the grantee is—

- (a) the interim resource operations licence holder; or
- (b) a local government; or
- (c) a water authority; or
- (d) an entity prescribed under a regulation.

(5) An interim water allocation takes effect from the day the information notice is given to the grantee.

### **188 Existing supply arrangements taken to be supply contracts**

(1) The supply arrangements contained in an application granted under section 175 are taken to be the supply contract for the supply of water to the person mentioned in the arrangements.

(2) Subsection (1) applies until the interim resource operations licence holder and interim water allocation holder enter into a different supply contract for supplying the holder with water.

### ***Subdivision 2—Interim water allocations to be managed through new infrastructure***

### **189 Granting interim water allocations**

(1) When the chief executive grants an interim resource operations licence under division 2, subdivision 2, the chief executive must grant an interim water allocation in accordance with the process stated in the water resource plan.

(2) The chief executive must, within 30 business days after the allocation is granted, give an interim water allocation holder an interim water allocation in the approved form and an information notice about the granting of the allocation.

(3) An interim water allocation attaches to the land of the grantee unless the grantee is—

- (a) the interim resource operations licence holder; or
- (b) a local government; or
- (c) a water authority; or
- (d) an entity prescribed under a regulation.

(4) An interim water allocation takes effect from the day the information notice is given to the grantee.

***Subdivision 3—Amending, renewing, transferring, forfeiting or cancelling interim water allocations***

**190 Amending, renewing, transferring or cancelling interim water allocation**

An interim water allocation may be amended, renewed, transferred or cancelled under part 6, division 2, as if the interim water allocation were a water licence.

**191 Who certain interim water allocations may be transferred to**

(1) Despite sections 190, 222 and 223, an interim resource operations licence holder may apply to transfer all or part of an interim water allocation not attached to land to any of the following to whom the holder can supply water—

- (a) any owner of land, if the water supplied is used on the land;
- (b) an interim resource operations licence holder;
- (c) a local government;
- (d) a water authority;
- (e) an entity prescribed under a regulation.

(2) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by evidence that enables the chief executive to transfer the licence, including, for example the written consent of the transferee; and
- (c) accompanied by the fee prescribed under a regulation.

### **192 Deciding application to transfer by interim resource operations licence holder**

(1) The chief executive must approve the application, with or without conditions.

(2) Within 30 business days after approving the application, the chief executive must—

- (a) give the applicant and the transferee—an information notice; and
- (b) give the transferee an interim water allocation in the approved form.

(3) If the application was not to transfer all of an interim water allocation, the chief executive must give the applicant an amended interim water allocation for the part not transferred.

(4) An interim water allocation mentioned in section 191(1)(a) attaches to the land of the transferee.

(5) An interim water allocation mentioned in subsection (2) or (3) has effect from the day the information notice is given to the applicant and the transferee.

### **193 Transferring interim water allocations to other land**

(1) This section applies only if a regulation provides for all or part of the authority to take water in relation to land to be transferred so that the authority attaches to other land, whether in or outside Queensland.

(2) The allocation holder may apply to the chief executive to transfer all or part of the authority in accordance with the regulation.

### **194 Forfeiting an interim water allocation**

(1) Subsection (2) applies if—

- (a) an interim water allocation holder has been convicted of an offence against this Act; or
- (b) the chief executive is satisfied the holder has breached a condition of the interim water allocation.

(2) The chief executive may deal with the interim water allocation under section 138(2) to (9) as if—

- (a) the interim water allocation were a water allocation; and
- (b) a reference in the section to a resource operations licence were a reference to an interim resource operations licence.

### **195–203 Section numbers not used**

See footnote to section 1.

## ***PART 6—WATER LICENCES AND PERMITS***

### ***Division 1—Preliminary***

#### ***204 Purpose of pt 6***

*Under this part, the chief executive may grant—*

- (a) *water licences for taking water and interfering with the flow of water, for example, by a weir; or*
- (b) *water permits for taking water.*

#### ***205 Decisions to be in accordance with plans***

*If a water resource plan or resource operations plan has been approved for an area, the chief executive must make decisions under this part in accordance with the plan.*

**Division 2—Water licences****Subdivision 1—Granting water licences****206 Applying for a water licence**

*(1) An owner of a parcel of land, or the owners of 2 contiguous parcels of land, may apply for a water licence for the parcel or parcels and any other land of the owner or owners contiguous to the parcel or parcels—*

- (a) for taking water and using the water on any of the land; or*
- (b) to interfere with the flow of water on, under or adjoining any of the land.*

*(2) An application under subsection (1)(a) may be only for taking water from any of the following—*

- (a) a watercourse, lake or spring on or adjoining any of the land;*
- (b) an aquifer under any of the land;*
- (c) water flowing across any of the land.*

*(3) Also, an application under subsection (1)(a) may be for taking water from a watercourse, lake, spring or aquifer if—*

- (a) the watercourse, lake or spring or land above the aquifer does not adjoin any of the applicant's land; but*
- (b) all the owners of land between the proposed point of taking the water and the applicant's land agree in writing to give the applicant a registrable lease or easement over the owner's land for the purpose of taking the water and delivering it to the applicant's land.*

*(4) The following entities may also apply for a water licence for taking water or interfering with the flow of water—*

- (a) a local government;*
- (b) a water authority;*
- (c) a resource operations licence holder;*
- (d) an interim resource operations licence holder;*
- (e) an entity prescribed under a regulation.*

*(5) The application must be—*

- (a) *made to the chief executive in the approved form; and*
- (b) *supported by sufficient information to enable the chief executive to decide the application; and*
- (c) *accompanied by the fee prescribed under a regulation.*

### **207 Additional information may be required**

**(1)** *The chief executive may require—*

- (a) *the applicant to give additional information about the application; or*
- (b) *any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration; or*
- (c) *if notice of the application is published—any submitter to give additional information about the submission.*

**(2)** *The request may be made—*

- (a) *whether or not notice of the application is published; and*
- (b) *before or after notice of the application is published.*

### **208 Public notice of application for water licence**

**(1)** *Subsection (2) applies when the chief executive is satisfied the application has been properly made and the applicant has given the chief executive any additional information requested about the application.*

**(2)** *The chief executive must give the applicant a notice the applicant must publish within the time and in the newspaper or newspapers stated by the chief executive.*

**(3)** *Subsections (1) and (2) do not apply to an application mentioned in section 209.*

**(4)** *The notice must include at least the following—*

- (a) *the location of the proposed taking of, or interfering with, water;*
- (b) *where copies of the application may be inspected and, on payment of a fee, purchased;*
- (c) *that written submissions may be made by any entity about the application;*

(d) a day by which submissions must be made, and the person to whom, and the place where, the submissions must be made.

(5) The day stated under subsection (4)(d) must not be earlier than 30 business days after the day the notice is published.

(6) Within 10 business days after the day the notice is published, the applicant must give the chief executive a copy of the page of the newspaper containing the published notice.

(7) If the notice has been properly published—

(a) the chief executive may send a copy of the notice to any other entity the chief executive considers appropriate; and

(b) the chief executive may decide the application after the day mentioned in subsection (4)(d).

(8) In this section—

**“properly published”** means published within the time and in the newspaper or newspapers stated by the chief executive.

### **209 Applications that may be decided without public notice**

(1) If the granting of the application would be inconsistent with a water resource plan or a resource operations plan, the chief executive must refuse the application without notice of the application being published.

(2) Within 30 business days after refusing the application, the chief executive must give the applicant an information notice about the refusal.

(3) Subsection (4) applies to an application—

(a) made under section 206; and

(b) for taking underground water only for domestic purposes or watering stock of a number that would normally be depastured on the land to which the application relates.

(4) The chief executive may decide the application without notice of the application being published.

### **210 Criteria for deciding application for water licence**

(1) In deciding whether to grant or refuse the application or the conditions for the water licence, the chief executive must consider the following—



- (a) *the application and additional information given in relation to the application;*
- (b) *if notice of the application has been published—all properly made submissions made about the application;*
- (c) *any water resource plan and resource operations plan that may apply to the licence;*
- (d) *existing water entitlements and authorities to take or interfere with water;*
- (e) *any information about the effects of taking, or interfering with, water on natural ecosystems;*
- (f) *any information about the effects of taking, or interfering with, water on the physical integrity of watercourses, lakes, springs or aquifers;*
- (g) *policies developed in consultation with local communities for the sustainable management of local water;*
- (h) *the sustainable resource management strategies and policies for the catchment, including, any relevant coastal zone;*
- (i) *the public interest.*

(2) *The chief executive may also consider whether the applicant has been convicted of an offence against this Act, the repealed Act or an interstate law.*

### **211 Deciding application for water licence**

(1) *If the chief executive is satisfied the application should be approved, the chief executive must approve the application for a stated period, with or without conditions.*

(2) *If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

(3) *Within 30 business days after deciding the application, the chief executive must give the applicant and any person who gave a properly made submission about the application an information notice.*

(4) *If the chief executive approves the application, with or without conditions, the chief executive must, within 30 business days after approving the application, give a water licence in the approved form to—*

- (a) *the applicant; or*

- (b) *if after making the application the applicant has ceased to be an owner of land to which the application relates—the registered owner of the land.*

(5) *The licence has effect from the day the information notice is given to the applicant.*

### **212 Granting a water licence under a plan process**

(1) *Subsection (2) applies if a water resource plan or a resource operations plan states a process for the allocation of water under a water licence to meet future water requirements.*

(2) *The chief executive must follow the process and may grant a water licence in accordance with the process without the need for an application to be made under section 206.*

(3) *Within 30 business days after the chief executive grants the licence, the chief executive must give the licensee the licence and an information notice about the granting of the licence.*

(4) *The licence has effect from the day the licence is given to the licensee.*

### **Subdivision 2—Contents and conditions of water licences**

#### **213 Contents of water licence**

*A water licence—*

- (a) *must be granted for a stated period; and*
- (b) *must state the water to which the licence relates; and*
- (c) *must state the location from which the water may be taken or at which it may be interfered with; and*
- (d) *may be amended, renewed, reinstated, transferred, amalgamated, subdivided, surrendered or cancelled; and*
- (e) *attaches to land stated in the licence and must be held by an owner of the land if—*
  - (i) *the application for the licence was made under section 206(1); or*

- (ii) *the licence was granted under section 212 to a person other than a registered water service provider, a local government or a water authority.*

### **214 Conditions of water licence**

**(1)** *The water licence is subject to the conditions—*

- (a) prescribed under a regulation; and*
- (b) the chief executive may impose for a particular licence.*

**(2)** *Without limiting subsection (1), the conditions may require the licensee to do all or any of the following—*

- (a) commence taking or interfering with water authorised under the licence within a stated time;*
- (b) install a measuring device to measure the volume of water taken, the rate at which it is taken and the time it is taken;*
- (c) take the water authorised to be taken under the licence;*
- (d) provide and maintain access to alternative water supplies for other water entitlement holders who would be affected by the granting of the licence;*
- (e) carry out and report on a stated monitoring program;*
- (f) give relevant information reasonably required by the chief executive for the administration or enforcement of this Act.*

### **215 Where water under certain licences must be used**

*Water taken under a licence that is attached to land must be used only on the land to which the licence attaches.*

*Maximum penalty—1 665 penalty units.*

### **Subdivision 3—Amending water licences**

### **216 Amending water licence on application of licensee**

**(1)** *The licensee may apply to amend a water licence.*

*(2) The application to amend the licence must be dealt with under division 2, subdivisions 1 and 2, as if it were an application for a licence.*

### **217 Amending water licence to implement water resource plan**

*(1) The chief executive must amend a water licence, if the water licence is inconsistent with a water resource plan or a resource operations plan.*

*(2) The chief executive must, within the time stated in the plan or as soon as possible after the plan is approved—*

- (a) amend the licence; and*
- (b) give the licensee an information notice stating the aspects of the existing licence that are inconsistent with the plan; and*
- (c) give the licensee an amended licence in the approved form.*

*(3) The amended licence takes effect from the day the chief executive gives the licensee the licence.*

### **218 Other amendments chief executive may make to water licence**

*(1) The chief executive may amend a water licence if the chief executive is satisfied the licence should be amended.*

*(2) However, the amendment must not—*

- (a) increase the volume of, rate of or times when water may be taken under the licence; or*
- (b) increase the area of land that may be irrigated under the licence; or*
- (c) increase the interference with the flow of the water; or*
- (d) change the location from which water may be taken, or interfered with, under the licence; or*
- (e) cause a significant adverse effect on—*
  - (i) the availability of water for the requirements of natural ecosystems; or*
  - (ii) the quality of water; or*
  - (iii) availability of water for existing water entitlement holders; or*
  - (iv) beneficial flooding.*

(3) Before the chief executive acts under subsection (1), the chief executive must give the licensee a show cause notice about the proposed amendment.

(4) In deciding whether to amend the licence, the chief executive must consider any properly made submission about the proposed amendment.

(5) If the chief executive is satisfied the proposed amendment should be made, the chief executive must, within 30 business days after the decision, give the licensee an amended licence in the approved form and an information notice.

(6) If the chief executive is not satisfied the amendment should be made, the chief executive must give the licensee notice that the licence will not be amended.

(7) The amended licence takes effect from the day the licence is given to the licensee.

### **219 Minor amendment of water licence**

(1) The chief executive may amend the licence without complying with the provisions of this division about amending a licence if the amendment is only—

- (a) to correct a minor error in the licence, or make another change that is not a change of substance; or
- (b) if the licence states that an amendment of a stated type may be made to the licence by amendment under this section—to make an amendment of the stated type.

(2) If the chief executive amends a licence under subsection (1), the chief executive must give the licensee an amended licence in the approved form.

### **Subdivision 4—Other dealings with water licences**

### **220 Renewing water licence**

(1) The licensee may apply to renew a water licence before the licence expires.

(2) The application must be—

- (a) made to the chief executive in the approved form; and

(b) *accompanied by the fee prescribed under a regulation.*

(3) *If a licensee applies to renew a licence, the licence remains in force until—*

(a) *the applicant has been given an information notice; or*

(b) *if the application is refused and the applicant has appealed against the decision—until the date on which notification of the final outcome of the appeal has been given to the applicant.*

(4) *If the chief executive is satisfied the application should be approved, the chief executive must—*

(a) *approve the application; or*

(b) *approve the application, subject to variation of the licence by 1 or more of the following—*

(i) *the amendment or revocation of a term to which it is subject or the addition of another term;*

(ii) *the reduction of the volume of water the licensee is authorised to take under the licence or the rates at which, and the times when, it may be taken;*

(iii) *the reduction of the authority to interfere with the water.*

(5) *However, the variation to the licence under subsection (4)(b) must not—*

(a) *increase the volume of, rate of or times when water may be taken under the licence; or*

(b) *increase the area of land that may be irrigated under the licence; or*

(c) *increase the interference with the flow of the water; or*

(d) *change the location from which water may be taken, or interfered with, under the licence; or*

(e) *cause a significant adverse effect on—*

(i) *the availability of water for the requirements of natural ecosystems; or*

(ii) *the quality of water; or*

(iii) *availability of water for existing water entitlement holders; or*

(iv) *beneficial flooding.*

(6) *If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

(7) *Within 30 business days after deciding the application, the chief executive must—*

(a) *give the applicant an information notice; and*

(b) *if the application is approved, give a new licence in the approved form to—*

(i) *the licensee; or*

(ii) *if after making the application the applicant has ceased to be the owner of land to which the licence attaches—the registered owner of the land.*

(8) *If the applicant is given a new licence, the licence has effect from the day the applicant is given the licence.*

### **221 Reinstating expired water licence**

(1) *If a licensee fails to renew a water licence, the licensee, or if the licensee has ceased to be an owner of the land to which the licence was attached, another owner of the land, may, within 30 business days after the licence expires, apply to have the licence reinstated.*

(2) *The application must be—*

(a) *made to the chief executive in the approved form; and*

(b) *accompanied by the fee prescribed under a regulation.*

(3) *If an application for the reinstatement of a water licence is made, the expired licence is taken to have been in force from the day the application was made until the applicant has been notified of the chief executive's decision on the application.*

(4) *For deciding the application, section 220(4) to (8) applies—*

(a) *as if a reference in the section to the renewal of a licence were a reference to the reinstatement of a licence; and*

(b) *with any other necessary changes.*

**222 Transferring water licence to another owner of the land**

(1) The licensee of a water licence may apply to transfer the licence to—

- (a) any owner of the land to which the licence attaches; or
- (b) a person who will be an owner of the land to which the licence attaches at the time the transfer is approved.

(2) The application must be—

- (a) made to the chief executive in the approved form; and
- (b) supported by evidence that enables the chief executive to transfer the licence, including, for example the written consent of the transferee; and
- (c) accompanied by the fee prescribed under a regulation.

(3) The chief executive must give the transferee a new licence on conditions that have the same effect as the conditions on the previous licence, other than for the change of name of the licensee—

- (a) for an application made under subsection (1)(a)—within 30 business days after receiving the application; or
- (b) for an application made under subsection (1)(b)—within 30 business days after the transferee gives the chief executive notice that the transferee has become an owner of the land.

(4) The new licence has effect on the day the transferee is given the licence.

**223 Transferring water licence to other land**

(1) This section applies only if a regulation provides for all or part of the authority to take water in relation to land to be transferred so that the authority attaches to other land, whether in or outside Queensland.

(2) The licensee may apply to the chief executive to transfer all or part of the authority in accordance with the regulation.

**224 Amalgamating water licences**

(1) The licensee or licensees of 2 or more water licences relating to the same land or contiguous land may apply to amalgamate the licences into a single licence.



(2) *The application must be—*

- (a) *made to the chief executive in the approved form; and*
- (b) *accompanied by the fee prescribed under a regulation.*

(3) *The application must be dealt with under division 2, subdivisions 1 and 2, as if it were an application for a licence.*

### **225 Subdividing water licence**

(1) *The licensee of a water licence (the “**original licence**”) may apply to replace the original licence with 2 or more new licences.*

(2) *The application must be—*

- (a) *made to the chief executive in the approved form; and*
- (b) *accompanied by the fee prescribed under a regulation.*

(3) *The application must be dealt with under sections 206 to 215 as if it were an application for a licence.*

(4) *If the chief executive approves the application, the chief executive must ensure that each new licence attaches only to land to which the original licence related.*

### **226 Surrendering water licence**

(1) *A licensee may surrender a water licence by giving the chief executive a notice of surrender.*

(2) *The surrender—*

- (a) *takes effect on the date on which the surrender notice is received by the chief executive; and*
- (b) *does not affect in any way a duty under this Act about works imposed on the licensee before the surrender.*

### **227 Cancelling water licence**

(1) *The chief executive may cancel a water licence if the chief executive is satisfied the licence should be cancelled.*

(2) *Section 218 applies to the cancellation—*

- (a) *as if a reference in the section to an amendment of the licence were a reference to the cancellation of the licence; and*
- (b) *with any other necessary changes.*

### ***Subdivision 5—Effects of land dealings on water licences***

#### **228 *Effect of licensee ceasing to be an owner of land***

**(1)** *Subsection (2) applies if—*

- (a) *a water licence attaches to land; and*
- (b) *the licensee ceases to be an owner of the land; and*
- (c) *before ceasing to be an owner of the land the licensee applied, in accordance with section 222, to transfer the licence to another person.*

**(2)** *On the day the licensee ceases to be an owner of the land—*

- (a) *the licensee ceases to be the holder of the licence; and*
- (b) *the other person becomes the new licensee.*

**(3)** *However, subsection (4) applies if—*

- (a) *a water licence attaches to land; and*
- (b) *the licensee ceases to be an owner of the land; and*
- (c) *before ceasing to be an owner of the land the licensee did not apply, in accordance with section 222, to transfer the licence to another person.*

**(4)** *On the day the licensee ceases to be an owner of the land—*

- (a) *the licensee ceases to be the holder of the licence; and*
- (b) *the registered owner of the land becomes the new licensee.*

**(5)** *Within 30 business days after becoming the new licensee, the new licensee must give the chief executive notice that the previous licensee has ceased to be the licensee.*

**(6)** *Within 30 business days after receiving the notice, the chief executive must give the new licensee a new licence on conditions that have the same effect as the conditions on the previous licence, other than for the change of name of the licensee.*

**229 Effect of disposal of part of land to which water licence attaches**

(1) Subsection (2) applies if—

- (a) a water licence is attached to land; and
- (b) the registered owner of the land disposes of part of the land.

(2) The licence expires on the day the owner disposes of the part.

(3) However, within 60 business days after the day the owner disposes of the part, 1 or more of the owners of the land to which the expired licence related, may apply for 1 or more licences (“**replacement licences**”) to replace the expired licence.

(4) An application must be—

- (a) made to the chief executive in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

(5) If an application is made to replace a licence, the expired licence is taken to have been in force until—

- (a) the applicant has been notified of the chief executive’s decision on the application; or
- (b) if the application is refused and the applicant has appealed against the decision—until the date on which notification of the final outcome of the appeal has been given to the applicant.

(6) Subject to subsection (7), the application must be dealt with as if the application were an application under section 225.

(7) The chief executive must also give notice of the application to all the registered owners of the land to which the expired licence related.

(8) The notice must state—

- (a) that a written submission may be made about the application; and
- (b) a day by which the submission must be made, and the person to whom, and the place where, the submission must be made.

(9) The day stated under subsection (8)(b) must not be earlier than 30 business days after the day the notice is given.

### ***Division 3—Seasonal water assignment of water licences***

#### **230 Application of div 3**

*This division applies if—*

- (a) a water resource plan or the resource operations plan that implements the water resource plan allows seasonal water assignments; or*
- (b) for water licences to which no water resource plan or resource operations plan applies—a regulation allows seasonal water assignments and makes seasonal water assignment rules.*

#### **231 Applying for seasonal water assignment**

*(1) The licensee of a water licence may apply for a seasonal water assignment for the water year in which the application is made.*

*(2) The application must be—*

- (a) made to the chief executive in the approved form; and*
- (b) supported by sufficient information to enable the chief executive to decide the application; and*
- (c) accompanied by the fee prescribed under a regulation.*

#### **232 Additional information may be required**

*The chief executive may require—*

- (a) the applicant to give additional information about the application; or*
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*

#### **233 Deciding application for seasonal water assignment**

*(1) If the application is in accordance with the seasonal water assignment rules, the chief executive must approve the application, with or without conditions.*

(2) *If the application is not in accordance with the rules, the chief executive must refuse the application.*

(3) *As soon as practicable after deciding the application, the chief executive must give the applicant an information notice.*

(4) *If the chief executive grants the application, with or without conditions, the chief executive must, as soon as practicable after approving the application, give the proposed assignee a water permit for the water year in the approved form.*

(5) *The assignment has effect from the day the information notice is given to the applicant.*

### **234 Effect of approval on water licence**

*To the extent that the application is approved, the licensee is not authorised to take water under the water licence.*

### **235 Conditions of seasonal water assignment**

*The water permit is subject to the conditions—*

- (a) to which the water licence is subject; and*
- (b) prescribed under a regulation; and*
- (c) the chief executive may impose for a particular permit.*

### **236 Application of ss 243, 244 and 246 to water permit**

*Sections 243, 244 and 246 apply to a water permit granted under this division.*

## **Division 4—Water permits**

### **237 Applying for water permit**

(1) *A person may apply for a water permit for taking water for an activity.*

(2) *At the time the application is made, the activity, including, for example, the construction of a road, mineral exploration or petroleum exploration, must have a reasonably foreseeable conclusion date.*

**(3)** *The application must be—*

- (a) made to the chief executive in the approved form; and*
- (b) supported by sufficient information to enable the chief executive to decide the application; and*
- (c) accompanied by the fee prescribed under a regulation.*

### **238 Additional information may be required**

*The chief executive may require—*

- (a) the applicant to give additional information about the application; or*
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*

### **239 Criteria for deciding application for water permit**

**(1)** *In deciding whether to grant or refuse the application or the conditions for the water permit, the chief executive must consider the following—*

- (a) the application and additional information given in relation to the application;*
- (b) any water resource plan or resource operations plan that may apply to the permit;*
- (c) existing water entitlements and authorisations to take or interfere with water;*
- (d) any information about the impacts on natural ecosystems;*
- (e) any information about the impacts on the physical integrity of watercourses, lakes, springs or aquifers;*
- (f) policies developed in consultation with local communities for the sustainable management of local water;*
- (g) the public interest.*

**(2)** *The chief executive may also consider whether the applicant has been convicted of an offence against this Act, the repealed Act or an interstate law.*

**240 Deciding application for water permit**

(1) *If the chief executive is satisfied the application should be granted, the chief executive must approve the application for a stated period, with or without conditions.*

(2) *If the chief executive is not satisfied the application should be granted, the chief executive must refuse the application.*

(3) *Within 30 business days after deciding the application, the chief executive must give the applicant an information notice.*

(4) *If the chief executive grants the application, with or without conditions, the chief executive must, within 30 business days after granting the application, give the applicant a water permit in the approved form.*

(5) *The permit has effect from the day the information notice is given to the applicant.*

**241 Contents of water permit**

*A water permit—*

- (a) *relates to the location or locations stated on the permit; and*
- (b) *must be granted for a stated period; and*
- (c) *can not be transferred, amended, renewed or suspended; and*
- (d) *must be for a stated activity.*

**242 Conditions of water permit**

*The water permit is subject to the conditions—*

- (a) *prescribed under a regulation; and*
- (b) *the chief executive may impose for a particular permit.*

**243 Surrendering water permit**

(1) *A permittee may surrender a water permit by giving the chief executive a notice of surrender.*

(2) *The surrender—*

- (a) *takes effect from the day the surrender notice is received by the chief executive; and*

- (b) *does not affect in any way a duty under this Act about works imposed on the permittee before the surrender.*

#### **244 Cancelling water permit**

(1) *The chief executive may cancel a water permit if the chief executive is satisfied the permit should be cancelled.*

(2) *Section 218 applies to the cancellation—*

(a) *as if a reference in the section to—*

(i) *an amendment were a reference to a cancellation; and*

(ii) *a licence were a reference to a permit; and*

(iii) *a licensee were a reference to a permittee; and*

(b) *with any other necessary changes.*

### **Division 5—General**

#### **245 Replacing lost or destroyed water licence or permit**

(1) *If a water licence or permit has been lost or destroyed, the licensee or permittee may apply to the chief executive for a replacement licence or permit.*

(2) *The application must be—*

(a) *in writing; and*

(b) *accompanied by the fee prescribed under a regulation.*

(3) *If the applicant complies with subsection (2) the chief executive must give the applicant a replacement licence or permit.*

#### **246 Limiting water taken under water licence or permit**

(1) *If there is a shortage of water, the chief executive may limit the water that may be taken under a water licence or permit, by publishing a notice.*

(2) *The notice may be for any 1 or more of the following—*

(a) *the times when water may be taken by a licensee or permittee;*

(b) *the purpose for which water may be taken;*



(c) *the volume of water, measured or estimated, that may be taken by a licensee or permittee for a stated purpose.*

(3) *The notice remains in force for the period stated in the notice or, if no period is stated, until the chief executive publishes another notice withdrawing the first notice.*

(4) *A person must not take water in contravention of the notice.*

*Maximum penalty for subsection (4)—500 penalty units.*

### **247–257 Section numbers not used**

*See footnote to section 1.<sup>14</sup>*

## **PART 7—CATCHMENT AREAS**

### **258 Declaring catchment areas**

For preserving the quality of water, a regulation may declare an area to be a catchment area.

### **259 Regulating land use in catchment area**

(1) The regulation may regulate—

- (a) the use of land in the catchment area, or a part of the area, identified in the regulation; and
- (b) the construction and use of buildings and structures on the land.

(2) To the extent that a planning scheme under the *Integrated Planning Act 1997* or a local law is inconsistent with the regulation, the planning scheme or local law is ineffective.

(3) To the extent that a development approval under the *Integrated Planning Act 1997* is inconsistent with the regulation, the development approval is ineffective.

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14 This part had not commenced on or before the reprint date.

(4) The regulation does not affect a person's power under this or another Act to take action to protect the quality of water in the catchment area.

### **260–265 Section numbers not used**

See footnote to section 1.

## ***PART 8—RIVERINE PROTECTION***

### ***Division 1—Granting permits for destroying vegetation, excavating or placing fill in a watercourse, lake or spring***

#### ***266 Applying for permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring***

(1) A person may apply to the chief executive for a permit to do any or all of the following activities—

- (a) *destroy vegetation in a watercourse, lake or spring;*
- (b) *excavate in a watercourse, lake or spring;*
- (c) *place fill in a watercourse, lake or spring.*

(2) *If the applicant is not the registered owner of land that wholly contains the watercourse, lake or spring or the part of the watercourse, lake or spring where the activity is to take place, the application must include the written consent of all owners of land—*

- (a) *wholly containing a length of the watercourse in which the activity is to take place, or a part of the lake or spring where the activity is to take place; or*
- (b) *adjoining the watercourse, lake or spring, where the activity is to take place.*

(3) *The application must—*

- (a) *be made to the chief executive in the approved form; and*
- (b) *state the proposed activity and the purpose of the activity; and*
- (c) *be accompanied by the fee prescribed under a regulation.*

**267 Additional information may be required**

(1) *The chief executive may require—*

- (a) *the applicant to give additional information about the application, including, for example, a statement of environmental effects; or*
- (b) *any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*

(2) *If the applicant fails, without reasonable excuse, to comply with the request, the application lapses.*

**268 Criteria for deciding application for a permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring**

*In deciding whether to grant or refuse the application or what should be the conditions of the permit, the chief executive must consider the following—*

- (a) *the effects of the proposed activity on water quality;*
- (b) *the quantity of vegetation to be destroyed or material to be excavated or placed;*
- (c) *the type of vegetation to be destroyed or material to be excavated or placed;*
- (d) *the seasonal factors influencing the watercourse, lake or spring from time to time;*
- (e) *the position in the watercourse, lake or spring of the vegetation to be destroyed or the proposed excavation or placing of fill;*
- (f) *the reasons given by the applicant for wishing to carry out the activity;*
- (g) *whether, and to what extent, the activity that the permit would allow may have an adverse effect on the physical integrity of the watercourse, lake or spring;*
- (h) *the implications of granting the permit for the long-term sustainable use of the river systems of Australia, and especially the cumulative effect of granting the application and likely similar applications;*
- (i) *any other matters the chief executive considers to be relevant.*

**269 Deciding application for permit to destroy vegetation, excavate or place fill in a watercourse, lake or spring**

(1) *If the chief executive is satisfied the application should be approved, the chief executive must issue a permit, with or without conditions.*

(2) *If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

(3) *Within 30 business days after deciding the application, the chief executive must give the applicant an information notice.*

(4) *If the chief executive grants the application, with or without conditions, the chief executive must, within 30 business days after approving the application, give the applicant a permit in the approved form.*

(5) *The permit—*

(a) *has effect from the day the applicant is given the permit; and*

(b) *must state how long it is to stay in force.*

**Division 2—Dealings with permits to destroy vegetation, excavate or place fill in a watercourse, lake or spring****270 Amending conditions or cancelling permit**

(1) *The chief executive may amend the conditions of, or cancel, the permit, if—*

(a) *the conditions of the permit are not being complied with or have been contravened; or*

(b) *it becomes evident that any adverse effect of the permitted activity on the physical integrity of the watercourse, lake or spring is greater than was anticipated when the permit was issued.*

(2) *Before amending or cancelling the permit, the chief executive must give the permittee a show cause notice inviting the permittee to show cause, within the reasonable time stated in the notice, why the permit should not be amended or cancelled.*

**271 Deciding whether to proceed with proposed cancellation or amendment**

(1) *In deciding whether to cancel or amend the permit, the chief executive must consider any properly made submission about the proposed cancellation or amendment.*

(2) *If the chief executive is satisfied the permit should be amended or cancelled, the chief executive must give the permittee—*

(a) *an information notice; and*

(b) *if the permit is amended—an amended permit in the approved form.*

(3) *If the chief executive is not satisfied the permit should be amended or cancelled, the chief executive must give the permittee notice that the permit will not be amended or cancelled.*

(4) *If the permit is cancelled or amended, the amendment or cancellation takes effect from the day the permittee is given the information notice.*

**272 Immediate suspension of permit in exceptional circumstances**

(1) *In addition to giving the permittee a show cause notice about the amendment or cancellation of the permit, the chief executive may give the permittee an information notice that immediately suspends the permit.*

(2) *The suspension has effect from the day the permittee is given the notice.*

(3) *The notice may be given only if the chief executive is satisfied exceptional circumstances exist in relation to the permit to cause the chief executive reasonable concern for the physical integrity of the watercourse, lake or spring.*

(4) *The permittee must not act under the permit during the period the permit is suspended, unless the permittee has a reasonable excuse.*

*Maximum penalty—1 665 penalty units.*

(5) *The notice has effect until—*

(a) *the permit is amended or cancelled; or*

(b) *the chief executive gives the permittee notice that the suspension has been withdrawn.*

(6) *If the chief executive is satisfied the suspension should not continue, the chief executive must give the permittee notice that the suspension has been withdrawn.*

(7) *If suspension of the permit is withdrawn, the withdrawal takes effect from the day the permittee is given notice of the withdrawal.*

(8) *After the suspension is withdrawn, the permit remains in effect only for the period during which it would have been in effect but for the suspension.*

### ***Division 3—Notices***

#### ***273 Notice to owner of land to remove vegetation etc.***

***(1) This section applies if—***

***(a) there is on any land vegetation, litter, refuse or other matter; and***

***(b) it appears to the chief executive that—***

***(i) the vegetation, litter, refuse or matter—***

***(A) has obstructed, or may obstruct, the flow of water in a watercourse, lake or spring; or***

***(B) has had, or may have, a significant adverse effect on the physical integrity of a watercourse, lake or spring; or***

***(C) has significantly affected, or may significantly affect, the quality of water in a watercourse, lake or spring; and***

***(ii) action should be taken in relation to the vegetation, litter, refuse or matter to protect or restore the flow of water in the watercourse, lake or spring, the physical integrity of the watercourse, lake or spring or the quality of water in the watercourse, lake or spring.***

***(2) The chief executive may give notice to the owner of the land requiring the person to take the reasonable action stated in the notice within the reasonable time and in the way, if any, stated in the notice.***

(3) *The owner must comply with the notice, unless the owner has a reasonable excuse.*

*Maximum penalty—1 665 penalty units.*

(4) *For section 851, the notice is taken to be a compliance notice.*

(5) *In this section—*

*“vegetation” includes non-native vegetation of any kind.*

### **274–278 Section numbers not used**

*See footnote to section 1.*

## **PART 9—QUARRY MATERIALS**

### **Division 1—Preliminary**

#### **279 Ownership and management of certain quarry material**

*Despite the Forestry Act 1959—*

- (a) *quarry material that is in the part of a watercourse or lake, the beds and banks of which are the property of the State, is the property of the State; and*
- (b) *all quarry material is under the control of the chief executive.*

### **Division 2—Granting and selling allocations of quarry material**

#### **280 Applying for allocation of quarry material**

- (1) *Any person may apply for an allocation of quarry material.*
- (2) *The application must be—*
  - (a) *made to the chief executive in the approved form; and*

- (b) *supported by sufficient information to enable the chief executive to decide the application; and*
- (c) *accompanied by the fee prescribed under a regulation.*

### **281 Additional information may be required**

*(1) For deciding the application, the chief executive may require all or any of the following—*

- (a) *the applicant to give additional information about the application;*
- (b) *the applicant to pay to the chief executive the reasonable amount decided by the chief executive by way of contribution towards the costs of research and investigations necessary for deciding the application;*
- (c) *any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*

*(2) If the applicant does not give the chief executive the further information, documents or amount by the reasonable date stated in the notice, the application lapses.*

### **282 Criteria for deciding application for allocation of quarry material**

*(1) In deciding whether to grant or refuse the application or what should be the conditions of the allocation, the chief executive must consider the impact the removal of the quarry material will have on the long term sustainable use of the watercourse or lake, including the following—*

- (a) *the physical integrity of the watercourse or lake, including bed and bank stability;*
- (b) *the condition of the watercourse or lake, including its ability to function naturally;*
- (c) *the supply of sediments to estuaries and the sea from the watercourse or lake;*
- (d) *the quarry material available in the watercourse or lake and any existing quarry material allocations for the watercourse or lake.*

*(2) Subsection (1) does not stop the chief executive from considering other matters relevant to the removal of the material.*



**283 Deciding application for allocation of quarry material**

*(1) If the chief executive is satisfied the application should be approved, the chief executive must grant the application, with or without conditions.*

*(2) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

*(3) Within 30 business days after deciding the application, the chief executive must give the applicant—*

*(a) notice of the decision; and*

*(b) if the chief executive grants the application, with or without conditions—an allocation notice in the approved form.*

*(4) The allocation notice—*

*(a) has effect from the day stated in the notice; and*

*(b) remains in force, unless sooner cancelled or suspended, for the period decided by the chief executive but not more than 5 years.*

**284 Selling allocation of State quarry material by auction or tender**

*(1) The chief executive may sell by auction or tender an allocation of State quarry material.*

*(2) In selling the allocation, the chief executive must consider the impact the removal of the quarry material will have on the long term sustainable use of the watercourse or lake, including the matters mentioned in section 282.*

*(3) The chief executive must give the buyer an allocation notice.*

*(4) Sections 285 to 287 apply to the allocation notice.*

**Division 3—Content and conditions of allocation notices****285 Content of allocation notices**

*Without limiting what may be included in an allocation notice, the notice must state—*

*(a) the quantity of quarry material for the allocation; and*

*(b) the maximum rate for extracting the quarry material.*

**286 Conditions of allocation notices**

An allocation notice is subject to—

- (a) *the condition that the allocation holder give to the chief executive, within 7 days after the end of each month, a written return in the approved form for all quarry material removed by the holder, in the month; and*
- (b) *any other condition stated in the allocation notice.*

**287 Financial assurance for allocation of quarry material**

(1) *Without limiting section 286(b), the allocation of quarry material may be subject to a condition that the allocation holder give the chief executive financial assurance in the form, and for the reasonable amount, decided by the chief executive.*

(2) *The financial assurance must continue in force, until all the conditions of the allocation notice are complied with to the satisfaction of the chief executive.*

**Division 4—Dealings with allocations of quarry material****288 Transferring allocation of quarry material**

(1) *The allocation notice holder may apply to transfer all or part of the allocation to another person.*

(2) *The application must be—*

- (a) *made to the chief executive in the approved form; and*
- (b) *supported by sufficient information to enable the chief executive to decide the application, including, for example, the consent of the transferee to the transfer; and*
- (c) *accompanied by the fee prescribed under a regulation.*

(3) *Within 30 business days after receiving the application, the chief executive must—*

- (a) *if the transfer is for all the allocation—approve the transfer; or*
- (b) *if the transfer is for part of the allocation—*

- (i) *approve the transfer, as applied for, with or without conditions; or*
- (ii) *approve the transfer, as varied by the chief executive, with or without conditions; or*
- (iii) *refuse the transfer.*

*(4) In making a decision under subsection (3)(b), the chief executive must consider the impact the transfer will have for the matters mentioned in section 282.*

*(5) Within 30 business days after deciding the application, the chief executive must—*

- (a) give the applicant and the transferee an information notice; and*
- (b) if the renewal is approved, with or without conditions—give the transferee a new allocation notice in accordance with the approval; and*
- (c) if the application was not to transfer all of an allocation notice—give the applicant an amended allocation notice for the part not transferred.*

*(6) The transfer has effect from the day the information notice is given.*

### **289 Renewing allocations of quarry material**

*(1) The allocation notice holder may apply to renew the allocation notice.*

*(2) The application must be—*

- (a) made to the chief executive in the approved form; and*
- (b) accompanied by the fee prescribed under a regulation.*

*(3) Within 30 business days after receiving the application, the chief executive must—*

- (a) approve the renewal, as applied for, with or without conditions; or*
- (b) approve the renewal, as varied by the chief executive, with or without conditions; or*
- (c) refuse the renewal.*

(4) *In deciding whether to renew the allocation, the chief executive must consider the impact the renewal will have for the matters mentioned in section 282.*

(5) *Within 30 business days after deciding the application, the chief executive must give the applicant—*

- (a) *an information notice; and*
- (b) *if the renewal is approved, with or without conditions—a new allocation notice in accordance with the approval.*

### **290 Amending, suspending or cancelling allocation notice**

(1) *The chief executive may amend, suspend or cancel an allocation notice if the chief executive is satisfied, or reasonably believes—*

- (a) *the allocation notice was granted in error or in consequence of a false or fraudulent document, statement or representation; or*
- (b) *the allocation notice holder—*
  - (i) *is convicted of an offence against this Act; or*
  - (ii) *failed to comply with a condition of the allocation notice; or*
- (c) *unforeseen degradation in the condition of the watercourse or lake requires the allocation notice to be amended, suspended or cancelled.*

(2) *An amendment under subsection (1) must not increase the quantity of material that may be extracted, the rate of extraction or the period for which the allocation notice has effect.*

(3) *Before amending, suspending or cancelling an allocation notice, the chief executive must give the holder a show cause notice inviting the holder to show cause, within the reasonable time stated in the notice, why the allocation notice should not be amended, suspended or cancelled.*

### **291 Deciding whether to proceed with proposed amendment, suspension or cancellation of allocation notice**

(1) *In deciding whether to amend, suspend or cancel the allocation notice, the chief executive must consider any properly made submission about the proposed amendment, suspension or cancellation.*

(2) *If the chief executive is satisfied the allocation notice should be amended, suspended or cancelled, the chief executive must amend, suspend or cancel the allocation notice.*

(3) *If the chief executive is satisfied the allocation notice should not be amended, suspended or cancelled, the chief executive must give the holder a notice that the allocation notice will not be amended, suspended or cancelled.*

(4) *Within 30 business days after amending, suspending or cancelling the allocation notice, the chief executive must give the holder an information notice about the amendment, suspension or cancellation.*

(5) *The amendment, suspension or cancellation takes effect the day the holder is given the information notice.*

(6) *If the allocation notice is amended, the chief executive must give the holder an amended allocation notice.*

(7) *If the allocation notice is suspended, it is of no effect during the period of suspension and after the suspension remains in effect only for the period during which it would have been in effect but for the suspension.*

(8) *The suspension may be for the reasonable period the chief executive decides.*

### **Division 5—General**

#### **292 Royalty or price for State quarry material**

(1) *For State quarry material removed under an allocation notice, royalty at the rate prescribed under a regulation or the price set for the sale is payable to the State in the way and at the times prescribed under the regulation or the sale.*

(2) *Royalty or the price payable and not paid is a debt due to the State.*

(3) *A person who fails to pay the royalty or the price payable commits an offence against this Act.*

*Maximum penalty—50 penalty units.*

#### **293–298 Section numbers not used**

*See footnote to section 1.*

## **PART 10—WATER BORE DRILLERS**

### ***Division 1—Granting water bore driller’s licences***

#### **299 Applying for water bore driller’s licence**

- (1) *An individual may apply for a water bore driller’s licence.*
- (2) *The application must—*
- (a) *be made to the chief executive in the approved form; and*
  - (b) *state the class of licence prescribed under a regulation for which the applicant is applying; and*
  - (c) *state any licence endorsements, prescribed under a regulation, the applicant is applying for; and*
  - (d) *be supported by evidence that the applicant has the qualifications or experience prescribed under a regulation for a water bore driller; and*
  - (e) *be accompanied by the fee prescribed under a regulation.*

#### **300 Additional information may be required**

- (1) *The chief executive may require—*
- (a) *the applicant to give additional information about the applicant’s experience or history in the water bore drilling industry, including, for example if the applicant has—*
    - (i) *been convicted of an offence against this Act, the repealed Acts or an interstate law; or*
    - (ii) *held a licence to drill water bores that has been cancelled or suspended under this Act, the repealed Acts or an interstate law; or*
  - (b) *any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*
- (2) *If the applicant fails, without reasonable excuse, to comply with the request, the application lapses.*

**301 Deciding application for water bore driller's licence**

*(1) If the chief executive is satisfied the application should be approved, the chief executive must grant the application.*

*(2) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

*(3) Within 30 business days after deciding the application, the chief executive must give the applicant a water bore driller's licence in the approved form—*

- (a) for a particular class of licence; and*
- (b) with particular endorsements; and*
- (c) with or without conditions.*

*(4) If the application is refused or the licence given to the applicant is different, in any respect, from the licence applied for, the chief executive must give the applicant an information notice.*

*(5) The licence has effect for 5 years from the day stated in it.*

**302 Conditions of water bore driller's licence**

*(1) The water bore driller's licence is subject to the conditions—*

- (a) prescribed under a regulation; and*
- (b) the chief executive may impose for a particular licence.*

*(2) Without limiting subsection (1), the conditions may limit the types of equipment and drilling methods the licence holder may use.*

**303 Refusing application for water bore driller's licence**

*If the chief executive refuses the application, the chief executive must give the applicant an information notice within 30 business days after deciding the application.*

**Division 2—Dealings with water bore driller's licences****304 Applying to amend water bore driller's licence**

(1) A licence holder may apply to amend a water bore driller's licence, including to upgrade the licence.

(2) An application to amend the licence must be dealt with under section 299 to 303 as if it were an application for a licence.

**305 Giving show cause notice about proposed amendment of water bore driller's licence**

(1) Subsection (2) applies if the chief executive is satisfied the licence holder is no longer competent to carry out water bore drilling activities authorised by the licence.

(2) The chief executive must give the holder a show cause notice as to why the licence should not be amended in the way stated in the notice.

**306 Deciding proposed amendment of water bore driller's licence**

(1) In deciding whether to proceed with the proposed amendment, the chief executive must consider any properly made submission about the proposed amendment.

(2) If the chief executive is satisfied the proposed amendment should be made the chief executive must, within 30 business days after the decision, give the holder an amended licence in the approved form and an information notice.

(3) If the holder agrees in writing to an amendment that is different from the amendment stated in the show cause notice, the chief executive must, within 30 business days after the agreement is received, give the holder an amended licence in the approved form.

(4) If the chief executive is not satisfied the amendment should be made, the chief executive must give the holder notice that the licence will not be amended.

(5) The amended licence takes effect from the day the holder is given the amended licence.



**307 Minor amendment of water bore driller's licence**

*The chief executive may amend the licence without complying with the provisions of this division about amending a licence if the amendment is only—*

- (a) to correct a minor error in the licence, or make another change that is not a change of substance; or*
- (b) if the licence states that an amendment of a stated type may be made to the licence by amendment under this section—to make an amendment of the stated type.*

**308 Renewing water bore driller's licence**

*(1) The licence holder may apply to renew a water bore driller's licence.*

*(2) The application must be—*

- (a) made to the chief executive in the approved form; and*
- (b) made before the licence expires; and*
- (c) accompanied by the fee prescribed under a regulation.*

*(3) If the holder applies to renew the licence, the licence remains in force until the applicant has been notified of the chief executive's decision on the application.*

*(4) After considering the application and any need to change the class, endorsements or conditions shown on the licence, if the chief executive is satisfied the application should be approved, the chief executive must—*

- (a) approve the application; or*
- (b) approve the application, subject to variation of the class, endorsements or conditions shown on the licence.*

*(5) If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

*(6) Within 30 business days after deciding the application, the chief executive must give the applicant an information notice.*

*(7) The chief executive, on approving the application, must give the holder a new licence in the approved form.*

**309 Suspending water bore driller's licence**

*(1) The chief executive may suspend a water bore driller's licence if the chief executive is satisfied the licence holder—*

- (a) has been convicted of an offence against this Act, the repealed Acts or an interstate law; or*
- (b) has carried out water bore drilling activities not permitted for the class of licence; or*
- (c) has failed to comply with the conditions of the licence; or*
- (d) has failed to comply with section 313.*

*(2) Before the chief executive acts under subsection (1), the chief executive must give the holder a show cause notice about the proposed suspension.*

*(3) In deciding whether to suspend the licence, the chief executive must consider any properly made submission about the proposed suspension.*

*(4) If the chief executive is satisfied the licence should be suspended, the chief executive must, within 30 business days after the decision, give the holder an information notice.*

*(5) If the chief executive is not satisfied the licence should be suspended, the chief executive must give the holder notice that the licence will not be suspended.*

*(6) The suspension takes effect from the day the information notice is given to the holder.*

*(7) If the licence is suspended, it is of no effect during the period of suspension.*

**310 Cancelling water bore driller's licence**

*(1) The chief executive may cancel a water bore driller's licence if the chief executive is satisfied—*

- (a) the licence was granted or renewed in error or in consequence of a false or misleading representation or declaration (made either orally or in writing); or*
- (b) the holder—*
  - (i) has been convicted of an offence against this Act, the repealed Acts or an interstate law; or*

(ii) *has carried out water bore drilling activities not permitted under the licence; or*

(iii) *has failed to comply with the conditions of the licence.*

(2) *Before the chief executive acts under subsection (1), the chief executive must give the holder a show cause notice about the proposed cancellation.*

(3) *In deciding whether to cancel the licence, the chief executive must consider any properly made submission about the proposed cancellation.*

(4) *If the chief executive is satisfied the licence should be cancelled, the chief executive must, within 30 business days after the decision, give the holder an information notice.*

(5) *If the chief executive is not satisfied the licence should be cancelled, the chief executive must give the holder notice that the licence will not be cancelled.*

(6) *The cancellation takes effect from the day the information notice is given to the holder.*

### **Division 3—General**

#### **311 Production of licence to authorised officer**

(1) *This section applies if an authorised officer finds an individual in circumstances that lead, or has information that leads, the authorised officer to reasonably suspect the individual is—*

(a) *drilling, deepening, enlarging or casing a water bore; or*

(b) *removing, replacing, altering or repairing the casing, lining or screening of a water bore; or*

(c) *decommissioning a water bore.*

(2) *The authorised officer may require the individual to produce the individual's water bore driller's licence for the authorised officer's inspection.*

(3) *If the individual holds a current water bore driller's licence, the individual must comply with the requirement, unless the individual has a reasonable excuse.*

*Maximum penalty—50 penalty units.*

(4) When making the requirement, the authorised officer must warn the individual it is an offence to fail to produce the licence, unless the individual has a reasonable excuse.

(5) Subsection (3) does not apply to the individual who is carrying out an activity under the Petroleum Act 1923 or the Mineral Resources Act 1989 if the activity would not result in a water bore being left as a functional bore for the supply of water at the end of the activity.

### **312 Failure to return suspended, cancelled or expired licence**

(1) Subsection (2) applies if an individual's water bore driller's licence has been suspended, cancelled or has expired.

(2) The individual must, unless the individual has a reasonable excuse for not returning the licence, return the licence to the chief executive as soon as practicable (but within 15 business days) after—

- (a) for the suspension of a licence—the day notice of the suspension was given to the individual; or
- (b) for the cancellation of a licence—the day notice of the cancellation was given to the individual.

Maximum penalty for subsection (2)—50 penalty units.

(3) If a licence has been returned to the chief executive under subsection (2) because of suspension of the licence, the chief executive must return the licence to the individual at the end of the period of suspension.

### **313 Records of water bores drilled**

(1) A water bore driller's licence holder must keep, in the approved form, information prescribed under a regulation about any activity the holder may carry out under this Act.

(2) The holder must record the information as each water bore is being drilled.

Maximum penalty—50 penalty units.

(3) The holder must give to the chief executive a copy of the information about each water bore within 30 business days after completing the drilling of the water bore.

Maximum penalty for subsection (3)—50 penalty units.

**314 Replacing lost or destroyed water bore driller's licence**

(1) *If a water bore driller's licence has been lost or destroyed, the licence holder may apply to the chief executive for a replacement licence.*

(2) *The application must be—*

(a) *in writing; and*

(b) *accompanied by the fee prescribed under a regulation.*

(3) *If the holder complies with subsection (2) the chief executive must give the holder a replacement licence.*

**315–325 Section numbers not used**

*See footnote to section 1.*

**PART 11—OPERATIONS LICENCE****Division 1—Preliminary****326 Purpose of pt 11**

(1) *Under this part, the chief executive may grant an operations licence for a single operation for the taking water by a person as an agent for 2 or more water entitlement holders.*

(2) *An operations licence—*

(a) *must state the water entitlements to which the licence relates; and*

(b) *must state the volumes, rates and times when the water may be taken; and*

(c) *may be transferred, amended, suspended or cancelled.*

**327 Application of pt 11**

*This part applies to water entitlements not managed under a resource operations licence.*

## ***Division 2—Granting operations licences***

### ***328 Applying for operations licence***

*(1) A person may apply for an operations licence.*

*(2) The application must be—*

- (a) made to the chief executive in the approved form; and*
- (b) accompanied by the written consent of the relevant entitlement holders; and*
- (c) supported by sufficient information to enable the chief executive to decide the application; and*
- (d) accompanied by the fee prescribed under a regulation.*

### ***329 Additional information may be required***

*The chief executive may require—*

- (a) the applicant to give additional information about the application; or*
- (b) any information included in the application, or any additional information required under paragraph (a), to be verified by statutory declaration.*

### ***330 Criteria for deciding application for operations licence***

*In deciding whether to grant or refuse the application or what should be the conditions of the operations licence, the chief executive—*

- (a) must consider the application and additional information given in relation to the application; and*
- (b) may consider whether the applicant has been convicted of an offence against this Act, the repealed Act or an interstate law.*

### ***331 Deciding application for operations licence***

*(1) If the chief executive is satisfied the application should be approved, the chief executive must approve the application, with or without conditions.*

(2) *If the chief executive is not satisfied the application should be approved, the chief executive must refuse the application.*

(3) *Within 30 business days after deciding the application, the chief executive must—*

- (a) *give the applicant an information notice about the decision; and*
- (b) *give the relevant entitlement holders notice of the decision.*

(4) *If the chief executive grants the application, with or without conditions, the chief executive must, within 30 business days after approving the application—*

- (a) *give the applicant an operations licence in the approved form; and*
- (b) *give the relevant entitlement holders notice of the approval and that the holder must not take water under the entitlement.*

(5) *The licence has effect from the day the information notice is given to the applicant.*

(6) *From the day the licence has effect, a holder of an entitlement mentioned in the licence must not take water under the entitlement.*

### **332 Conditions of operations licence**

(1) *The operations licence is subject to the conditions—*

- (a) *prescribed under a regulation; and*
- (b) *the chief executive may impose for a particular licence.*

(2) *Without limiting subsection (1), the conditions may require the licensee to do all or any of the following—*

- (a) *install a measuring device to measure the volume of water taken, the rate at which it is taken and the time it is taken;*
- (b) *give relevant information reasonably required by the chief executive for the administration or enforcement of this Act.*

### **Division 3—Dealings with operations licences**

### **333 Amending operations licences on application of licensee**

(1) *The licensee may apply to amend an operations licence.*

*(2) The application to amend the licence must be dealt with under section 328 to 332 as if it were an application for a licence.*

### **334 Giving show cause notice about proposed amendment of operations licence**

*(1) The chief executive may amend an operations licence if the chief executive is satisfied the licence should be amended.*

*(2) Before the chief executive acts under subsection (1), the chief executive must give the licensee a show cause notice about the proposed amendment.*

*(3) In deciding whether to amend the licence, the chief executive must consider any properly made submission about the proposed amendment.*

*(4) If the chief executive is satisfied the proposed amendment should be made, the chief executive must, within 30 business days after the decision, give the licensee an amended licence in the approved form and an information notice.*

*(5) If the chief executive is not satisfied the amendment should be made, the chief executive must give the licensee notice that the licence will not be amended.*

*(6) The amended licence takes effect from the day the information notice is given to the licensee.*

### **335 When chief executive must amend operations licence**

*(1) Subsection (2) applies if—*

- (a) a water entitlement holder gives the chief executive notice in the approved form that the holder no longer wishes the holder's water to be taken under the operations licence; or*
- (b) a water entitlement holder ceases to be a water entitlement holder.*

*(2) The chief executive must—*

- (a) amend an operations licence; and*
- (b) give the licensee a copy of the notice received under subsection (1)(a) and an amended licence in the approved form; and*



(c) *advise the entitlement holder of the action taken.*

(3) *The amended licence takes effect from the day stated in the amended licence.*

(4) *Unless the licensee otherwise consents, the day stated in the amended licence must not be earlier than 5 business days after the day the chief executive gives the licensee an amended licence.*

(5) *If subsection (2) applies because of subsection (1)(b), the amendment may, with the consent of the new entitlement holder and the licensee, include the new holder instead of the previous holder.*

### **336 Minor amendment of operations licence**

(1) *The chief executive may amend the operations licence without complying with the provisions of this division about amending a licence if the amendment is only to correct a minor error in the licence, or make another change that is not a change of substance; or*

(2) *If the chief executive amends a licence under subsection (1), the chief executive must give the licensee an amended licence in the approved form.*

### **337 Transferring operations licence**

(1) *The licensee may apply to transfer the operations licence.*

(2) *The application must be—*

(a) *made to the chief executive in the approved form; and*

(b) *accompanied by the fee prescribed under a regulation.*

(3) *Within 30 business days after receiving the application, the chief executive must give the transferee a new licence on conditions that have the same effect as the licence being transferred, other than for the change of name of the licensee.*

### **338 Surrendering operations licence**

(1) *A licensee may surrender an operations licence by giving the chief executive a notice of surrender.*

(2) *The surrender—*

(a) *takes effect on the date on which the surrender notice is received by the chief executive; and*

- (b) *does not affect in any way a duty under this Act about works imposed on the licensee before the surrender.*

### **339 Cancelling operations licence**

(1) *The chief executive may cancel an operations licence if the chief executive is satisfied the licence should be cancelled.*

(2) *Section 334 applies to the cancellation—*

- (a) *as if a reference in the section to an amendment of the licence were a reference to the cancellation of the licence; and*
- (b) *with any other necessary changes.*

### **340–360 Section numbers not used**

*See footnote to section 1.<sup>15</sup>*

## **CHAPTER 3—INFRASTRUCTURE AND SERVICE**

### **PART 1—PRELIMINARY**

#### **361 Purpose of ch 3**

The purpose of this chapter is to—

- (a) provide for a regulatory framework for providing water and sewerage services in Queensland; and
- (b) provide for the functions and powers of service providers; and
- (c) protect the interests of customers of service providers; and<sup>16</sup>
- (d) provide for the regulation of referable dams; and
- (e) provide for flood mitigation responsibilities.

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15 These parts had not commenced on or before the reprint date.

16 See the *Health Act 1937*, section 33(2)(k) with respect to drinking water quality.

**362 Application of chapter to local governments**

Nothing in this chapter affects the powers of a local government or an authorised person under the *Local Government Act 1993*.

**363–369 Section numbers not used**

See footnote to section 1.

**PART 2—SERVICE PROVIDERS***Division 1—Registration of service providers***370 Who must apply for registration as a service provider**

The following persons must, before commencing to operate as a service provider, apply for registration as a service provider—

- (a) each local government that owns infrastructure for supplying water or sewerage services;
- (b) each water authority that owns infrastructure for supplying water or sewerage services;
- (c) each person who is the legal owner of 1 or more elements of infrastructure for supplying water or sewerage services for which a charge is intended to be made.<sup>17</sup>

**371 Applying for registration as a service provider**

(1) An application for registration as a service provider must be—

- (a) made to the regulator in the approved form; and
- (b) supported by sufficient information to enable the regulator to decide the application; and
- (c) accompanied by the fee prescribed under a regulation.

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<sup>17</sup> See section 821 (Supplying unauthorised services)

(2) The regulator may require—

- (a) the applicant to give additional information about the application; or
- (b) the information included in the application, or the additional information required under paragraph (a), to be verified by statutory declaration.

### **372 Registration as a service provider**

(1) If the regulator is satisfied the applicant has complied with section 371, the regulator must—

- (a) register the applicant in the service provider register as a service provider for the service shown in the application; and
- (b) give the applicant notice of the registration.

(2) The registration takes effect the day the regulator registers the applicant in the register as a service provider.

### **373 Applying to amend service provider's details of registration**

(1) A service provider may apply to change the service provider's details of registration in the service provider register by, for example—

- (a) including a service or adding infrastructure for which the service provider is not currently registered; or
- (b) removing a service or infrastructure for which the service provider is currently registered.

(2) The application must be made to the regulator in the approved form.

(3) On receiving the application—

- (a) the regulator must record the changes in the register; and
- (b) give the service provider a copy of the service provider's details, including the amendments, as registered in the register.

### **374 Notice of transfer of infrastructure**

(1) Subsection (2) applies if a service provider (the “**transferor**”) intends to transfer the ownership of the service provider's infrastructure for a registered service to another person (the “**transferee**”).

(2) The transferor must give the regulator notice of the proposed transfer.

(3) The notice must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

(4) The regulator may require—

- (a) the transferor or transferee to give additional information about the notice; or
- (b) the information included in the notice, or the additional information required under paragraph (a), to be verified by statutory declaration.

### **375 Registering transferee as a service provider**

(1) If the regulator is satisfied the transferor has complied with section 374, the regulator must—

- (a) cancel the transferor's registration as a service provider for the infrastructure and services shown in the notice of the proposed transfer; and
- (b) register the transferee in the service provider register as a service provider for the infrastructure and services; and
- (c) give the transferor notice of the cancellation under paragraph (a); and
- (d) give the transferee notice of the registration under paragraph (b).

(2) The registration—

- (a) must not be on a day earlier than the day the regulator received the notice of the proposed transfer; but
- (b) may, if the transferor and transferee give their written agreement, be on a later day.

(3) On registration—

- (a) the transferor stops being the service provider for the infrastructure and services; and
- (b) the transferee becomes the service provider for the infrastructure and services.

(4) Subsection (5) applies if—

- (a) the ownership of infrastructure is transferred under this section; and
- (b) the regulator has given a compliance notice to the transferor before registration takes effect under subsection (2); and
- (c) the transferor has not complied with the notice.

(5) The transferee is taken to have been the service provider given the notice.

### **376 Notice of intention to stop operating as a service provider**

(1) Subsection (2) applies if—

- (a) a service provider is likely to stop supplying a registered service; and
- (b) there is no other entity willing to take over the operation of all or part of the service provider's infrastructure for the service.

(2) The service provider must give the regulator 20 business days notice of the possible stoppage unless the service provider has a reasonable excuse for not giving the notice.<sup>18</sup>

Maximum penalty—1 000 penalty units.

### **377 Registration as a service provider is not a right to water entitlement or resource operations licence**

To remove any doubt, it is declared that registration as a service provider does not, of itself, entitle a person registered as a service provider to a water entitlement or a resource operations licence.

### **378 Reviewing and changing service provider registration details**

(1) Within 30 business days after 30 June each year, each service provider must review the service provider's registration details.

(2) If the details have changed since the last review, the service provider must give the regulator notice of the change in the approved form.

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18 See section 955(1)(a)(ii).

- (3) On receiving the notice the regulator must—
- (a) record the changes in the register; and
  - (b) give the service provider a copy of the service provider’s details, including the changes, as registered in the register.

### *Division 2—General powers of service providers and authorised persons*

#### **379 Definition for div 2**

In this division—

“place” does not include a part of a place used for residential purposes.

#### **380 Application of div 2**

This division applies only to the services for which a service provider is registered.

#### **381 Power to disconnect unauthorised connections**

(1) Subsection (2) applies if a person makes an unauthorised connection to the service provider’s infrastructure.

(2) The service provider may give the person a notice asking the person to state, within the reasonable time stated in the notice, why the service provider should not disconnect the connection.

(3) The time stated in the notice must not be less than 48 hours after the notice is given.

(4) If the person does not satisfy the service provider, within the time stated in the notice, why the connection should not be disconnected—

- (a) an authorised person may enter the place where the connection is and disconnect the connection; and
- (b) the service provider may recover from the person, as a debt due to the service provider—
  - (i) the cost of the disconnection; and
  - (ii) the value of any service used by the person through the connection.

(5) However, if the connection is causing damage to the service provider's infrastructure—

- (a) an authorised person may, without notice, enter the place where the connection is and disconnect the connection; and
- (b) the service provider may recover from the person, as a debt due to the service provider—
  - (i) the cost of the disconnection; and
  - (ii) the value of any service used by the person through the connection.

(6) If an authorised person enters a place under subsection (5), the authorised person must give a notice to the person who appears to the authorised person to be the owner of, or in control of, the place, advising the purpose of the entry.

(7) If there is no person at the place at the time of the entry under subsection (5), the authorised person must—

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

### **382 Power to direct remedial work**

(1) This section applies if the service provider requires a person to rectify defective or improper equipment that is connected to, or is adversely impacting on, the service provider's infrastructure.

(2) The service provider may give the person a notice to rectify the equipment within the reasonable time stated in the notice.

(3) If the person does not rectify the equipment within the time stated in the notice—

- (a) an authorised person may enter the place where the equipment is and rectify the equipment; and
- (b) the service provider may recover from the person, as a debt due, the cost of the rectification.



**383 Power to install meters**

(1) A service provider may install, or approve the installation of, a meter in a position, decided by the service provider, on infrastructure supplying water to premises.

(2) The meter is the property of the service provider even if it is installed inside the boundary of the premises.

**384 Power to enter places for restricted purposes**

(1) An authorised person may enter a place to inspect, operate, change, maintain, remove, repair or replace a service provider's infrastructure at the place.

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

- (a) the occupier consents to the entry; or
- (b) the service provider has given the occupier at least 14 days notice of the entry and the purpose of the entry; or
- (c) the service provider needs to take urgent action to protect its infrastructure at the place.

(3) After entering the place, the authorised person may carry out the activity that is the purpose of the entry.

(4) If an authorised person enters a place under subsection (2)(c), the authorised person must give a notice to the person who appears to the authorised person to be the owner of, or in control of, the place, advising the purpose of the entry.

(5) If there is no person at the place at the time of the entry under subsection (2)(b), the authorised person must—

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

**385 Giving notice of damage**

(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 notice of the particulars of the damage.

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

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

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secure way and in a conspicuous position.

### **386 Compensation for damage**

(1) A person may claim compensation from the service provider if the person incurs loss or expense because of the exercise or purported exercise of a power under this division by the authorised person or the service provider.

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

(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.

(4) For this section, loss or expense does not include loss or expense caused by the act of removing an unauthorised connection or rectifying defective or improper equipment.

### **387 Recovery of costs**

(1) This section applies if—

- (a) a person damages a service provider's infrastructure; or
- (b) a service provider suffers loss because a person—
  - (i) makes an unauthorised connection to the service provider's infrastructure; or
  - (ii) discharges unauthorised material into the service provider's infrastructure; or
  - (iii) interferes with the service provider's infrastructure; or
  - (iv) pollutes the water in the service provider's infrastructure.

(2) The service provider may recover from the person, as a debt due to the service provider, the amount of the loss or the reasonable cost of repairing the damage.

### *Division 3—Power to restrict water supply*

#### **388 Restricting water supply**

(1) If a water service provider considers it necessary, because of climatic conditions or water conservation needs, the water service provider may restrict—

- (a) the volume of water supplied to a customer or type of customer; or
- (b) the hours when water may be used on premises for stated purposes; or
- (c) the way water may be used on premises.

(2) The water service provider may impose a restriction under subsection (1) (a “**water restriction**”) only if—

- (a) there is an urgent need for the water restriction; or
- (b) the available water supply has fallen to a level at which unrestricted use of the water is not in the public interest; or
- (c) the service provider has a reasonable and comprehensive demand management strategy and the restriction is essential to ensure the aims of the strategy are met; or
- (d) the Minister has published a notice under section 22 or if a regulation has been made under section 23.

(3) However, a restriction imposed under subsection (1) must be consistent with conditions contained in the service provider’s resource operations licence, interim resource operations licence, water licence or water allocation, relating to the supply of the water.

#### **389 Notice of water restriction must be given**

(1) The water service provider must give notice of the water restriction to anyone affected by it in the way the service provider considers

appropriate having regard to the circumstances in which the restriction is imposed.

(2) The water restriction does not have effect until the day after the notice is given.

(3) A person must not contravene a water restriction.

Maximum penalty for subsection (3)—200 penalty units.

### **390 Temporary interruptions to water supply**

(1) A water service provider may shut off the water supply to premises for the time reasonably necessary for the service provider to perform work on the service provider's infrastructure, including a property service.

(2) However, the service provider must give to anyone likely to be affected by shutting off the water supply at least 48 hours notice of its intention to shut off the water supply, advising the reasons for shutting it off, and for how long it will be shut off.

(3) Subsection (2) does not stop the service provider shutting off its water supply, without notice, if there is—

- (a) a serious risk to public health; or
- (b) a likelihood of serious injury to persons or damage to property; or
- (c) another emergency.

(4) If the service provider acts under subsection (3), the service provider must give, to anyone likely to be affected by the action—

- (a) notice of the action; and
- (b) the reasons for the action; and
- (c) if the action is continuing when the notice is given—notice about how long the action will continue.

## ***Division 4—Authorised persons***

### **391 Appointing authorised persons**

A service provider may appoint a person to be an authorised person if—

- (a) the service provider is satisfied the person has the necessary expertise or experience to be an authorised person; or
- (b) the person has satisfactorily finished training approved by the service provider.

### **392 Authorised person's identity cards**

(1) The service provider must give an identity card to each authorised person.

(2) The identity card must—

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

### **393 Failure to return identity card**

A person who ceases to be an authorised person must give the person's identity card to the service provider within 15 business days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **394 Producing and displaying identity card**

(1) An authorised person may exercise a power under division 2 in relation to someone else (the “**other person**”) only if the authorised person—

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

(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.

*Division 5—Liability of service providers***395 Liability of service providers for negligence**

(1) A service provider, owner of land, operator of water infrastructure, lessee of a service provider or operator (each **“an affected party”**) is not liable for an event or circumstance beyond the control of the affected party.

(2) Subsection (1)—

- (a) applies only if, in relation to the event or circumstance, the affected party acted reasonably and without negligence; and
- (b) does not affect, or in any way limit, the liability of an affected party for negligence.

(3) In this section—

**“an event or circumstance beyond the control of the affected party”** includes—

- (a) the escape of water from water infrastructure or works; and
- (b) flooding upstream or downstream of water infrastructure or works; and
- (c) contamination of, or the quality of, water flowing, or released from, water infrastructure or works.

**396–407 Section numbers not used**

See footnote to section 1.

## **PART 3—SERVICE PROVIDER OBLIGATIONS**

### *Division 1—Strategic asset management plans*

#### *Subdivision 1—Preparing, certifying and approving strategic asset management plans*

#### **408 Preparing strategic asset management plan**

(1) Each service provider must have an approved strategic asset management plan for ensuring continuity of supply of each of the service provider's registered services.

(2) The service provider must prepare a strategic asset management plan for approval by the regulator.

(3) The plan must state the following matters—

- (a) the registered services to which the plan applies;
- (b) the infrastructure for providing the services;
- (c) standards for appropriate levels of service and performance indicators for the service;
- (d) an operation, maintenance and renewals strategy that demonstrates how each standard will be achieved.

(4) The plan must also—

- (a) identify the methodology used by the service provider for developing the standards, including, for example, cost considerations in deciding appropriate levels of service; and
- (b) have regard to best practice industry standards for the registered services; and
- (c) be prepared in accordance with the guidelines, if any, issued by the regulator for preparing the plan.

#### **409 Certifying strategic asset management plan**

(1) The strategic asset management plan must be certified by a registered professional engineer as being appropriate for the service provider's infrastructure and registered services.

(2) The certification must include the engineer's name and registration details.

#### **410 Submitting strategic asset management plan for approval**

The service provider must, within 1 year after the day the service provider is registered, give a copy of the strategic asset management plan to the regulator for approval.

Maximum penalty—500 penalty units.

#### **411 Approving strategic asset management plan**

(1) The regulator must, within 3 months after receiving the strategic asset management plan, approve the plan and give the service provider notice of the approval unless the regulator is satisfied—

- (a) the plan was not certified by a registered professional engineer; or
- (b) the plan is inadequate in a material particular.

(2) The notice must also tell the service provider—

- (a) the intervals at which regular reviews of the approved plan must be conducted; and
- (b) if the regulator requires regular audits of the approved plan under section 417—the intervals at which the audits must be conducted.

(3) An interval mentioned in subsection (2)(a) must not be less than 1 year.

(4) An interval mentioned in subsection (2)(b) must not be less than 2 years.

(5) The regulator may obtain advice from an advisory council before approving the plan.

#### **412 Refusing strategic asset management plan**

(1) If the regulator is satisfied the plan has not been certified by a registered professional engineer, the regulator must—

- (a) return the plan to the service provider; and



- (b) give the service provider a notice stating that the plan must be—
  - (i) certified by a registered professional engineer; and
  - (ii) returned to the regulator within the reasonable time stated in the notice.

(2) If the regulator is satisfied the plan is inadequate in a material particular, the regulator must return the plan to the service provider and give the service provider an information notice.

(3) For deciding if a plan is inadequate in a material particular, the regulator must take account of cost considerations for the service provider and its customers in addressing the material particular.

(4) The information notice must also state how the plan is inadequate in a material particular and that—

- (a) the plan must be revised and returned to the regulator within the reasonable time stated in the notice; or
- (b) a new plan must be prepared, certified and given to the regulator within the reasonable time stated in the notice.

(5) The service provider must comply with subsection (4) and give the regulator a copy of the revised plan or new plan for approval under section 411.

### **413 Changing strategic asset management plan**

(1) The service provider may, with the regulator's agreement, change the strategic asset management plan after it is approved.

(2) The plan, as changed in the way agreed by the regulator, is taken to be approved by the regulator.

### **414 Complying with approved strategic asset management plan**

The service provider must comply with the approved strategic asset management plan, when supplying the services to the service provider's customers.

***Subdivision 2—Audit reports and reviews*****415 Reviewing strategic asset management plan**

(1) The service provider must, in accordance with the notice given by the regulator under section 411, regularly review the strategic asset management plan.

(2) The purpose of the review is to ensure the plan remains relevant having regard to best practice industry standards for the types of services provided by the service provider.

(3) The service provider must, in its annual report, state—

- (a) the outcome of the review; and
- (b) how the service provider has addressed matters raised in the review.

**416 Changing strategic asset management plan following review**

(1) Subsection (2) applies if a review of the strategic asset management plan indicates the plan should be changed to reflect best practice industry standards for the types of services provided by the service provider.

(2) The service provider, within 30 business days after the review ends, must give the regulator a modified strategic asset management plan including the indicated changes.

(3) Section 411 applies to the modified plan.

**417 Providing regular audit reports**

(1) The service provider must, in accordance with the notice given by the regulator under section 411, arrange for regular audit reports to be prepared about the service provider's strategic asset management plan and compliance with the plan.

(2) The purpose of the regular audit report is to—

- (a) verify the accuracy of performance data provided through the annual report; and
- (b) assess the service provider's technical ability to meet the standards identified in the plan.

(3) The regular audit report must be—

- (a) prepared by a registered professional engineer (the “**auditor**”) who is not—
  - (i) an employee of the service provider; or
  - (ii) the engineer who prepared or certified the plan; or
  - (iii) an engineer employed in operating the service provider’s infrastructure; and
- (b) given to the regulator within 30 days after its completion; and
- (c) available for inspection and purchase.

Maximum penalty for subsection (3)(b)—500 penalty units.

#### **418 Declarations about regular audit report**

(1) The regular audit report must be accompanied by a statutory declaration by the service provider and the auditor.

(2) The service provider’s declaration must be made—

- (a) if the service provider is an individual—by the service provider; or
- (b) if the service provider is a corporation—by an executive officer of the corporation.

(3) The service provider’s declaration must state that the service provider—

- (a) has not knowingly given any false or misleading information to the auditor; and
- (b) has given all relevant information to the auditor.

(4) The auditor’s declaration must—

- (a) state the auditor’s qualifications and experience relevant to the audit; and
- (b) state that the auditor has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that the auditor has not knowingly failed to reveal any relevant information or document to the regulator; and
- (d) certify that—

- (i) the report addresses the relevant matters for the evaluation and is factually correct; and
- (ii) the opinions expressed in it are honestly and reasonably held.

#### **419 Spot audits of strategic asset management plans**

(1) Subsection (2) applies if—

- (a) the regulator is satisfied, or reasonably believes—
  - (i) a service provider is not complying with the service provider's strategic asset management plan; or
  - (ii) a service provider's strategic asset management plan is no longer adequate for the service provider's registered services; or
- (b) a service provider does not—
  - (i) have an audit report prepared under section 417; or
  - (ii) give the regulator a copy of an audit report under section 417.

(2) In addition to any regular audit mentioned in section 417, the regulator may, by giving a service provider a show cause notice, arrange for a spot audit report to be prepared about the service provider's strategic asset management plan.

(3) The spot audit report must be prepared by a registered professional engineer (the “**auditor**”).

(4) The regulator must give the service provider a copy of the report within 30 business days after its completion.

(5) Subsections (6) and (8) apply if the report states either or both of the following—

- (a) the service provider's strategic asset management plan is inadequate in a material particular;
- (b) the service provider has not properly carried out the plan.

(6) The regulator must give the service provider an information notice requiring the service provider, within the reasonable time stated in the notice, to—

- (a) if subsection (5)(a) applies—rectify the inadequacy; or

(b) if subsection (5)(b) applies—properly carry out the plan.

(7) The service provider must comply with the notice, unless the service provider has a reasonable excuse.

Maximum penalty—1 665 penalty units.

(8) The regulator may recover from the service provider an amount equal to the cost of completing the report.

#### **420 Declarations about spot audit report**

(1) The spot audit report submitted to the regulator must be accompanied by a statutory declaration by the auditor.

(2) The declaration must state the matters mentioned in section 418(4).

#### **421 Access for conducting audit reports**

(1) For conducting an audit under this division, a service provider must give the auditor, and any person employed or authorised by the auditor to participate in conducting the audit, free and uninterrupted access to the service provider's infrastructure and any records relating to the infrastructure.

Maximum penalty—200 penalty units.

(2) However, the auditor and any person employed or authorised by the auditor to participate in the conduct of the audit must not enter the premises of a customer of the service provider unless the customer agrees to the entry.

### ***Division 2—Customer service standards***

#### **422 Purpose of div 2**

The purpose of this division is to ensure customers who do not have a supply contract with the service provider are protected by standards relating to the supply of registered services.

**423 Application of div 2**

(1) This division applies to a service provider if the service provider does not have a supply contract with all of its customers.

(2) Sections 427 and 428 do not apply to an agency to which the *Parliamentary Commissioner Act 1974* applies.

**424 Preparing customer service standards**

The service provider must, within 1 year after the service provider is registered—

- (a) prepare a customer service standard for the service; and
- (b) give a copy of the standard to both the regulator and all customers of the service provider who do not have a contract mentioned in section 423.

**425 Content of customer service standard**

The customer service standard must state the following—

- (a) the level of service to be provided by the service provider;
- (b) the process for service connections, billing, metering, accounting, customer consultation, complaints and dispute resolution;
- (c) any other matter stated in guidelines, if any, issued by the regulator for preparing customer service standards.

**426 Complying with customer service standard**

The service provider must comply with the customer service standard, when supplying services to the service provider's customers.

**427 Customer complaints**

(1) Subsection (2) applies if—

- (a) a customer considers there is a significant deficiency in the customer service standard or the service provider has not complied with the standard; and

- (b) the customer can not resolve the complaint through negotiation with the service provider.
- (2) The customer may give the regulator notice of the complaint.
- (3) If the customer gives the regulator a notice under subsection (2), the regulator must—
  - (a) give the service provider a copy of the notice; and
  - (b) inquire into the matter.
- (4) After inquiring into the matter, the regulator must give the service provider a notice—
  - (a) if the service provider has not complied with the service provider's customer service standard—requiring the service provider to comply with the standard; or
  - (b) if the complaint highlights a deficiency in the standard—requiring the service provider to revise the standard; or
  - (c) if the regulator is satisfied no action is required in relation to the complaint—that the regulator will not take any further action.
- (5) The notice is taken to be a compliance notice to which section 780(3) does not apply.
- (6) The regulator must give the customer an information notice about the action taken under subsection (4).

#### **428 Revising customer service standard**

If, under section 427, the regulator requires the service provider to revise the customer service standard, the service provider must—

- (a) revise the standard having regard to the complaint; and
- (b) give the regulator and each customer of the service provider a copy of the revised standard.

#### **429 Reviewing customer service standard**

(1) The service provider must review the customer service standard each year.

(2) If because of the review, the service provider changes the standard, the service provider must give the regulator and each customer of the service provider a copy of the changed standard.

### *Division 3—Annual reports*

#### **430 Service provider to report annually**

(1) The service provider must prepare, for each financial year after a strategic asset management plan has been approved, an annual report.

(2) The service provider must also prepare, for each financial year after a customer service standard has been given to the regulator, an annual report.

(3) A report mentioned in subsection (1) may be combined with a report mentioned in subsection (2).

(4) The report must—

(a) for a report mentioned in subsection (1)—

- (i) measure the service provider's performance for the financial year for the services for which the service provider is registered against the strategic asset management plan for the services; and
- (ii) document the actions taken by the service provider to implement the plan including the application of funds to support implementation of the plan; and
- (iii) state the outcome of any review of the plan and how the service provider has addressed matters raised in the review; and
- (iv) contain a summary of the findings of and any recommendations stated in an audit report given to the regulator in the financial year to which the report relates; or

(b) for a report mentioned in subsection (2)—

- (i) measure the service provider's performance for the financial year for the services for which the service provider is registered against the customer service standard for the services; and
- (ii) state the outcome of any review of the plan and how the service provider has addressed matters raised in the review.



(5) A copy of the report must be given to the regulator within 120 business days after the end of the financial year.

Maximum penalty—500 penalty units.

(6) Subsections (4) and (5) do not apply to a service provider—

- (a) if the service provider is a local government; and
- (b) the local government includes the information in subsection (4) in a report required under the *Local Government Act 1993*, section 531; and
- (c) the local government gives a copy of the report mentioned in paragraph (b) to the regulator within 30 business days after the report is adopted.

(7) A copy of a report mentioned in subsection (4) or (6)(c) must be available for inspection and purchase.

#### *Division 4—Water for fire fighting*

#### **431 Application of div 4**

This division applies only to a service provider who provides a retail water service.

#### **432 No charge for water for fire fighting purposes**

(1) A water service provider must not make a charge for water taken from a fire fighting system for fire fighting purposes.

(2) However, the service provider may fix a meter to any private fire fighting system.

**433 Water from fire fighting system to be used only for fire fighting purposes**

(1) A person must not take water from a fire fighting system without the permission of the service provider unless the water is taken for fire fighting purposes.<sup>19</sup>

Maximum penalty—1 000 penalty units.

(2) If a person is convicted of an offence against subsection (1), the service provider may recover from the person, as a debt due, the amount of the loss or the reasonable cost of repairing any damage caused by the unlawful taking of the water.

***Division 5—Exemptions for small service providers*****434 Small service providers may apply for exemption from divs 1–3**

(1) A small service provider may apply to the regulator for an exemption from complying with division 1, 2 or 3.

(2) The application must be in the approved form.

**435 Deciding application for exemption**

(1) Subsection (2) applies if the regulator is satisfied it is not reasonably practicable for the small service provider to comply with 1 or more of the following provisions because the cost of complying would outweigh the benefit to the service provider's customers—

- (a) division 1;
- (b) division 2;
- (c) division 3.

(2) The regulator must grant the exemption, with or without conditions.

(3) In deciding the application, the regulator must have regard to the guidelines, if any, issued by the regulator for granting exemptions under this division.

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19 Under the *Fire and Rescue Authority Act 1990*, section 53(2)(h), the Queensland Fire and Rescue authority may take water for fire fighting purposes from any source whether natural or artificial.

(4) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

(5) If the regulator is not satisfied under subsection (1), the regulator must refuse to grant the exemption.

### **436 Notice of decision on application for exemption**

(1) If the regulator exempts the small service provider from complying with division 1, 2 or 3, the regulator must give the service provider an information notice of the exemption.

(2) The regulator must also, as soon as is practicable after giving an exemption, give notice of the exemption in the gazette.

(3) The gazette notice must state the following—

- (a) the small service provider to whom the exemption applies;
- (b) the registered service to which the exemption applies;
- (c) the division, or divisions, to which the exemption applies;
- (d) any conditions to which the exemption is subject;
- (e) any limit on the duration of the exemption.

(4) The *Statutory Instruments Act 1992*, sections 24 to 26 apply to an exemption as if it were a statutory instrument.

(5) If the regulator refuses to grant the exemption, the regulator must give the service provider an information notice about the refusal.

### **437 Cancelling or amending an exemption**

(1) If the circumstances under which an exemption was given change, the small service provider must immediately give the regulator notice of the change.

(2) The regulator may amend or cancel an exemption—

- (a) after receiving a notice under subsection (1); or
- (b) if the regulator becomes aware of a change in the circumstances under which the exemption was given.

(3) If the regulator amends or cancels the exemption, the regulator must—

- (a) give the service provider an information notice about the amendment or cancellation; and
- (b) as soon as is practicable after amending or cancelling the exemption, give notice of the amendment or cancellation in the gazette.

### **438–447 Section numbers not used**

See footnote to section 1.

## ***PART 4—SERVICE AREAS***

### ***Division 1—Preliminary***

#### ***448 Application of pt 4***

*This part applies to a service provider who supplies a retail water service or sewerage service in a service area.*

### ***Division 2—Service areas***

#### ***449 Declaration of service area***

*(1) A local government, by resolution, may declare—*

- (a) all or part of its local government area to be a service area; and*
- (b) the service provider for the service area.*

*(2) A local government must not declare an entity, other than the local government, to be the service provider for the area unless the other entity agrees in writing to the declaration before the declaration is made.*

*(3) A local government, by resolution, may amend the declaration by adding an area to, or removing an area from, the service area.*

*(4) A resolution must not be made under subsection (3) without the written agreement of the service provider.*

(5) A resolution under subsection (1) or (3) takes effect on—

- (a) if the declaration states a day—the day stated; or
- (b) if paragraph (a) does not apply—the day the declaration is made.

(6) A local government must not declare an area to be a service area for a retail water service or a sewerage service if the area has already been declared for another retail water service or sewerage service.

#### **450 Notice of declaration of service area**

If a local government makes or amends a declaration under section 449, the local government must—

- (a) publish a notice of the declaration or amendment; and
- (b) make the notice available for inspection and purchase under the Local Government Act 1993.

#### **451 Map of service area**

(1) The service provider for a registered service in a service area must keep a map showing, for the service—

- (a) the limits of the service area; and
- (b) the location of the service provider's infrastructure.

(2) The service provider must—

- (a) if the service provider is not the local government—give the local government a copy of the map; and
- (b) update the map at least annually; and
- (c) make the map available for inspection and purchase.

### **Division 3—Access to services in service areas**

#### **452 Access to service in service area**

(1) The service provider must, to the greatest practicable extent, ensure that—

- (a) *all premises in the service area are able to be connected directly and separately to the service provider's infrastructure for the area; and*
- (b) *if 2 or more premises are part of a premises group—the premises group, rather than each individual premises, is able to be connected, directly and separately to its infrastructure; and*
- (c) *the infrastructure can deal with the service requirements of all premises in the service area; and*
- (d) *for a retail water service—the design of its infrastructure allows for a connection point at or within the boundary of each premises connected to the service; and*
- (e) *for a sewerage service—the design of its infrastructure allows for a connection point—*
  - (i) *at or within the boundary of each premises connected to the service; and*
  - (ii) *to the greatest practicable extent, at an invert level below ground level at which the sanitary drain or property sewer laid at minimum grade is capable of servicing the premises.*

(2) *A property service is part of the service provider's infrastructure for a water service.*

(3) *In this section—*

**“premises group”** *means the land comprised in 2 or more premises all the owners of which have mutual rights and obligations under the Body Corporate and Community Management Act 1997 or the Building Units and Group Titles Act 1980 for their respective ownerships, and includes the common property forming part of—*

- (a) *if the premises are lots included in a community titles scheme under the Body Corporate and Community Management Act 1997—the scheme land for the scheme; or*
- (b) *if the premises are lots under the Building Units and Group Titles Act 1980—the parcel of which the premises form part.*

### **453 Recovering cost of giving access to registered service**

*The service provider may recover from a customer the reasonable cost of complying with section 452 for the customer's premises.*

**454 When service provider not required to supply water in service area**

(1) This section applies if—

- (a) the owner of premises in the service area wants the service provider to supply water to the premises; and
- (b) the service provider can not supply water from its infrastructure to the premises at a satisfactory pressure because of physical constraints.

(2) The service provider must supply water to the premises if the owner installs enough water storage tanks and pumps to ensure that water can be supplied at a satisfactory pressure and flow.

(3) The service provider may impose conditions on the installation of the water storage tanks and pumps, including, for example, a condition requiring that a pump installed on the supply side of a water storage tank does not cause negative pressures in the service provider's water main.

**Division 4—Connecting to registered services****455 Owner may ask for connection to service provider's infrastructure**

(1) This section applies if an owner of premises in the service area asks the service provider to connect the owner's premises to the service provider's infrastructure.

(2) The service provider must advise the owner of any work the service provider considers reasonably necessary to be carried out on the premises and any reasonable connection fee to enable the premises to be connected to the infrastructure.<sup>20</sup>

(3) When the owner has satisfactorily completed the work and paid the connection fee, the service provider must connect the owner's property to the infrastructure.

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<sup>20</sup> If the work is self-assessable development or assessable development under the *Integrated Planning Act 1997*, that Act applies to the work.

**456 Notice requiring connection to registered service**

(1) *The service provider may, by notice given to the owner of premises in a service area, require the owner to carry out works for connecting the premises to a registered service.*

(2) *The notice must state—*

- (a) *the work to be carried out on the premises to enable the service to be supplied;<sup>21</sup> and*
- (b) *a reasonable period, but not less than 20 business days, for completing the work; and*
- (c) *that the work must be completed within the stated period or any extension of the period agreed to by the service provider; and*
- (d) *anything else the owner must do to enable the service to be supplied.*

(3) *The owner must comply with the notice, unless the owner has a reasonable excuse.*

*Maximum penalty—200 penalty units.*

(4) *When the owner has satisfactorily completed the work, the service provider must connect the owner's premises to the service provider's infrastructure.*

**Division 5—Restricting domestic water supply****457 Restricting domestic water supply in certain circumstances**

(1) *This section applies if—*

- (a) *premises used for domestic purposes are connected to a water service; and*
- (b) *the owner or occupier of the premises—*
  - (i) *contravenes a water restriction; or*
  - (ii) *does not pay the rate or charge for the service; and*

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21 The *Integrated Planning Act 1997* provides for the process of granting approvals for the work.



- (c) *the owner or occupier has been given a notice not to continue to contravene the restriction or to pay the rate or charge; and*
- (d) *the owner or occupier continues to contravene the restriction or refuses to pay the rate or charge.*

(2) *The service provider may reduce the water supply to the premises to the minimum level necessary for the health and sanitation purposes of the owner or occupier.*

(3) *However, the service provider must not completely shut off the water supply to the premises.*

#### **458–468 Section numbers not used**

*See footnote to section 1.*

## **PART 5—TRADE WASTE**

### **469 Trade waste approvals**

(1) *A local government that is a sewerage service provider may give a person an approval to discharge trade waste (a “**trade waste approval**”) into the local government’s sewerage infrastructure.*

(2) *Before giving the approval, the local government must consider the effect of the proposed discharge on any existing or potential re-use of waste water or sludge.*

(3) *The local government may give the approval only if the local government is satisfied that—*

- (a) *having regard to the amount, type and strength of the proposed discharge, the discharge will not harm the sewerage or the health and safety of anyone working on the sewerage; and*
- (b) *the sewage treatment plant to treat the waste is capable of treating the waste to an acceptable standard; and*
- (c) *if the local government has an environmental plan about trade waste management, as defined under the Environmental Protection (Water Policy) 1997—the proposed discharge into the sewerage is consistent with the plan.*

(4) *In this section—*

**“sludge”** means semi-liquid solids settled from sewage in septic tanks, arresters and sewage treatment plants.

**“waste water”** means the spent or used water of a community or industry that contains dissolved or suspended matter.

#### **470 Approval may be conditional**

The local government may give the trade waste approval on conditions, including, for example, conditions about 1 or more of the following—

- (a) *the maximum daily quantity of trade waste that may be discharged;*
- (b) *the maximum permissible rate of the discharge;*
- (c) *the permissible limits for the quality of the waste, including limits for suspended solids, biochemical oxygen demand, acidity and alkalinity;*
- (d) *whether the waste must be treated before being discharged into the local government’s sewerage;*
- (e) *the appropriate management of polluted areas, including, for example, conditions requiring—*
  - (i) *the building of a roof over a stated area to prevent rainwater entering a sanitary drain or sewer; or*
  - (ii) *the paving of the floor of a stated area with an approved impervious material and to a stated grade to an outlet; or*
  - (iii) *the installation of an arrester or pre-treatment device.*

#### **471 Suspending or cancelling trade waste approval**

(1) A local government may suspend or cancel a trade waste approval (the **“proposed action”**) if the local government is satisfied—

- (a) *the approval holder has contravened a condition of the approval;*  
*or*
- (b) *the approval holder has contravened a provision of this Act; or*

- (c) *the approval is no longer appropriate because the circumstances under which trade wastes are generated by the holder have significantly changed since the approval was given; or*
- (d) *urgent action is necessary in the interests of public health or safety to prevent environmental harm or prevent damage to the local government's sewerage system.*

*(2) Before the local government acts under subsection (1), the local government must give the approval holder a show cause notice about the proposed action.*

*(3) If, after considering any properly made submissions, the local government is still satisfied the proposed action should be taken, the local government may—*

- (a) *if the proposed action was to suspend the approval for a stated period—suspend the approval for not longer than the proposed suspension period; or*
- (b) *if the proposed action was to cancel the approval—either cancel the approval or suspend it for a period.*

*(4) Within 30 business days after making a decision under subsection (3), the local government must give the approval holder an information notice about the decision.*

*(5) If, after considering any properly made submissions, the local government is not satisfied the proposed action should be taken, the local government must give the approval holder a notice about the decision.*

*(6) A decision under subsection (3), takes effect on the later of the following—*

- (a) *the day the information notice is received by the approval holder;*
- (b) *the day stated in the notice.*

*(7) Despite subsection (2), the local government may suspend or cancel the approval from the moment the approval holder is given the show cause notice, if the local government considers urgent action is necessary—*

- (a) *in the interests of public health or safety; or*
- (b) *to prevent environmental harm; or*
- (c) *to prevent damage to the local government's sewerage system.*

(8) *If the local government acts under subsection (7), the local government must give the approval holder an information notice about the action.*

**472–479 Section numbers not used**

*See footnote to section 1.*<sup>22</sup>

**PART 6—REFERABLE DAMS AND  
FLOOD MITIGATION**

***Division 1—Referable dams***

***Subdivision 1—Preliminary***

**480 Definition for div 1**

*In this division—*

**“water”** *includes any other liquid or a mixture that includes water or any other liquid or suspended solid.*

**481 Meaning of “referable dam”**

(1) *A dam is, or a proposed dam after its construction will be, a “referable dam” if—*

- (a) *a failure impact assessment of the dam, or for the proposed dam, is required to be carried out under this part; and*
- (b) *the assessment states the dam has, or the proposed dam after its construction will have, a category 1 or category 2 failure impact rating.*

(2) *The following are not referable dams—*

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22 These parts had not commenced on or before the reprint.

- (a) a dam containing, or a proposed dam that after its construction will contain, hazardous waste;
- (b) a weir, unless the weir has a variable flow control structure on the crest of the weir.

#### **482 Meaning of “failure impact assessment”**

(1) A “failure impact assessment” is an assessment certified under this part about the safety of a dam, or a proposed dam—

- (a) by a registered professional engineer who is not, for the dam, or the proposed dam—
  - (i) the owner; or
  - (ii) an employee of the owner; or
  - (iii) the operator; or
  - (iv) an employee of the operator; and
- (b) in accordance with the guidelines for failure impact assessment of water dams published in the gazette by the chief executive.

(2) The certification must include the engineer’s name and registration details.

#### **Subdivision 2—Failure impact assessing dams**

#### **483 When a dam must be failure impact assessed**

(1) A person who proposes to construct a dam must have the dam failure impact assessed if the dam, after its construction, will be—

- (a) more than 8 m in height and have a storage capacity of more than 500 ML; or
- (b) more than 8 m in height and have a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level.

Maximum penalty—1 665 penalty units.

(2) Also, the chief executive may give the owner of an existing dam, or a dam being constructed, a notice to have the dam failure impact assessed.

(3) *The chief executive may give the notice only if the chief executive reasonably believes the dam, or the dam after its construction, would have a category 1 or category 2 failure impact rating.*

(4) *If the chief executive gives an owner a notice under subsection (2), the owner must ensure the failure impact assessment is completed and given to the chief executive within the reasonable time stated in the notice.*

*Maximum penalty—1 665 penalty units.*

(5) *Subsection (6) applies if a dam has been failure impact assessed under this section, including subsection (6).*

(6) *The owner must ensure another failure impact assessment of the dam is completed and given to the chief executive within 5 years after the day the last failure impact assessment was accepted by the chief executive.*

*Maximum penalty—1 665 penalty units.*

(7) *Subsection (6) does not apply to the owner of—*

- (a) *a dam given a category 2 failure impact rating under the last failure impact assessment of the dam; or*
- (b) *a dam mentioned in subsection (2) if the failure impact assessment for the dam, carried out under subsection (2), does not have a category 1 or category 2 failure impact rating.*

#### **484 Failure impact ratings for dams**

(1) *An existing dam has, or a proposed dam after its construction will have, the following failure impact rating if a failure impact assessment for the dam, or the proposed dam after its construction, states that the population at risk is—*

- (a) *for a category 1 failure impact rating—2 or more persons and not more than 100 persons;*
- (b) *for a category 2 failure impact rating—more than 100 persons.*

(2) *In subsection (1)—*

**“population at risk”** *means the number of persons, calculated under the guidelines mentioned in section 482(1)(b), whose safety will be at risk if the dam, or the proposed dam after its construction, fails.*

**485 Offences about failure impact assessments**

*(1) A person must not certify a failure impact assessment containing information the person knows is false or misleading.*

*Maximum penalty—1 665 penalty units.*

*(2) Subsection (1) does not apply to a person if the person, when certifying the assessment—*

- (a) tells the chief executive, to the best of the person's ability, how it is false or misleading; and*
- (b) if the person has, or can reasonably obtain, the correct information—gives the chief executive the correct information.*

*(3) A person must not give another person certifying a failure impact assessment information the person knows—*

- (a) the other person will rely on when certifying the failure impact assessment; and*
- (b) is false or misleading.*

*Maximum penalty—1 665 penalty units.*

*(4) Subsection (3) does not apply to a person if the person, when giving the information—*

- (a) tells the person to whom it is given, to the best of the person's ability, how it is false or misleading; and*
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.*

*(5) It is enough for a complaint for an offence against subsection (1) or (3) to state the assessment or information given to the person certifying the assessment was false or misleading to the person's knowledge, without stating which.*

**486 Cost of failure impact assessment**

**486.(1)** *For a failure impact assessment required under section 483(1), the owner of the dam must pay the cost of preparing and certifying the failure impact assessment.*

*(2) For a failure impact assessment required under section 483(2)—*

- (a) if the dam, or the proposed dam, is assessed as not having a category 1 or category 2 failure impact rating—the chief*

*executive must pay the reasonable cost of preparing and certifying the assessment; and*

*(b) in any other case—the owner of the dam must pay the cost of preparing and certifying the assessment.*

*(3) For subsections (1) and (2), the cost of preparing and certifying the assessment includes the cost of any review of the assessment under section 489.*

#### **487 Accepting, rejecting or reviewing failure impact assessment**

*(1) The chief executive may accept, reject or require a review of a failure impact assessment.*

*(2) However, before requiring a review of, or rejecting, the assessment, the chief executive may require the owner to give additional information about the assessment to assist the chief executive in deciding if the review or rejection is necessary.*

#### **488 Notice accepting failure impact assessment**

*If the chief executive accepts a failure impact assessment, the chief executive must give notice of the acceptance to the owner of the dam within 30 business days after the acceptance.*

#### **489 Reviewing failure impact assessment**

*(1) Subsection (2) applies if the chief executive is satisfied a failure impact assessment is—*

- (a) incorrect in a material particular; or*
- (b) incomplete in a material particular; or*
- (c) not completed in accordance with the guidelines mentioned in section 482.*

*(2) The chief executive must, within 30 business days after being satisfied under subsection (1)—*

- (a) give the owner of the dam an information notice; and*
- (b) return the assessment to the owner.*

*(3) The information notice must require the owner to—*



- (a) *have the assessment reviewed, corrected or completed and recertified; and*
- (b) *return the recertified assessment to the chief executive for a decision under section 487(1) by the day stated in the notice.*

*(4) The owner must comply with the notice, unless the owner has a reasonable excuse for not complying.*

*Maximum penalty—1 665 penalty units.*

#### **490 Rejecting failure impact assessment**

*(1) The chief executive may reject a failure impact assessment or a recertified assessment if the assessment or recertified assessment is incorrect or incomplete in a material particular or not completed in accordance with the guidelines mentioned in section 482.*

*(2) If the chief executive rejects the assessment or the recertified assessment, the chief executive must, within 30 business days after the rejection, give the owner of the dam an information notice.*

#### **491 Safety conditions for existing referable dams**

*(1) The chief executive may apply safety conditions to a referable dam.*

*(2) For assessing the safety conditions that are to apply, the chief executive may give the owner of the dam a notice requesting the owner to give the chief executive—*

- (a) *within the reasonable time stated in the notice, information that will assist the chief executive in deciding the conditions to be applied; and*
- (b) *the fee prescribed under a regulation.*

*(3) The owner must comply with the notice, unless the owner has a reasonable excuse.*

*Maximum penalty—200 penalty units.*

*(4) When the chief executive has received the information requested in the notice, the chief executive must assess the information and decide the safety conditions for the dam.*

*(5) The chief executive must decide the safety conditions for the dam within—*

(a) 40 business days after the day the chief executive receives the information requested; or

(b) if the owner of the dam, by written agreement, extends the time—the extended time.

(6) The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or reasonably required for the dam.

(7) When the chief executive has decided the safety conditions, the chief executive must give the owner an information notice about the safety conditions.

(8) If a development permit has been given, or is taken to have been given, for the construction of the dam, the safety conditions are taken to be conditions attaching to the permit.

(9) If a development permit has not been given for the construction of the dam—

(a) the chief executive's decision is taken to be a development permit given for the construction of the dam; and

(b) the safety conditions are taken to be conditions attaching to the permit.

#### **492 Changing safety conditions**

(1) The chief executive may change the safety conditions for a referable dam if the chief executive is satisfied the change should be made in the interests of dam safety.

(2) If the chief executive changes the conditions, the chief executive must give the owner of the dam an information notice about the decision to make the change.

(3) The change has effect from the day the notice is given.

(4) The chief executive's power to change the conditions includes the power to add conditions.

(5) The changed safety conditions are taken to be conditions attaching to the development permit mentioned in section 491(7) or (8).

**493 Reassessing dams**

*If a failure impact assessment prepared under section 483(6) and accepted by the chief executive for a referable dam assesses the dam as not having a category 1 or category 2 failure impact rating, any existing safety conditions for the dam no longer apply to the dam.*

**Subdivision 3—Chief executive's powers****494 Emergency powers**

*(1) This section applies if the chief executive is satisfied, or reasonably believes—*

- (a) there is danger of the failure of a referable dam; and*
- (b) action is necessary to prevent or minimise the impact of the failure.*

*(2) The chief executive may, by notice, direct the owner or operator of the dam to take stated reasonable action within a stated reasonable time.*

*(3) The notice—*

- (a) is taken to be a compliance notice; and*
- (b) is not a compliance notice for which a show cause notice must first be given; and*
- (c) attaches to the land and binds the owner and the owner's successors in title; and*
- (d) is taken to be a remedial action notice under the Land Act 1994, section 214.*

*(4) The person to whom the notice is given must comply with the notice, unless the person has a reasonable excuse.*

*Maximum penalty—1 665 penalty units.*

*(5) Subsection (4) does not apply if the person to whom the notice is given—*

- (a) gives the chief executive notice that the person intends to remove the referable dam; and*
- (b) the person complies with the intention in accordance with any direction given by the chief executive.*

(6) *Subsection (7) applies if—*

- (a) *the person to whom the notice is given does not comply, or does not fully comply, with the notice; and*
- (b) *the chief executive incurs expense under section 783(1) or (3) in relation to the notice.*

(7) *The chief executive may give the owner an information notice stating the amount of the expense incurred.*

(8) *If the chief executive gives a notice under subsection (7), the amount of the expense incurred becomes a charge on the land and the charge continues in force despite any disposition of the land until the amount is paid.*

#### ***Subdivision 4—General matters for referable dams***

#### ***495 Liability for loss or damage caused by failure of dam***

*Nothing in this part affects a dam owner or operator’s liability for any loss or damage caused by the failure of a dam or the escape of water from the dam.<sup>23</sup>*

#### ***Division 2—Flood mitigation***

#### **496 Owners of certain dams must prepare flood mitigation manual**

(1) A regulation may nominate an owner of a dam as an owner who must prepare a manual (a “**flood mitigation manual**”) of operational procedures for flood mitigation for the dam.

(2) The regulation must nominate the time by which the owner must comply with section 497(1).

#### **497 Approving flood mitigation manual**

(1) The owner must give the chief executive a copy of the flood mitigation manual for the chief executive’s approval.

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<sup>23</sup> This division had not commenced on or before the reprint date.

(2) The chief executive may, by gazette notice, approve the manual.

(3) The approval may be for a period of not more than 5 years.

(4) The chief executive may get advice from an advisory council before approving the manual.

#### **498 Amending flood mitigation manual**

(1) The chief executive may require the owner, by notice, to amend the flood mitigation manual.

(2) The owner must comply with the chief executive's request under subsection (1).

(3) The chief executive must, by gazette notice, approve the manual as amended.

(4) The approval of the manual as amended may be for—

- (a) the balance of the period of the approval for the manual before the amendment; or
- (b) a period of not more than 5 years from the day the manual as amended was approved.

(5) The chief executive may get advice from an advisory council before approving the manual as amended.

#### **499 Regular reviews of flood mitigation manual**

Before the approval for the flood mitigation manual expires, the owner must—

- (a) review, and if necessary, update the manual; and
- (b) give a copy of it to the chief executive under section 497.

#### **500 Protection from liability for complying with flood mitigation manual**

(1) The chief executive or a member of the council does not incur civil liability for an act done, or omission made, honestly and without negligence under this division.

(2) An owner who observes the operational procedures in a flood mitigation manual approved by the chief executive does not incur civil

liability for an act done, or omission made, honestly and without negligence in observing the procedures.

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

(4) In this section—

“owner” includes—

- (a) a director of the owner or operator of the dam; or
- (b) an employee of the owner or operator of the dam; or
- (c) an agent of the owner or operator of the dam.

### **501–513 Section numbers not used**

See footnote to section 1.

## **PART 7—REGULATOR**

### **514 Who is the regulator**

The chief executive is the regulator.

### **515 Regulator’s general functions**

(1) The regulator’s general functions are—

- (a) to keep a register of service providers registered under this Act; and
- (b) to review and make recommendations about standards and practices under this chapter; and
- (c) to monitor compliance with this chapter; and
- (d) to perform other functions given to the regulator under this Act or another Act.

(2) In performing the regulator’s functions, the regulator must consider the purposes of this Act.

**516 Register of service providers must be kept**

(1) The regulator must keep a register of service providers.

(2) The register may be kept in the form, whether or not in a documentary form, the regulator considers appropriate.

(3) Without limiting subsection (2), the regulator may change the form in which the register or a part of the register is kept.

(4) The register must contain the following, for each person registered by the regulator as a service provider—

- (a) the name and contact details of the service provider;
- (b) the nominated contact officer for the service provider;
- (c) details of the infrastructure operated by the service provider;
- (d) if the service provider is not the operator of the infrastructure—the name and contact details of the operator;
- (e) the nature of the services offered by the service provider;
- (f) any other particulars the regulator considers necessary.

(5) The regulator must, as soon as practicable after 1 January in each year, publish in the gazette a list of the service providers registered, as at 1 January in that year.

**517 Information may be required from service providers**

(1) The regulator may give a service provider a notice requiring information the regulator reasonably requires to enable the regulator to perform the regulator's functions.

(2) The notice must state the reasonable time in which the information must be given to the regulator.

(3) The service provider must comply with the notice, unless the service provider has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) However, this section does not require the service provider to give information if giving the information might tend to incriminate the service provider.

**518 Non-disclosure of commercially sensitive information**

(1) This section applies if the information a service provider has given to the regulator under section 517 is of a commercially sensitive nature.

(2) The regulator must not disclose the information to any person other than the Minister.

(3) The Minister must not disclose to any person information the Minister obtains under subsection (2).

(4) In this section—

“**commercially sensitive nature**” means reasonably expected to adversely affect a person’s commercial activities.

**519 Annual reports**

(1) The regulator may prepare annual reports about the regulator’s activities under this part.

(2) The reports may include information the regulator obtained under part 3, division 3 or section 517.

**520 Delegation of regulator’s powers**

(1) The regulator may delegate a power of the regulator to an appropriately qualified officer of the department.

(2) A regulation may state a particular power of the regulator—

(a) may not be delegated; or

(b) may be delegated only to a particular person.

**521–541 Section numbers not used**

See footnote to section 1.



## CHAPTER 4—WATER AUTHORITIES

### PART 1—PRELIMINARY

#### 542 Purpose of ch 4

The purpose of this chapter is to establish a framework for the establishment and operation of water authorities that provides for the following—

- (a) efficiency in carrying out water activities by the application of commercial principles;
- (b) appropriate governance arrangements and accountability requirements;
- (c) community involvement in making and implementing arrangements for using, conserving and sustainably managing water.

#### 543–547 Section numbers not used

See footnote to section 1.

### PART 2—ESTABLISHING WATER AUTHORITIES

#### *Division 1—General*

#### 548 Establishing water authorities

(1) A regulation may establish a water authority to carry out water activities—

- (a) generally in the State; or
- (b) for a particular area (the “**authority area**”) identified in the regulation.

(2) The authority area may comprise 2 or more non-contiguous areas.

(3) The regulation must—

- (a) name the authority; and
- (b) state its category; and
- (c) if the authority is established for an authority area—identify the authority area; and
- (d) state the matters mentioned in section 598 about composition of the authority's board.

### **549 Categories of water authorities**

A water authority may be a category 1 water authority or a category 2 water authority.

### **550 Water authority is a body corporate etc.**

(1) A water authority—

- (a) is a body corporate; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

(2) A water authority has all the powers of an individual and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

(3) Subsection (2) does not limit a water authority's powers under this or another Act.

(4) A water authority does not represent the State.

### **551 Application of particular Acts to a water authority**

(1) A water authority is a statutory body under the *Financial Administration and Audit Act 1977* and *Statutory Bodies Financial Arrangements Act 1982*.

(2) However, the *Financial Management Standard 1997*, part 2 and sections 41, 43, 47 and 48(3),<sup>24</sup> made under the *Financial Administration and Audit Act 1977*, do not apply to a category 1 water authority.

### ***Division 2—Procedure***

#### **552 Public notice of proposal to establish a water authority**

(1) Before a regulation establishes a water authority, the chief executive must publish notice of the proposed establishment in—

- (a) the gazette; and
- (b) a newspaper circulating—
  - (i) throughout the State; or
  - (ii) if the proposed water authority is to have an authority area—generally, in the authority area.

(2) Subsection (1) does not apply if the regulation merely remakes subordinate legislation under which the authority has been established.

(3) A notice under subsection (1) must state the following information about the proposed water authority—

- (a) its name;
- (b) its category;
- (c) that it is to carry out water activities;
- (d) the works it intends to acquire or build;
- (e) the land it intends to acquire;
- (f) its financing arrangements, including its borrowings and projected water activities costs;
- (g) how many directors it is to have;
- (h) if it is to have an authority area—
  - (i) whether the directors are to be elected by the authority's ratepayers or nominated; and

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<sup>24</sup> *Financial Management Standard 1997*, part 2 (Planning), and sections 41 (Register of special payments), 43 (Register of material losses), 47 (Evaluations of physical asset investments) and 48 (Maintenance of assets)

- (ii) if they are to be nominated, by whom they are to be nominated;
- (i) if it is not to have an authority area—that the directors are to be nominated, and by whom they are to be nominated;
- (j) the establishment costs the State may recover under section 717.<sup>25</sup>

(4) If the proposed water authority is to have an authority area, the notice must identify the area.

(5) The notice must also state the following—

- (a) that written submissions on the proposed establishment may be made to the chief executive;
- (b) the date, at least 20 business days after the notice is published, by which the submissions may be made;
- (c) where the submissions may be made.

### **553 Considering submissions on establishment proposal**

The chief executive must consider each properly made submission about an establishment proposal before the water authority to which it relates is established.

### **554 Changing, and republishing, establishment proposal**

(1) The chief executive may change an establishment proposal whether because of a properly made submission about the proposal or for another reason the chief executive considers appropriate.

(2) If the chief executive changes an establishment proposal, the chief executive must publish notice of the changed proposal under section 552.

(3) However, the date by which submissions on the changed proposal may be made must be at least 10 business days after the notice is published.

(4) Subsection (2) does not apply if the change—

- (a) corrects a minor error in the proposal; or
- (b) is not a change of substance.

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25 Section 717 (Recovering water authority's establishment costs)

**555 Considering submissions on changed establishment proposal**

The chief executive must consider each properly made submission about a changed establishment proposal before the water authority to which it relates is established.

**556 Amending establishment regulation**

(1) This section applies despite the *Acts Interpretation Act 1954*, section 24AA(b).<sup>26</sup>

(2) Before an establishment regulation is amended, the chief executive must publish notice of the proposed amendment in the way stated in section 552(1).

(3) The notice must state the following—

- (a) the proposed amendment;
- (b) that written submissions on the proposed amendment may be made to the chief executive;
- (c) the date, at least 20 business days after the notice is published, by which the submissions may be made;
- (d) where the submissions may be made.

(4) Subsection (2) does not apply if the amendment—

- (a) merely corrects a minor error in the regulation; or
- (b) is not a change of substance.

**557 Considering submissions on amending establishment regulation**

The chief executive must consider each properly made submission about amending an establishment regulation before the regulation is amended.

**558–568 Section numbers not used**

See footnote to section 1.

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<sup>26</sup> *Acts Interpretation Act 1954*, section 24AA (Power to make instrument or decision includes power to amend or repeal)

## **PART 3—FUNCTIONS AND POWERS OF WATER AUTHORITIES**

### *Division 1—Functions*

#### **569 Main function of water authority**

(1) A water authority's main function is to carry out the water activities decided by the authority.

(2) If the authority has an authority area, its main function is to carry out the water activities for the authority area.

(3) However, a water authority with an authority area may carry out water activities outside its authority area if carrying out the activity—

- (a) does not—
  - (i) limit the authority's ability to perform its main function; or
  - (ii) financially prejudice the authority or its ratepayers or customers; and
- (b) for a category 1 authority—is in accordance with the authority's performance plan.

#### **570 Other functions of water authority**

(1) A water authority may carry out 1 or more of the following functions decided by it—

- (a) riverine area protection;
- (b) soil erosion control;
- (c) land degradation treatment and prevention;
- (d) the management of recreational areas on land owned by the authority or under its control.

(2) If a water authority has an authority area, it may carry out a function mentioned in subsection (1) either inside or outside its authority area.

**571 Establishment as a water authority is not a right to water entitlement or resource operations licence**

To remove any doubt, it is declared that the establishment of a water authority to carry out water activities does not, of itself, entitle the authority to a water entitlement or a resource operations licence.

***Division 2—Powers******Subdivision 1—Rates and charges*****572 Power to make and levy rates and charges**

(1) A category 1 water authority, for carrying out its functions under this Act, may make and levy charges on its customers.

(2) A category 2 water authority, for carrying out its functions under this Act, may make and levy on its customers or ratepayers—

(a) charges; and

(b) if the authority has an authority area—rates.

(3) Without limiting subsection (1) or (2)(a), the authority may make and levy a charge for providing connections to its works.

(4) A charge may be made and levied on a volumetric basis for water activities carried out.

(5) A rate may be made and levied, if the authority has an authority area, on a property basis for land in the authority area.

(6) Subsections (4) and (5) do not limit the ways in which a charge or rate may be made or levied.

**573 Exemption from rates**

Despite section 572(2)(b), a water authority can not make and levy rates for water activities for the following land—

(a) unoccupied State land;

(b) unallocated State land reserved for a public purpose;

- (c) land occupied by the State, other than land leased by the State from a person;
- (d) land prescribed under a regulation for this section.

### **574 Interest on overdue rates and charges**

(1) An overdue rate or charge made or levied by a water authority under section 572 bears interest at the annual rate, decided by the authority, of not more than—

- (a) 15%; or
- (b) if another percentage is prescribed under a regulation—the other percentage.

(2) The interest must be calculated as simple interest.

(3) In this section—

**“overdue charge”** means the amount of the charge that is not paid when it becomes payable.

**“overdue rate”** means the amount of the rate that is not paid when it becomes payable.

### **575 Discount for payment of rates and charges**

(1) A water authority may allow a discount for payment of a rate or charge made or levied by it.

(2) Unless a regulation prescribes otherwise, the discount must not be more than 15% of the rate or charge.

### **576 Recovering rates and charges**

A water authority may recover an overdue rate or charge made or levied by it, and any interest payable on the overdue rate or charge, as a debt due to the authority by the person on whom the rate or charge is made or levied.



### *Subdivision 2—Taking land*

#### **577 Power to take land**

(1) A water authority may take any land.

(2) For land to which the *Acquisition of Land Act 1967* applies, the authority is a constructing authority for that Act.<sup>27</sup>

(3) The *Land Act 1994*, chapter 5, part 3,<sup>28</sup> applies, with any necessary changes, to land to which it applies.

(4) However, if the land is further land, a category 1 water authority must also obtain the Minister’s written approval before taking the land.

(5) In this section—

“**further land**”, for a water authority, means land the authority intends to acquire.

#### **578 Purposes for which land may be taken**

A water authority may take land for carrying out works, and any other purpose, within the authority’s main functions.

### *Subdivision 3—General*

#### **579 Delegation**

(1) A water authority may, in writing, delegate its powers to a director or an appropriately qualified employee of the authority.

(2) A person must not, in relation to a matter, exercise a power that has been delegated to the person under subsection (1) if the person has a direct or indirect financial or personal interest in the matter.

Maximum penalty for subsection (2)—100 penalty units.

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27 *Acquisition of Land Act 1967*, section 2 (Definitions)—

‘**“land”** means land, or any estate or interest in land, that is held in fee simple, but does not include a freeholding lease under the *Land Act 1994*.’

28 *Land Act 1994*, chapter 5, part 3 (Resumption and compensation)

### ***Division 3—Reporting requirements***

#### **580 Notice of proposed significant action**

(1) This section applies if a water authority proposes to—

- (a) do anything that may prevent, or have a significant adverse effect on, the authority performing its main function; or
- (b) sell or buy property for more than—
  - (i) for a category 1 water authority—\$1 000 000; or
  - (ii) for a category 2 water authority—\$100 000.

(2) Before doing anything (the “**proposed significant action**”) mentioned in subsection (1), the water authority must give the Minister notice of the proposed significant action.

(3) This section does not apply if, before taking the proposed significant action, the water authority gives details of the proposed significant action in its annual report or, for a category 1 water authority, its performance plan.

#### **581 Minister may require information**

(1) The Minister, by notice given to a water authority, may require the authority to give the Minister information about the performance of its functions and operations under this Act.

(2) The notice must state the day by which the information must be given.

(3) The water authority must give the information to the Minister by the stated day.

#### **582 Statement of operations**

(1) A category 1 water authority must include in its annual report a statement of its operations under this Act during the preceding financial year.

(2) The statement must contain the following—

- (a) sufficient information to enable an informed assessment to be made of the operations, including a comparison of the authority’s performance with its performance plan;

- (b) particulars of any amendments made to the authority's performance plan in the financial year;
- (c) particulars of any directions, including directions about community service obligations to be carried out by the authority, or notices, given to the authority for the financial year;
- (d) particulars of the impact that any changes to the authority's performance plan may have had on its financial position, including its operating surplus and deficit and prospects.

### **583 Identification and disclosure of cross-subsidies**

(1) This section applies to a water authority that charges on a volumetric basis for water managed by it.

(2) The authority must include in its annual report a statement—

- (a) identifying and disclosing all cross-subsidies between classes of its customers in carrying out its water activities; and
- (b) disclosing—
  - (i) the classes of its customers for whom a water activity is carried out at an amount below the full cost of the activity; and
  - (ii) the amount.

### *Division 4—Water authority employees*

#### **584 Employees**

(1) A water authority may engage the employees it considers necessary to perform its functions.

(2) The authority may decide its employees' terms and conditions of employment.

(3) However, subsection (2) has effect subject to any relevant award, industrial agreement, certified agreement or enterprise flexibility agreement.

*Division 5—Water authority officers' duties and responsibilities***585 Duties and liabilities of water authority officers**

(1) An officer of a water authority must act honestly in exercising powers, and discharging functions, as an officer of the authority.

Maximum penalty—

- (a) if the contravention is committed for a fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) in any other case—100 penalty units.

(2) In exercising powers and discharging functions, an officer of a water authority must exercise the degree of care and diligence that a reasonable person in a like position in a water authority would exercise in the authority's circumstances.

Maximum penalty—100 penalty units.

(3) An officer of a water authority, or a person who has been an officer of a water authority, must not make improper use of information acquired because of his or her position as an officer of a water authority—

- (a) to gain, directly or indirectly, an advantage for himself or herself or for another person; or
- (b) to cause detriment to the authority.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(4) An officer of a water authority must not make improper use of his or her position as an officer of the authority—

- (a) to gain, directly or indirectly, an advantage for himself or herself or another person; or
- (b) to cause detriment to the authority.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(5) If a person contravenes this section in relation to a water authority, the authority may recover from the person as a debt due to the authority—

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and
- (b) if the authority suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(6) An amount may be recovered from the person under subsection (5) whether or not the person has been convicted of an offence in relation to the contravention.

(7) Subsection (6) is in addition to, and does not limit, the *Crimes (Confiscation) Act 1989*.

(8) This section—

- (a) is in addition to, and does not limit, any rule of law relating to the duty or liability of a person because of the person’s office in relation to a corporation; and
- (b) does not prevent civil proceedings being instituted for a breach of the duty or the liability.

(9) In this section—

“**officer**”, of a water authority, includes an employee of the authority.

## **586–596 Section numbers not used**

See footnote to section 1.

## **PART 4—BOARD OF DIRECTORS**

### *Division 1—Appointment etc. of board of directors*

#### **597 Board of directors**

A water authority must have a board of directors (a “**board**”).

#### **598 Composition of board for water authorities**

Subject to sections 599 and 600 a regulation establishing a water authority must state the following—

- (a) the number of directors comprising the authority’s board;

- (b) whether the directors are to be elected by the authority's ratepayers or nominated and, if they are to be nominated, by whom they are to be nominated;
- (c) the procedure for electing or nominating the directors.

### **599 Composition of board for Gladstone Area Water Board**

The board for the Gladstone Area Water Board comprises—

- (a) 2 persons nominated by the Gladstone City Council; and
- (b) 2 persons nominated by the Calliope Shire Council; and
- (c) 3 persons nominated by the chief executive, 1 of whom must be the board's chairperson.

### **600 Appointment**

The directors for a water authority must be appointed by the Governor in Council.

### **601 Chairperson**

(1) This section does not apply to the Gladstone Area Water Board.

(2) The chairperson of a water authority's board is the director chosen as chairperson by the directors comprising the board.

(3) If a chairperson is not chosen for the board under subsection (2) within 1 month after the date appointed for the board's first meeting, the chairperson is the director chosen by the chief executive.

(4) The chairperson holds office until the annual meeting of the board next following the director's selection as chairperson.

### **602 Administration of water authority**

(1) The Minister may appoint the chief executive to administer a water authority until the authority's first board is appointed.

(2) If the Governor in Council removes all the directors of a water authority's board from office, the Minister may appoint either of the following persons to administer the water authority until a board is appointed for the authority—

- (a) the chief executive;
- (b) another person the Minister considers has the necessary qualifications and experience to administer the authority.

### **603 Eligibility for appointment as director**

(1) A person is not eligible to be elected, or nominated for appointment, as a director if the person—

- (a) becomes mentally or physically incapable of satisfactorily performing the director's duties; or
- (b) is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankrupt or insolvent debtors; or
- (c) has been convicted of an indictable offence, whether in Queensland or elsewhere, and the rehabilitation period for the offence has not expired or has been revived under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; or
- (d) is an employee of the authority; or
- (e) is directly interested in an agreement with, or on behalf of, the authority.

(2) Subsection (1)(e) does not apply to a person to the extent the person is directly interested in an agreement with the water authority for the supply of water.

### **604 Term of office for directors of water authorities other than Gladstone Area Water Board**

(1) This section does not apply to a director of the Gladstone Area Water Board.

(2) Subject to subsections (3) and (4), a director is appointed for the term of 3 years starting on the day stated in the director's instrument of appointment.

(3) The director continues holding office after the director's term of office ends until the director's successor is appointed.

(4) If a person is appointed to fill a casual vacancy in the office of a director, the person is appointed only for the remainder of the director's term of office.

### **605 Term of office for directors of Gladstone Area Water Board**

(1) The appointment of a director of the Gladstone Area Water Board starts—

- (a) on the day notice of the appointment is published in the gazette;  
or
- (b) on a later day stated in the notice.

(2) Subject to subsections (3) and (4), the director's term ends on a day fixed by gazette notice.

(3) If the director is the nominee of a local government, the day the director's term ends must be not later than 6 months after the day prescribed under the *Local Government Act 1993* for holding the quadrennial election next following the director's appointment.

(4) If a person is appointed to fill a casual vacancy in the office of a director, the person is appointed only for the remainder of the director's term of office.

### **606 Resignation**

(1) Subject to subsections (2) and (4), a director for a water authority may resign by signed notice of resignation given to the chairperson of the authority's board.

(2) Subject to subsection (3), the chairperson may resign from office as chairperson, or as a director, by signed notice of resignation given to the other directors on the board.

(3) The chairperson of the board for the Gladstone Area Water Board may resign from office as chairperson by signed notice of resignation given to the other directors on the board.

(4) If a person resigns from office as chairperson of a board under subsection (3), the person must also resign from office as a director of the board by signed notice of resignation given to the other directors on the board.

### **607 Termination of appointment as director**

The Governor in Council may remove a director on a water authority's board from office if the director—



- (a) is absent from 3 consecutive meetings of the board without the board's leave and without reasonable excuse; or
- (b) becomes ineligible to be elected or nominated for appointment as a director; or
- (c) declines to act as a director; or
- (d) is convicted of an offence against this Act; or
- (e) is prohibited from being a director of a body corporate by the Corporations Act for a reason other than a person's age.

### **608 Casual vacancy**

(1) The office of a director becomes vacant if—

- (a) the director dies during the director's term of office; or
- (b) the director resigns from office; or
- (c) the Governor in Council removes the director from office.

(2) The office of a director also becomes vacant if the director—

- (a) is a nominee and councillor of a local government; and
- (b) ceases to be a councillor of the local government other than by—
  - (i) defeat at an election of councillors of the local government; or
  - (ii) failure to contest the election.

### **609 Removal of board**

The Governor in Council may remove all the directors of a water authority's board from office if the board—

- (a) does not comply with a public sector policy notified to it by the Minister under this Act; or
- (b) does not comply with a direction given to it by the Minister under this Act; or
- (c) does not comply with a joint direction given to it by the Minister and Treasurer under this Act; or
- (d) does not comply with its obligations under this Act for the preparation and submission of—

- (i) performance plans; or
  - (ii) any reports under the performance plans; or
  - (iii) a corporate plan; or
- (e) does not comply with its obligations under the *Financial Administration and Audit Act 1977* for the preparation and submission of reports and plans.

### *Division 2—Directors' duties*

#### **610 Disclosure of interests**

(1) This section applies to a director on a water authority's board if—

- (a) the director has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, by the board; and
- (b) the interest could conflict with the proper performance of the director's duties about the consideration of the matter.

(2) As soon as practicable after the relevant facts come to the director's knowledge, the director must disclose the nature of the interest to a meeting of the board.

Maximum penalty—100 penalty units.

(3) The disclosure must be recorded in the board's minutes.

(4) Unless the board otherwise decides, the director must not—

- (a) be present when the board considers the matter; or
- (b) take part in a decision of the board on the matter.

Maximum penalty—100 penalty units.

(5) The director must not be present when the board is considering its decision under subsection (4).

Maximum penalty—100 penalty units.

(6) Another director who also has a direct or indirect financial or personal interest in the matter must not—

- (a) be present when the board is considering its decision under subsection (4); or

- (b) take part in making the decision.

Maximum penalty—100 penalty units.

- (7) In this section—

**“financial or personal interest”**, of a person in a matter, does not include—

- (a) the person’s interest in the matter as a customer or ratepayer of the water authority; or
- (b) for a person nominated by an entity for appointment as a director, an interest in an agreement with the authority for the supply of water to the entity.

### **611 Declaration about duty to act in authority’s interest**

To remove any doubt, it is declared that a director of a water authority, in exercising powers, and discharging functions, as a director of the authority, must act in the best interests of the authority.

### **612 Prohibition on loans to directors**

- (1) A water authority must not, directly or indirectly—

- (a) make a loan to a director, a director’s spouse, or a relative of a director or a director’s spouse; or
- (b) give a guarantee or provide security for a loan made to a director, a director’s spouse, or a relative of a director or a director’s spouse.

(2) Subsection (1) does not apply to the entering into by the authority of an instrument with a person mentioned in the subsection if the instrument is entered into on the same terms as similar instruments are entered into by the authority with members of the public.

(3) A director of a water authority must not be knowingly concerned in a contravention of subsection (1) by the authority, whether or not in relation to the director.

Maximum penalty—100 penalty units.

- (4) In this section—

**“relative”**, of a person, means the person’s—

- (a) parent or remoter lineal ancestor; or
- (b) son, daughter or remoter issue; or
- (c) brother or sister.

### **613 Water authority not to indemnify officers**

(1) A water authority must not—

- (a) indemnify a person who is or has been an officer of the authority against a liability incurred by the person as an officer of the authority; or
- (b) exempt a person who is or has been an officer of the authority from a liability incurred as an officer of the authority.

(2) An instrument is void to the extent it is inconsistent with subsection (1).

(3) Subsection (1) does not prevent a water authority from indemnifying a person against a civil liability, other than a liability to the authority, unless the liability arises out of conduct involving lack of good faith.

(4) Subsection (1) does not prevent a water authority from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) A water authority may give an indemnity mentioned in subsection (3) or (4) only if the Minister has approved the giving of the indemnity.

### **614 Water authority not to pay premiums for particular liabilities of officers**

(1) A water authority must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the authority against a liability—

- (a) incurred by the person as an officer of the authority; and
- (b) arising out of a breach of conduct involving—

- (i) a wilful breach of duty in relation to the authority; or
- (ii) a contravention of section 585(3) or (4).<sup>29</sup>

(2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever the outcome of the proceedings.

(3) An instrument is void to the extent it is inconsistent with subsection (1).

(4) In this section—

“pay” includes pay indirectly through 1 or more interposed entities.

### **615 Director’s duty to prevent insolvent trading**

(1) This section applies if—

- (a) immediately before a water authority incurs a debt—
  - (i) there are reasonable grounds to suspect the authority will not be able to pay all its debts as and when they become payable; or
  - (ii) there are reasonable grounds to suspect that, if the authority incurs the debt, it will not be able to pay all its debts as and when they become payable; and
- (b) the authority is, or later becomes, unable to pay all its debts as and when they become payable.

(2) A person who is a director of the authority, or takes part in the authority’s management, at the time the debt is incurred commits an offence.

Maximum penalty—100 penalty units or imprisonment for 1 year.

(3) In a proceeding against a person for an offence against this section, it is a defence if it is proved—

- (a) that the debt was incurred without the person’s express or implied authority or consent; or
- (b) that, at the time the debt was incurred, the person did not have reasonable cause to suspect that—

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<sup>29</sup> Section 585 (Duties and liabilities of water authority officers)

- (i) the authority would not be able to pay all its debts as and when they became payable; or
- (ii) if the authority incurred the debt, it would not be able to pay all its debts as and when they became payable; or
- (c) the person took all reasonable steps to prevent the authority from incurring the debt; or
- (d) for a director—the person did not take part at the time in the authority's management because of illness or for some other good cause.

### **616 Court may order compensation**

(1) This section applies if a person is convicted of an offence against section 615 in relation to the incurring of a debt by a water authority.

(2) The Supreme Court or the District Court may declare that the person is to be personally responsible, without any limitation of liability, for the payment to the authority of the amount required to satisfy the part of the authority's debts that the court considers appropriate.

(3) This section does not affect any rights of a person to indemnity, subrogation or contribution.

(4) This section—

- (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a water authority; and
- (b) does not prevent proceedings being started for a breach of the duty or the liability.

### **617 Examination of persons concerned with water authorities**

(1) This section applies if it appears to the Attorney-General that—

- (a) a person who has been concerned, or taken part, in a water authority's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the authority; or
- (b) a person may be capable of giving information in relation to a water authority's management, administration or affairs.

(2) The Attorney-General may apply to the Supreme Court or the District Court for an order under this section in relation to the person.

(3) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on any matters relating to the water authority's management, administration or affairs.

(4) The examination of the person must be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(5) The court may give directions about—

- (a) the matters to be inquired into at the examination; and
- (b) the procedures to be followed at the examination including, if the examination is to be held in private, the persons who may be present.

(6) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(7) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(8) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or imprisonment for 2 years.

(9) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(10) The person must not, without reasonable excuse, contravene a direction under subsection (9).

Maximum penalty—200 penalty units or imprisonment for 2 years.

(11) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(12) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or imprisonment for 5 years.

(13) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(14) Subsection 15 applies if—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty.

(15) The answer is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(16) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

(17) Subject to subsection (15), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(18) The person may, at his or her own expense, employ a lawyer, and the lawyer may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(19) The court may adjourn the examination from time to time.

(20) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order all, or any part, of the costs incurred by the person be paid by the State.

## **618 Power to grant relief**

(1) This section applies to a person who is an officer or employee of a water authority.



(2) Subsection (3) applies if, in a proceeding against the person for negligence, default, breach of trust or breach of duty as an officer or employee of the water authority, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach; but
- (b) the person has acted honestly and, having regard to all the circumstances of the case, including circumstances connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach.

(3) The court may relieve the person, wholly or partly, from liability on terms the court considers appropriate.

(4) If the person believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as an officer or employee of the water authority, the person may apply to the Supreme Court or the District Court for relief.

(5) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(6) Subsection (7) applies if—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved, wholly or partly, from the liability sought to be enforced against the person.

(7) The judge may withdraw the case, wholly or partly, from the jury and direct that judgment be entered for the defendant on the terms, as to costs or otherwise, that the judge considers appropriate.

## **619 False or misleading information or documents**

(1) In this section—

“**officer**” of a water authority includes an employee of the authority.

(2) An officer of a water authority must not—

- (a) make a statement concerning the affairs of the authority to another officer or the Minister that the first officer knows is false or misleading in a material particular; or

- (b) omit from a statement concerning the authority's affairs made to another officer or the Minister anything without which the statement is, to the first officer's knowledge, misleading in a material particular.

(3) It is enough for a complaint for an offence against subsection (2)(a) or (b) to state the statement made was 'false or misleading' to the person's knowledge, without specifying which.

(4) An officer of a water authority must not give to another officer or the Minister a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the water authority, its creditors or creditors of another person or for another fraudulent purpose—500 penalty units or imprisonment for 5 years; or
- (b) otherwise—100 penalty units.

### *Division 3—Board proceedings*

#### **620 Time and place of meetings**

(1) Meetings of the board are to be held at the times and places it decides.

(2) However, the board must hold—

- (a) its first meeting at the time and place decided by the chief executive; and
- (b) at least 1 meeting a year.

(3) The board chairperson—

- (a) may call a board meeting at any time; and

- (b) must call a meeting if asked by at least one-half of the directors comprising the board or, if the number is not a whole number, the next highest whole number of directors.

### **621 Conduct of proceedings**

(1) The board's chairperson must preside at all meetings at which the chairperson is present.

(2) If the chairperson is absent, the director chosen by the directors present must preside.

(3) At a board meeting—

- (a) a quorum is the number of directors equalling one-half the number of directors on the board plus 1 or, if the number is not a whole number, the next highest whole number; and
- (b) a question is decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question to be decided and, if the votes are equal, the chairperson has a casting vote.

(4) Unless otherwise prescribed under a regulation, the board may conduct its proceedings, including its meetings, as it considers appropriate.

### **622 Participation in meetings by telephone etc.**

(1) The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication.

(2) A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

### **623 Minutes**

The board must keep minutes of its proceedings.

*Division 4—Directors’ fees and allowances***624 Fees and allowances**

A director is entitled to be paid the fees and allowances approved by the Minister.

**625–636 Section numbers not used**

See footnote to section 1.

**PART 5—CATEGORY 1 WATER AUTHORITY MATTERS***Division 1—Commercialising category 1 water authorities**Subdivision 1—Preliminary***637 Meaning of “commercialisation”**

“**Commercialisation**” of a category 1 water authority involves the authority undergoing a structural reform process so that it operates, as far as practicable, on a commercial basis and in a competitive environment.

**638 Key commercialisation principles**

(1) The key commercialisation principles are the following—

- (a) principle 1—clarity of objectives;
- (b) principle 2—management autonomy and authority;
- (c) principle 3—accountability for performance;
- (d) principle 4—competitive neutrality.

(2) The elements of principle 1 are as follows—

- (a) the water authority will have clear, non-conflicting objectives;

- (b) specific financial and non-financial performance targets will be set for the commercial activities of the water authority and stated in its performance plan;
  - (c) any community service obligations of the water authority will be—
    - (i) clearly identified in its performance plan; and
    - (ii) separately costed;
  - (d) the water authority will be appropriately funded for its community service obligations and any funding will be made apparent;
  - (e) the water authority will be set performance targets for its community service obligations.
- (3) The elements of principle 2 are as follows—
- (a) the water authority will be required to use its best endeavours to ensure it meets its performance targets;
  - (b) subject to this Act, the water authority will be given autonomy in its day to day operations;
  - (c) government directions for the water authority to achieve non-commercial objectives will be exercised in an open way;
  - (d) in its day to day operations, the water authority will be at arms length to the State.
- (4) The elements of principle 3 are as follows—
- (a) the water authority's board will be accountable to the Minister for the authority's performance;
  - (b) the authority's performance plan will form the basis for accountability;
  - (c) the authority's performance will be monitored by the chief executive against the performance targets specified in its performance plan;
  - (d) Government monitoring of the authority is intended to compensate for the absence of the wide range of monitoring to which corporations whose shares are listed on a stock exchange are subject.
- (5) The elements of principle 4 are as follows—

- (a) the efficiency of overall resource use is promoted by ensuring markets are not unnecessarily distorted;
  - (b) wherever possible and appropriate, advantages and disadvantages accruing to the water authority because it is a statutory authority should be removed.
- (6) Without limiting subsection (5)(b), advantages accruing to the water authority may be removed by requiring the authority—
- (a) to pay to the State amounts equivalent to—
    - (i) government taxes that are not otherwise payable by the authority to the Commonwealth, State or local government; and
    - (ii) any cost of funds advantage the authority obtains over commercial rates of interest because of State guarantees given for providing the goods or services; and
  - (b) to comply with Commonwealth, State and local government requirements that apply only if the activity carried on by the authority were carried on by a private sector business, including, for example, requirements about protecting the environment and planning and approval processes.

***Subdivision 2—Category 1 water authorities subject to commercialisation***

**639 Category 1 water authorities subject to commercialisation**

Category 1 water authorities are subject to commercialisation.

**640 Key objectives of category 1 water authority**

(1) Under commercialisation, the key objectives of a category 1 water authority are to be—

- (a) commercially successful in carrying on its activities; and
- (b) efficient and effective in providing goods and delivering its services, including things done as community service obligations.

(2) The commercial success, efficiency and effectiveness of a category 1 water authority are to be measured against its financial and non-financial performance targets stated in its performance plan.

### *Division 2—Commercialisation charter for category 1 water authorities*

#### **641 Preparing commercialisation charter**

The Minister may prepare a commercialisation charter for a category 1 water authority.

#### **642 Content of commercialisation charter**

A water authority's commercialisation charter must include 1 or more of the following matters decided by the Minister—

- (a) an outline of how the key commercialisation principles and their elements are to be applied to the authority;
- (b) a timetable for applying the principles and elements;
- (c) a timetable for the authority's adoption of the following—
  - (i) appropriate systems of accounting;
  - (ii) commercial management and performance systems;
- (d) a timetable and method for valuing the authority's assets and deciding its capital structure;
- (e) a statement of activities to be undertaken by the authority before commercialisation;
- (f) a statement of the authority's community service obligations and its financial costs for the obligations.

#### **643 Compliance with commercialisation charter**

A category 1 water authority for which the Minister has prepared a commercialisation charter must implement the charter.

**644 Expiry of commercialisation charter**

A commercialisation charter prepared for a water authority under section 641 expires 1 year after the authority becomes a category 1 water authority.

***Division 3—Corporate plan for category 1 water authorities*****645 Category 1 water authority must have corporate plan**

A category 1 water authority must have a corporate plan.

**646 Guidelines for corporate plans**

(1) The Minister may issue guidelines about the form and content of corporate plans.

(2) Each category 1 water authority must comply with the guidelines.

(3) Guidelines under this section are subordinate legislation.

**647 Draft corporate plan**

(1) A category 1 water authority must prepare, and submit to the Minister for the Minister's agreement, a draft corporate plan—

(a) within 1 month of becoming a category 1 water authority; and

(b) not later than 2 months before the start of each subsequent financial year (a “**subsequent financial year**”).

(2) The authority and Minister must endeavour to reach agreement on the draft plan as soon as possible and, in the case of a draft corporate plan for a subsequent financial year, in any event not later than 1 month before the start of the financial year.

**648 Special procedures for draft corporate plan**

(1) The Minister may return the draft corporate plan to the water authority and request it to—

(a) consider, or further consider, any matter and deal with the matter in the draft plan; and



(b) revise the draft plan in the light of its consideration or further consideration.

(2) The board must comply with the request as a matter of urgency.

(3) If a draft corporate plan has not been agreed to by the Minister within 2 months after the authority becomes a category 1 water authority, the Minister may, by notice, direct the authority—

(a) to take specified steps in relation to the draft plan; or

(b) to make specified modifications to the draft plan.

(4) If, in the case of a subsequent financial year, a draft corporate plan has not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by notice, direct the authority—

(a) to take specified steps in relation to the draft plan; or

(b) to make specified modifications to the draft plan.

(5) The authority must immediately comply with a direction under subsection (3) or (4).

(6) The Minister must cause a copy of a direction to be published in the gazette within 15 business days after it is given.

### **649 Corporate plan on agreement**

When a water authority's draft corporate plan is agreed to by the Minister, it becomes the authority's corporate plan for the relevant financial year.

### **650 Corporate plan pending agreement**

(1) Subsection (2) applies if a water authority's draft corporate plan has not been agreed to by the Minister within 1 month after the authority becomes a category 1 water authority.

(2) The draft corporate plan submitted, or last submitted, by the authority to the Minister before the time mentioned in subsection (1) (with any modifications made by the authority, whether before or after that time, at the direction of the Minister) is taken to be the authority's corporate plan until a draft corporate plan becomes the authority's corporate plan under section 649.

(3) Subsection (4) applies if, in the case of a subsequent financial year, the Minister has not agreed to a draft corporate plan before the start of the financial year.

(4) The draft corporate plan submitted, or last submitted, by the authority to the Minister before the start of the financial year (with any modifications made by the authority, whether before or after that time, at the direction of the Minister) is taken to be the authority's corporate plan until a draft corporate plan becomes the authority's corporate plan under section 649.

### **651 Modifying corporate plan**

(1) A water authority's corporate plan may be modified by the authority with the Minister's agreement.

(2) The Minister, by notice, may direct the authority to modify the corporate plan.

(3) The Minister must cause a copy of the direction to be published in the gazette within 15 business days after it is given.

### ***Division 4—Performance plan for category 1 water authorities***

### **652 Category 1 water authority must have performance plan**

(1) A category 1 water authority must have a performance plan for each financial year.

(2) The performance plan must be consistent with the authority's corporate plan.

### **653 Content of performance plan**

(1) A category 1 water authority's performance plan must include the following for the relevant financial year—

- (a) the authority's financial and non-financial performance targets for its functions;
- (b) particulars of the authority's relevant employment and industrial relations plan;
- (c) an outline of the authority's objectives;

- (d) an outline of the nature and scope of the activities proposed to be undertaken by the authority during the financial year;
- (e) an outline of the authority's main undertakings during the financial year;
- (f) the authority's proposed infrastructure investments;
- (g) the authority's capital structure and dividend policies;
- (h) the authority's forecast taxation obligations;
- (i) an outline of the borrowings made, and proposed to be made, by the authority;
- (j) an outline of the policies adopted by the authority to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (k) an outline of the authority's asset management plans, including its policies and procedures relating to the acquisition and disposal of major assets;
- (l) the authority's accounting policies that apply to the preparation of its accounts;
- (m) style and frequency of reporting requirements;
- (n) the performance indicators for the authority's performance targets.

(2) The performance plan must also contain the following particulars about the water authority's community service obligations—

- (a) the nature and extent of the obligations to be performed by the authority for the financial year to which the plan relates;
- (b) the costs for the obligations;
- (c) the ways in which, and the extent to which, the authority must be compensated by the State for performing the obligations;
- (d) performance targets for the obligations.

### **654 Preparing draft performance plan**

(1) A category 1 water authority must prepare, and give to the Minister for approval, a draft performance plan.

(2) The draft must be given to the Minister—

- (a) within 1 month after the water authority becomes a category 1 water authority; and
- (b) not later than 2 months before the start of each subsequent financial year.

(3) The authority and the Minister must try to reach agreement on the draft performance plan—

- (a) as soon as possible; and
- (b) for a draft plan for a subsequent financial year—not later than the start of the financial year.

### **655 Special procedures for draft performance plan**

(1) The Minister may return the draft performance plan to the water authority and request it to—

- (a) consider, or further consider, any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

(2) The authority must immediately comply with the request.

(3) If a draft performance plan has not been agreed to by the Minister within 2 months after the authority becomes a category 1 water authority, the Minister may, by notice, direct the authority—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified modifications to the draft plan.

(4) If, in the case of a subsequent financial year, a draft performance plan has not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by notice, direct the authority—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified modifications to the draft plan.

(5) The authority must immediately comply with a direction under subsection (3) or (4).

(6) The Minister must cause a copy of a direction to be published in the gazette within 15 business days after it is given.

**656 Performance plan on agreement**

When a water authority's draft performance plan is agreed to by the Minister, it becomes the authority's performance plan for the relevant financial year.

**657 Performance plan pending agreement**

(1) Subsection (2) applies if a water authority's draft performance plan has not been agreed to by the Minister within 1 month after the authority becomes a category 1 water authority.

(2) The draft performance plan submitted, or last submitted, by the authority to the Minister before the time mentioned in subsection (1) (with any modifications made by the authority, whether before or after that time, at the direction of the Minister) is taken to be the authority's performance plan until a draft performance plan becomes the authority's performance plan under section 656.

(3) Subsection (4) applies if, in the case of a subsequent financial year, the Minister has not agreed to a draft performance plan before the start of the financial year.

(4) The draft performance plan submitted, or last submitted, by the authority to the Minister before the start of the financial year (with any modifications made by the authority, whether before or after that time, at the direction of the Minister) is taken to be the authority's performance plan until a draft performance plan becomes the authority's performance plan under section 656.

**658 Modifying performance plan**

(1) A water authority's performance plan may be modified by the authority with the Minister's agreement.

(2) The Minister, by notice, may direct the authority to modify the performance plan.

(3) The Minister must cause a copy of the direction to be published in the gazette within 15 business days after it is given.

*Division 5—Tax equivalents manual for category 1 water authorities***659 Treasurer may issue tax equivalents manual**

(1) The Treasurer may issue a manual (the “**tax equivalents manual**”) about deciding the amounts (“**tax equivalents**”) that must be taken into account by a category 1 water authority in applying full cost pricing to its operations as the value of benefits derived by the authority if there is no liability to pay a government tax that would be payable by the authority if it were not a statutory authority.

(2) Without limiting subsection (1), the tax equivalents manual may provide for the following—

- (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax;
- (b) lodging returns and giving information;
- (c) assessing returns;
- (d) the tax assessor’s functions and powers;
- (e) objections and appeals against assessments and rulings.

(3) The Treasurer may appoint a person to be the tax assessor under the tax equivalents manual.

(4) A category 1 water authority must, as required under the tax equivalents manual, pay tax equivalents to the Minister for payment to the consolidated fund.

(5) The Treasurer must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment is made.

*Division 6—Dividends payable by category 1 water authorities***660 Payment of dividends**

(1) A category 1 water authority must advise the Minister of the recommendation that, in the light of the information then available to the authority, it is likely to make under subsection (3).

(2) The authority must comply with subsection (1) within—

- (a) 1 month after the end of each financial year; or
- (b) for a particular financial year, if the Minister has extended the period to a period not longer than 3 months after the end of the financial year, the extended period.

(3) Within 4 months after the end of each financial year, the authority must recommend to the Minister that the authority pay a specified dividend to the State, or not pay a dividend, for the financial year.

(4) The authority must consult with the Minister before making the recommendation.

(5) Within 1 month after receiving the recommendation, the Minister must either—

- (a) approve the recommendation; or
- (b) direct the payment to the State of the specified dividend or a different specified dividend, as the case requires.

(6) The dividend for a financial year must not exceed the authority's profits, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(7) The dividend must be paid within 6 months after the end of the financial year or any further period the Minister allows.

(8) The Minister must cause a copy of a direction given under subsection (5)(b) to be published in the gazette within 15 business days after the direction is given.

### **661 Interim dividends**

(1) The Minister, at any time after 1 January in a financial year, may require a water authority to make a recommendation about the payment of interim amounts to the State, including when the amounts are to be paid, on account of the dividend that may become payable under section 660 for the financial year.

(2) Within 1 month after receiving notice of the requirement, the authority must make a recommendation to the Minister.

(3) The Minister must, within 1 month after receiving the recommendation, either—

- (a) approve the recommendation; or
- (b) direct the payment, at specified times, of specified amounts, or different specified amounts, on account of the dividend that may become payable for the financial year.

(4) A direction under subsection (3)(b) must not direct the payment of an amount that exceeds the authority's estimated profit for the first 6 months of the financial year, after—

- (a) provision has been made for income tax or its equivalent; and
- (b) any unrealised capital gains from upwards revaluation of non-current assets have been excluded.

(5) The Minister must cause a copy of a direction under subsection (3)(b) to be published in the gazette within 15 business days after the direction is given.

#### **662 Dividend payment for financial year in which water authority becomes a category 1 water authority**

For applying section 660 to a water authority for the financial year in which it became a category 1 water authority, a dividend payable by the authority is payable for, at the discretion of the Minister—

- (a) the whole financial year; or
- (b) the part of the financial year for which it was a category 1 water authority.

#### **663 Interim dividend for financial year in which water authority becomes a category 1 water authority**

(1) For applying section 661 to a water authority for the financial year in which it becomes a category 1 water authority—

- (a) the period (the “**applicable period**”) in relation to which an interim dividend is payable is, at the discretion of the Minister—
  - (i) the first 6 months of the financial year; or
  - (ii) the part of the 6 months for which it was a category 1 water authority; and



- (b) the Minister must, when acting under section 661(1) to require the authority to make a recommendation, also notify the authority of the applicable period.

(2) However, when the Minister exercises the Minister's discretion under section 662(a), the Minister is not bound by an applicable period previously decided and notified under subsection (1).

### **664–674 Section numbers not used**

See footnote to section 1.

## **PART 6—RESERVE POWERS OF MINISTER AND TREASURER**

### **675 Minister's power to notify water authority of public sector policies**

(1) The Minister may give a water authority notice of a public sector policy that is to apply to the authority if the Minister is satisfied it is necessary to give the notice in the public interest.

(2) The water authority must comply with the policy.

(3) Before giving the notice, the Minister must—

- (a) consult with the water authority; and
- (b) ask the authority to advise whether, in its opinion, complying with the policy would not be in its financial interest.

(4) The Minister must gazette a copy of the notice within 15 business days after it is given.

### **676 Minister's power to give directions in public interest**

(1) The Minister may give a water authority a written direction if the Minister is satisfied it is necessary to give the direction in the public interest because of exceptional circumstances.

(2) The water authority must comply with the direction.

(3) Before giving the direction, the Minister must—

- (a) consult with the water authority; and
- (b) ask the authority to advise whether, in its opinion, complying with the direction would not be in its financial interest.

(4) The Minister must gazette a copy of the direction within 15 business days after it is given.

### **677 Minister’s and Treasurer’s power to give joint directions to category 1 water authority**

(1) The Minister and Treasurer may give a category 1 water authority a written joint direction if the Minister and Treasurer are satisfied it is necessary to give the direction—

- (a) to give effect to the purpose of this chapter; or
- (b) to facilitate water industry reform in the State; or
- (c) to ensure a financially viable water industry in the State.

(2) The water authority must comply with the direction.

(3) The Minister must gazette a copy of the direction within 15 business days after it is given.

(4) This section expires 3 years after it commences.

### **678 Notice of suspected insolvency because of notice or direction**

(1) This section applies if—

- (a) a water authority is given a notice about a public sector policy (a “**public sector policy notice**”) or direction under this part; and
- (b) the authority suspects that it will or may become insolvent; and
- (c) in the authority’s opinion, the cause or a substantial cause of the suspected insolvency would be compliance with the public sector policy notice or direction.

(2) The authority must immediately give the Minister notice of the suspicion and its reasons for the opinion.

(3) The notice must state that it is given under this section.

**(4)** The giving of the notice operates to suspend the public sector policy notice or direction until—

- (a) the Minister gives the authority written advice that the Minister is not satisfied that—
  - (i) the authority's suspicion mentioned in subsection (1)(b) is well-founded; or
  - (ii) the authority's opinion mentioned in subsection (1)(c) is justified; or
- (b) the public sector policy notice or direction is revoked.

**(5)** If the authority was given a public sector policy notice, or a direction other than a joint direction under section 677, and the Minister is satisfied that the authority's suspicion is well-founded, the Minister must immediately—

- (a) if the Minister is also satisfied that the authority's opinion is justified—revoke the public sector policy notice or direction; and
- (b) in any case—give the authority the written directions the Minister considers necessary or desirable, including any directions necessary or desirable to ensure—
  - (i) the authority does not incur further debts; or
  - (ii) the authority will be able to pay all its debts as and when they become due.

**(6)** If the authority was given a joint direction under section 677 and the Minister and the Treasurer are each satisfied that the authority's suspicion is well-founded, the Minister and Treasurer must immediately, by joint notice—

- (a) if the Minister and Treasurer are also satisfied that the authority's opinion is justified—revoke the direction; and
- (b) in any case—give the authority the written joint directions the Minister and Treasurer consider necessary or desirable, including any directions necessary or desirable to ensure—
  - (i) the authority does not incur further debts; or
  - (ii) the authority will be able to pay all its debts as and when they become due.

**(7)** Without limiting subsections (5) and (6), a direction under this section may require the authority to stop or limit particular activities.

(8) The authority must comply with a direction under this section.

(9) The Minister must publish a copy of the direction in the gazette within 15 business days after it is given.

(10) This section is in addition to, and does not limit, another provision of this Act or another law.

### **679–689 Section numbers not used**

See footnote to section 1.

## **PART 7—AMALGAMATING, DISSOLVING AND TRANSFERRING FUNCTIONS OF WATER AUTHORITIES**

### *Division 1—Amalgamating or dissolving water authorities*

#### **690 Amalgamating water authorities and authority areas**

(1) A regulation may amalgamate 2 or more water authorities (“**former authorities**”) to form a new water authority.

(2) The regulation must—

- (a) name the new water authority; and
- (b) state its category; and
- (c) state the matters mentioned in section 598 about composition of the new water authority’s board; and
- (d) if the new water authority is to have an authority area—identify the area; and
- (e) dissolve the former authorities.

#### **691 Dissolution of water authority and authority area**

(1) A regulation may—

- (a) dissolve a water authority if the Minister is satisfied the water authority no longer serves the function for which it was established; or
- (b) dissolve a water authority for converting the authority to an alternative institutional structure; or
- (c) dissolve a water authority after transferring all its functions to a local government under section 691;<sup>30</sup> or
- (d) dissolve a water authority and appoint the chief executive to perform the authority's functions.

(2) If a water authority mentioned in subsection (1)(a) to (c) has an authority area, the regulation may also dissolve the authority area.

### **692 Public notice of proposed amalgamation or dissolution**

Before a regulation amalgamates water authorities or dissolves a water authority, the chief executive must publish notice of the proposed amalgamation or dissolution in—

- (a) the gazette; and
- (b) a newspaper circulating—
  - (i) throughout the State; or
  - (ii) if any of the authorities proposed to be amalgamated have an authority area—generally, in each authority area; or
  - (iii) if the authority proposed to be dissolved has an authority area—generally, in the authority area.

### **693 Content of notice of proposed amalgamation or dissolution**

(1) For a proposed amalgamation, a notice under section 692 must—

- (a) state the names of the water authorities proposed to be amalgamated; and
- (b) state the following information about the new water authority proposed to be formed by the amalgamation—
  - (i) its name;

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30 Section 700 (Transfer of functions)

- (ii) its category;
  - (iii) that it is to carry out water activities;
  - (iv) the infrastructure it is to own, build or acquire;
  - (v) the land it is to own or acquire;
  - (vi) its financing arrangements, including borrowings and projected water activities costs;
  - (vii) how many directors it is to have;
  - (viii) if it is to have an authority area—
    - (A) whether the directors are to be elected by the authority's ratepayers or nominated; and
    - (B) if they are to be nominated, by whom they are to be nominated;
  - (ix) if it is not to have an authority area—that the directors are to be nominated, and by whom they are to be nominated; and
  - (c) if the authority has an authority area—identify the area.
- (2)** For a proposed dissolution, the notice must—
- (a) state the authority's name; and
  - (b) if the authority has an authority area—identify the area; and
  - (c) state—
    - (i) for a proposed dissolution under section 691(1)(a)—that the Minister is satisfied the water authority no longer serves the function for which it was established; or
    - (ii) for a proposed dissolution under section 691(1)(b)—state the type of alternative institutional structure; or
    - (iii) for a proposed dissolution under section 691(1)(c)—that all the water authority's functions have been transferred to a stated local government; or
    - (iv) for a proposed dissolution under section 691(1)(d)—that the chief executive is to be appointed to perform the authority's functions.
- (3)** The notice must also state the following—
- (a) that written submissions on the proposed dissolution or amalgamation may be made to the chief executive;

- (b) the date, at least 20 business days after the notice is published, by which the submissions may be made;
- (c) where the submissions may be made.

### **694 Considering submissions on proposed amalgamation or dissolution**

The chief executive must consider each properly made submission about a proposed water authority amalgamation or dissolution before the amalgamation or dissolution happens.

### **695 Water authority may request its dissolution**

(1) A water authority may request its dissolution to enable it to convert to an alternative institutional structure if—

- (a) its board, by special resolution, resolves to make the request; and
- (b) for an authority with an authority area—a majority of its ratepayers in the area, by special ballot, agree to the authority making the request.

(2) The request must be given, in writing, to the chief executive and must state the particulars of the proposed conversion.

(3) The special ballot must be conducted in the way prescribed under a regulation.

(4) In this section—

“**special resolution**” means a resolution that is passed by a two-thirds majority at a meeting of the board.

### **696 Procedure before authority is dissolved to convert to an alternative institutional structure**

Before a regulation is made dissolving a water authority to allow it to convert to an alternative institutional structure—

- (a) the new entity that is the alternative institutional structure must be established; and
- (b) the Minister, after consultation with the Treasurer, must be satisfied the State has obtained or will obtain—

- (i) a satisfactory indemnity for civil liabilities incurred by the State under section 705; and
- (ii) appropriate payment from the new entity for the authority's assets.

### **697 Recovering water authority's dissolution costs**

The State may recover from a water authority, the costs incurred by the State in publishing notice of the authority's proposed dissolution under section 692.

#### *Division 2—Transferring water authority's functions to local government*

### **698 Water authority and local government must agree to proposed transfer**

(1) A water authority and a relevant local government may agree to the proposed transfer to the local government of all or part of the authority's functions.

(2) The water authority and local government must consider the following matters and agree on how to implement the proposed transfer—

- (a) the value of the authority's assets and liabilities relating to the functions proposed to be transferred;
- (b) the value of the authority's existing works and their suitability for facilitating the functions proposed to be transferred;
- (c) the effect the proposed transfer may have on the authority's ratepayers and customers affected by the transfer;
- (d) the consideration for acquiring the authority's assets to be paid by the relevant local government to the authority or, if required by the Minister and the Treasurer under section 700(3), the State;
- (e) the authority's liabilities proposed to be transferred to the local government;
- (f) the practicability of the proposed transfer to the local government of the authority's liabilities and the ways and means by which the liabilities may be transferred;



- (g) the effect the management of existing works or the provision of additional works by the local government may have on rates and charges made and levied by the authority on its ratepayers and customers affected by the transfer in the area;
- (h) the necessary transfers of property to the local government.

(3) In this section—

**“relevant local government”** means the local government decided by the chief executive, having regard to—

- (a) for a water authority with an authority area—the local government whose area most closely corresponds with the authority area; or
- (b) for a water authority without an authority area—
  - (i) the local government whose area contains the majority of the authority’s works; or
  - (ii) any local government to which the authority supplies water.

### **699 Joint report to Minister**

(1) After agreeing on how to implement the proposed transfer, the water authority and local government must give the Minister and Treasurer a joint report on the agreement and proposed transfer.

(2) The report must—

- (a) state the authority’s functions proposed to be transferred; and
- (b) contain details of the matters considered by the water authority and local government under section 698(2); and
- (c) be accompanied by a copy of the agreement signed by the water authority and local government.

### **700 Transferring functions**

(1) This section applies if the Minister and the Treasurer are satisfied it is in the public interest to transfer the water authority’s functions mentioned in section 699(2)(a) to the local government after considering the following—

- (a) the report;

(b) the financial and other implications for the State;

(c) the authority's financial viability.

(2) A regulation may approve the agreement mentioned in section 699(1).

(3) Before the regulation is made, the Minister and the Treasurer may require the local government to pay to the State, rather than the authority, consideration for transferring any assets of the authority.

(4) Subsection (3) does not apply to the Gladstone Area Water Board.

(5) The regulation must include, as an attachment, a copy of the agreement entered into between the water authority and the local government.

(6) The agreement takes effect when the regulation commences.

***Division 3—Effect of amalgamating, dissolving, converting to alternative institutional structure and transferring functions***

**701 Definitions for div 3**

In this division—

**“changeover day”**, for a former water authority, means the day the authority is amalgamated with another water authority or dissolved under division 1.

**“former water authority”** means a water authority that is—

- (a) amalgamated with another water authority; or
- (b) converted to an alternative institutional structure; or
- (c) dissolved under section 691(1)(a), (c) or (d).<sup>31</sup>

**“new entity”** means—

- (a) for a former water authority that is amalgamated with another water authority—the water authority constituted as a result of the amalgamation; or

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31 Section 691 (Dissolution of water authority and authority area)

- (b) for a former water authority that is converted to an alternative institutional structure—the entity that is the alternative institutional structure; or
- (c) for a former water authority that is dissolved under section 691(1)(a), (c) or (d)—the State.

### **702 Vesting of assets, rights and liabilities**

The assets, rights and liabilities of a former water authority vest in the new entity on the changeover day.

### **703 Continuing legal proceedings**

On the changeover day for a former water authority, a legal proceeding by or against the authority that has not been finished before the changeover day may be continued and finished by or against the new entity.

### **704 Existing employees**

(1) On the changeover day for a former water authority that is amalgamated with another water authority or converted to an alternative institutional structure, a person who was employed by the authority immediately before the changeover day, becomes an employee of the new entity.

(2) The person—

- (a) must be employed on the person's existing or equivalent terms and conditions of employment; and
- (b) remains entitled to all existing and accruing rights of employment.

### **705 State undertakes non-transferable civil liability**

(1) This section applies only to an act done or omission made by a changing authority in relation to its functions and powers under this Act before the authority is changed.

(2) If the act or omission gives rise to a civil liability that, at law, can not be transferred to the new entity, the State stands in the place of the authority for the act or omission.

(3) In this section—

“**changed**”, for an authority, means—

- (a) amalgamated with another water authority; or
- (b) converted to an alternative institutional structure.

“**changing authority**” means a water authority that is to be—

- (a) amalgamated with another water authority; or
- (b) converted to an alternative institutional structure.

### **706–716 Section numbers not used**

See footnote to section 1.

## **PART 8—MISCELLANEOUS**

### **717 Recovering water authority’s establishment costs**

(1) The State may recover from a water authority the costs incurred by the State for the following—

- (a) designing the works stated in the authority’s establishment proposal as works the authority proposes to build;
- (b) conducting site investigations for the works;
- (c) publishing notice of the authority’s proposed establishment under section 552.<sup>32</sup>

(2) However, the State may recover the costs mentioned in subsection (1)(a) and (b) only if the establishment proposal for the authority states—

- (a) the amount of the costs; and
- (b) that the State may recover the costs from the authority.

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32 Section 552 (Public notice of proposal to establish a water authority)

**718–738 Section numbers not used**

See footnote to section 1.

**CHAPTER 5—INVESTIGATIONS, ENFORCEMENT  
AND OFFENCES****PART 1—INVESTIGATION MATTERS***Division 1—Authorised officers***739 Appointment and qualifications of authorised officers**

(1) The chief executive or the regulator (the “**appointer**”) may appoint a person as an authorised officer.

(2) The appointer may appoint a person as an authorised officer only if, in the appointer’s opinion, the person has the necessary expertise or experience to be an authorised officer.

**740 Functions and powers of authorised officers**

(1) An authorised officer has the following functions—

- (a) collecting information for this Act;
- (b) conducting investigations and inspections to monitor and enforce compliance with—
  - (i) this Act; or
  - (ii) the *Integrated Planning Act 1997*, so far as that Act relates to a development condition or operations of any kind and all things constructed or installed for taking, or interfering with, water under this Act.

(2) For performing an authorised officer’s functions under this Act, an authorised officer has the powers given under this or another Act.

(3) An authorised officer is subject to the directions of the appointer in exercising the powers.

- (4) The powers of an authorised officer may be limited—
- (a) under a regulation; or
  - (b) under a condition of appointment; or
  - (c) by notice of the appointer given to the authorised officer.

#### **741 Conditions of appointment of authorised officers**

(1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.

- (2) An authorised officer—
- (a) if the appointment provides for a term of appointment—ceases to hold office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the appointer.

#### **742 Authorised officer's identity card**

(1) The appointer must give each authorised officer an identity card.

- (2) The identity card must—
- (a) contain a recent photograph of the authorised officer; and
  - (b) be signed by the authorised officer; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date.

(3) This section does not prevent the giving of a single identity card to a person for this Act and other Acts.

#### **743 Failure to return identity card**

A person who ceases to be an authorised officer must return the person's identity card to the appointer as soon as practicable (but within 15 business days) after ceasing to be an authorised officer, unless the person has a reasonable excuse for not returning it.

Maximum penalty—50 penalty units.

**744 Producing or displaying identity card**

(1) An authorised officer may exercise a power under this Act in relation to someone else only if the authorised officer—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

***Division 2—Powers of entry of authorised officers*****745 Definition for div 2**

In this division—

**“land”** means a parcel of land other than the part on which there is erected a building or structure that is—

- (a) a dwelling place; or
- (b) being used, at the relevant time, as a dwelling place.

**746 Power to enter land to monitor compliance**

(1) An authorised officer may, at any reasonable time, enter land of an owner of land authorised under this Act to take, interfere with or use water to do any 1 or more of the following—

- (a) read any device used for recording the taking of, interfering with, or use of the water;
- (b) check the accuracy of, or repair or replace, the device;
- (c) calculate or measure the water taken, interfered with or used;
- (d) ensure the conditions of the authorisation or the provisions of a plan under this Act for the taking of, interfering with or use of the water are being complied with.

(2) An authorised officer may, at any reasonable time, enter land of an owner of land authorised under this Act to take, interfere with or destroy other resources to do any 1 or more of the following—

- (a) calculate or measure the resource taken, interfered with or destroyed;
- (b) ensure the conditions of the authorisation are being complied with.

(3) An authorised officer may, at any reasonable time, enter land where an activity mentioned in section 311(1) is being carried out to ensure the carrying out of the activity complies with this Act.

(4) An authorised officer may, at any reasonable time, enter land to find out if the *Integrated Planning Act 1997* is being complied with in relation to a development condition.

#### **747 Power to enter land to collect information**

(1) An authorised officer may, at any reasonable time, enter land—

- (a) if there is monitoring equipment on the land—
  - (i) to read the equipment; or
  - (ii) to recalibrate, repair or replace the equipment; or
- (b) if paragraph (a) does not apply—to calculate or measure on the land rainfall, water flow, water levels or for assessing the effects of water use on land and water; or
- (c) to take samples of soil or water from the land; or
- (d) to construct monitoring equipment on the land.

(2) An authorised officer may, at any reasonable time, enter land—

- (a) to calculate or measure other resources on the land; or
- (b) to take samples of the resources from the land; or
- (c) to measure the health of watercourses, lakes, springs and aquifers.

(3) For exercising a power mentioned in subsection (1) or (2), an authorised officer may enter and cross any land to access land mentioned in the subsection.

(4) An authorised officer may, at any reasonable time—



- (a) enter land to inspect—
  - (i) a dam or a referable dam on the land; or
  - (ii) any records about a referable dam; or
- (b) enter other land to ascertain—
  - (i) the impact a failure of the dam or referable dam would have; or
  - (ii) if there are factors that are likely to cause the dam or referable dam to fail; or
  - (iii) if a failure impact assessment of the dam or referable dam should be requested.

(5) In this section—

**“monitoring equipment”** means equipment for reading rainfall, water flow, water levels or for assessing the effects of water use on land and water.

#### **748 Power to enter land to search for unauthorised activities**

(1) Subsection (2) applies if an authorised officer reasonably believes 1 or more of the following activities is happening—

- (a) unauthorised drilling;
- (b) unauthorised taking of, interfering with or use of water;
- (c) unauthorised taking of other resources;
- (d) unauthorised interference with the physical integrity of a watercourse, lake or spring.

(2) The authorised officer may enter land to find out, or confirm whether, an unauthorised activity mentioned in subsection (1) is happening or has happened.

(3) The authorised officer may exercise powers under subsection (2), at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.

#### **749 Power to enter places for other purposes**

(1) An authorised officer may enter a place for a purpose other than a purpose mentioned in section 746, 747 or 748, if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a place of business to which this Act relates and the entry is made when the place is open for business or otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(d)—

**“place of business”** does not include a part of the place where a person resides.

### *Division 3—Procedure for entry*

#### **750 Entry with consent**

(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place under section 749(1)(a).

(2) Before asking for the consent, the authorised officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and

- (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the authorised officer must immediately give a copy to the occupier.

(6) A court must find the occupier of a place did not consent to an authorised officer entering the place under this division if—

- (a) a matter arises in a proceeding before the court whether the occupier of the place consented to the entry under section 749(1)(a); and
- (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **751 Applying for warrant**

(1) An authorised officer may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **752 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place, or, within the next 7 days, may be at the place.

(2) The warrant must state—

(a) that a stated authorised officer may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for the entry; and

(ii) exercise the authorised officer's powers under this division; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

### 753 Special warrants

(1) An authorised officer may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised officer's remote location.

(2) Before applying for the special warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised officer may apply for the special warrant before the application is sworn.

(4) After issuing the special warrant, the magistrate must promptly fax a copy (a “**facsimile warrant**”) to the authorised officer if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the authorised officer—

(a) the magistrate must tell the authorised officer—

(i) what the terms of the special warrant are; and

- (ii) the date and time the special warrant is issued; and
- (b) the authorised officer must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the special warrant; and
  - (iii) the terms of the special warrant.

(6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

(7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the authorised officer completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—

- (a) a matter arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
- (b) the special warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the special warrant.

### **754 Warrants—procedure before entry**

(1) This section applies if an authorised officer named in a special warrant issued under this division for a place is intending to enter the place under the warrant.

(2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the authorised officer’s

identity card or a copy of another document evidencing the authorised officer's appointment;

- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 753(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the authorised officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

#### *Division 4—Powers of authorised officers after entering a place*

### **755 General powers after entering places**

(1) This section applies to an authorised officer who enters a place under division 2.

(2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the authorised officer may exercise 1 or more of the following powers—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
- (d) copy a document at the place;
- (e) regulate or prevent the taking of water or other resources under this Act so as to comply with the quantity authorised to be taken under this Act;

- (f) take all steps and do all acts and things necessary for advancing the purposes of this Act;
- (g) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for the exercise of a power under this division;
- (h) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (g);
- (i) require the occupier of a place, or a person at the place, to give the authorised officer information to help the authorised officer ascertain whether the Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(h) or (i), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **756 Failure to help authorised officer**

(1) A person required to give reasonable help under section 755(3)(h) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If the requirement is to be complied with by an individual giving information, or producing a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

### **757 Failure to give information**

(1) A person of whom a requirement is made under section 755(3)(i) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

***Division 5—Power to obtain information*****758 Power to require name and address**

(1) This section applies if—

- (a) an authorised officer finds a person committing an offence against this Act; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer to reasonably believe the person has just committed an offence against this Act.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.

**759 Failure to give name or address**

(1) A person of whom a requirement under section 758 is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

**760 Power to require production of documents**

(1) An authorised officer may require a person to make available for inspection by an authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—

- (a) a document given to the person under this Act; or



(b) a document required to be kept by the person under this Act.

(2) The authorised officer may keep the document to copy it.

(3) If the authorised officer copies a document mentioned in subsection (1)(b), or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(4) The authorised officer must return the document to the person as soon as practicable after copying it.

(5) However, if a requirement (a “**document certification requirement**”) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.

(6) A requirement under subsection (1) is called a “**document production requirement**”.

### **761 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

### **762 Failure to produce document**

(1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) It is a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the individual.

### **763 Power to require information**

(1) This section applies if an authorised officer reasonably believes—

(a) an offence against this Act has been committed; and

(b) a person may be able to give information about the offence.

(2) The authorised officer may, by notice given to the person, require the person to give information about the offence to the authorised officer at a stated reasonable place and at a stated reasonable time.

(3) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

### *Division 6—Compensation for damage caused when exercising power*

#### **764 Giving notice of damage**

(1) This section applies if—

- (a) an authorised officer damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction or authority of an authorised officer damages property.

(2) The authorised officer must immediately give notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.

(3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer’s, or other person’s, control, the authorised officer may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the authorised officer reasonably believes is trivial.

(6) In this section—

“**owner**”, of property, includes the person in possession or control of it.

**765 Compensation for damage**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under division 2 or 4.<sup>33</sup>

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the division.

(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

**766–777 Section numbers not used**

See footnote to section 1.

**PART 2—ENFORCEMENT MATTERS***Division 1—Show cause and compliance notices***778 When regulator may give a show cause notice**

(1) Subsection (2) applies if the regulator proposes to have a spot audit conducted of a strategic asset management plan or to give a service provider a compliance notice.

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33 Divisions 2 (Powers of entry of authorised officers) and 4 (Powers of authorised officers after entering a place)

(2) The regulator must first give the service provider a notice (a “**show cause notice**”) inviting the service provider to show cause why the audit should not be conducted or the compliance notice given.

### **779 General requirements for show cause notices**

(1) A show cause notice must state the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) the facts and circumstances forming the basis for the grounds;
- (d) that a submission may be made about the show cause notice;
- (e) how the submission may be made;
- (f) where the submission may be made or sent;
- (g) a day and time within which the submission must be made.

(2) The day stated in the notice must be, or must end, at least 15 business days after the notice is given.

### **780 Who may give a compliance notice**

(1) This section applies if the chief executive, regulator or an authorised officer reasonably believes—

- (a) a person—
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
- (b) a matter relating to the contravention is reasonably capable of being rectified; and
- (c) it is appropriate to give the person an opportunity to rectify the matter.

(2) The chief executive, regulator or authorised officer may give the person a notice (a “**compliance notice**”) requiring the person to refrain from doing an act or to rectify the matter.

(3) Subsection (4) applies if the giving of the compliance notice is for a matter for which a show cause notice has been given by the regulator.

(4) The compliance notice may only be given if, after considering any properly made submission by the service provider about the show cause notice, the chief executive, regulator or authorised officer still believes it is appropriate to give the compliance notice.

### **781 General requirements for compliance notices**

(1) The compliance notice must state—

- (a) that the chief executive, regulator or authorised officer believes the person to whom the notice is to be given—
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the chief executive, regulator or authorised officer believes is being, or has been, contravened; and
- (c) briefly, how it is believed the provision is being, or has been contravened; and
- (d) the matter relating to the contravention that the chief executive, regulator or authorised officer believes is reasonably capable of being rectified; and
- (e) the reasonable steps the person must take to rectify the matter; and
- (f) that the person must take the steps within a stated reasonable period; and
- (g) if the notice is for a matter for which a show cause notice has been given by the regulator—that if the notice is not complied with the regulator may be authorised under section 955(2) to take over the operation of the service provider’s infrastructure; and
- (h) that the person may appeal against the decision to give the notice within 30 business days after the day the notice is given; and
- (i) how the person may appeal.

(2) If a compliance notice requires the person to do an act involving the carrying out of work, it also must give details of the work involved.

(3) If a compliance notice requires the person to refrain from doing an act, it also must state either—

- (a) a period for which the requirement applies; or
- (b) that the requirement applies until further notice.

### **782 Compliance with compliance notice**

The person must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—the number of penalty units that applies for the offence to which the notice relates.

### **783 Chief executive or regulator may take action and recover costs**

(1) If the person contravenes the compliance notice by not doing something, the chief executive or regulator may do the thing.

(2) Subsection (3) applies if—

- (a) under section 494(3), the notice is taken to be a compliance notice; and
- (b) the person to whom the notice is given has not complied with the notice by the day stated in the notice.

(3) The chief executive may, instead of doing the thing under subsection (1), take any action the chief executive reasonably believes is necessary to prevent or minimise the impact of the failure of the dam.

(4) Any reasonable expenses incurred by the chief executive or regulator in doing anything under subsection (1) or (3), may be recovered by the chief executive or regulator as a debt due to it by the person.

## ***Division 2—Enforcement orders***

### **784 Proceeding for orders**

(1) Subject to subsections (2) and (4), a person may bring a proceeding in the District Court for 1 or more of the following orders—

- (a) an order to remedy or restrain the commission of an offence against this Act (an “**enforcement order**”);
- (b) an order that a person who has committed an offence against this Act pay damages to compensate the applicant for injury suffered

by the applicant or loss or damage to the applicant's property because of the commission of the offence;

- (c) if the person has brought a proceeding under paragraph (a) and the court has not decided the proceeding—for an order under section 934 (an “**interim enforcement order**”);
- (d) to cancel or change an enforcement order or interim enforcement order.

(2) If the order sought under subsection (1) is for an offence against chapter 3, parts 1 to 3, or section 821 or 956, the proceeding may be brought only by the regulator.

(3) Subsection (2) applies for an offence against section 956 only if the appointment of the administrator was made for section 955(1)(a).

(4) If the order sought under subsection (1) is for an offence against section 824, the proceeding may be brought only by the local government.

(5) If the order sought under subsection (1) is for an offence against chapter 3, part 4, division 4 or section 822 or 823, the proceeding may be brought only by the regulator or the local government.

(6) The person may bring a proceeding under subsection (1)(a) whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.

(7) If a person other than the chief executive brings a proceeding under this section, the person must, within 5 business days of commencing to bring the proceeding, give the chief executive notice of the proceeding.

### **785 Proceeding brought in a representative capacity**

(1) A proceeding under section 784(1) may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;
- (b) if the proceeding is brought on behalf of an individual—the individual.

**786 Making interim enforcement order**

(1) The court may make an interim enforcement order pending a decision of the proceeding if the court is satisfied it would be appropriate to make the order.

(2) The court may make the order subject to conditions, including a condition requiring the applicant for the order to give an undertaking to pay costs resulting from damage suffered by the respondent.

**787 Proceeding for enforcement order without notice**

(1) A person may bring a proceeding for an enforcement order without notice to the other party.

(2) Without limiting the discretion of the court in the exercise of its equitable jurisdiction, the court may, with or without conditions—

- (a) grant the order for a limited period stated in the order; or
- (b) grant the order until the trial of the proceeding; or
- (c) grant an order for a limited time prohibiting a person from leaving Australia; or
- (d) make another order.

*Example of an injunction under subsection (2)(c)—*

This order may be used if the departure of the person would render a proceeding useless, for example, because the person's departure would make it impossible to have an enforcement hearing in relation to a judgment against the person and so ascertain the location of the person's assets. Conditions imposed may, for example, relate to payment of an amount, or surrendering a passport, to the court.

**788 Making enforcement order**

(1) The court may make an enforcement order if the court is satisfied the offence—

- (a) has been committed; or
- (b) will be committed unless restrained.

(2) If the court is satisfied the offence has been committed, the court may make either or both of the following orders—

- (a) an enforcement order whether or not there has been a prosecution for the offence;
- (b) an order for exemplary damages.



(3) In considering whether to make an order for exemplary damages, the court may consider—

- (a) any impact on water available to other water entitlement holders and natural ecosystems, resulting, or likely to result, because of the commission of the offence; and
- (b) any effect on a watercourse, lake, spring, aquifer or water quality; and
- (c) any financial saving or other benefit the person who committed the offence received or is likely to receive because of the commission of the offence.

(4) If an order is made for exemplary damages, the amount of the damages must be paid to the consolidated fund.

### **789 Effect of orders**

(1) An enforcement order or an interim enforcement order may direct the respondent—

- (a) to stop an activity that constitutes, or will constitute, an offence against this Act; or
- (b) not to start an activity that will constitute an offence against this Act; or
- (c) to do anything required to stop committing an offence against this Act; or
- (d) to return anything to a condition as close as practicable to the condition it was in immediately before an offence against this Act was committed; or
- (e) to do anything to comply with this Act.

(2) Without limiting the court's powers, the court may make an order requiring the demolition, removal or modification of—

- (a) works for taking or interfering with water or other resources; or
- (b) a referable dam.

(3) An enforcement order or an interim enforcement order—

- (a) may be in terms the court considers appropriate to secure compliance with this Act; and
- (b) must state the time by which the order is to be complied with.

**790 Court's powers about orders**

(1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to engage, or to continue to engage, in the activity; or
- (b) the person has previously engaged in an activity of the kind; or
- (c) there is danger of substantial damage to natural ecosystems or property or injury to another person if the person engages, or continues to engage, in the activity; or
- (d) there is risk of failure of a referable dam.

(2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised whether or not—

- (a) it appears to the court the person against whom the order is made intends to fail, or to continue to fail, to do the thing; or
- (b) the person has previously failed to do a thing of the kind; or
- (c) there is danger of substantial damage to property or injury to another person if the person fails, or continues to fail, to do the thing; or
- (d) there is risk of failure of a referable dam.

(3) The court may cancel or change an enforcement order or interim enforcement order.

(4) The court's powers under this section are in addition to its other powers.

**791 Contributing to cost of bringing proceeding**

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

***Division 3—Costs for proceedings under division 2*****792 Parties to pay own costs for proceedings**

(1) Each party to a proceeding in a court under division 2 must bear the party's own costs for the proceeding.

(2) However, the court may order costs for the proceeding, including allowances to witnesses attending for giving evidence at the proceeding, as it considers appropriate in the following circumstances—

- (a) the court considers the proceeding was started merely to delay or obstruct;
- (b) the court considers the proceeding, or part of the proceeding, to have been frivolous or vexatious;
- (c) a party has not been given reasonable notice of intention to apply for an adjournment of the proceeding;
- (d) a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party;
- (e) a party has incurred costs because another party has defaulted in the court's procedural requirements;
- (f) without limiting paragraph (d), a party has incurred costs because another party has introduced, or sought to introduce, new material;
- (g) a party to the proceeding does not properly discharge its responsibilities in the proceedings.

(3) If the court makes an order under subsection (2), the court may also order the party ordered to pay costs under subsection (2) to pay to the other party an amount as compensation for loss or damage suffered by the other party because of the proceeding if the court considers—

- (a) the proceeding was started merely to delay or obstruct; or
- (b) the proceeding, or part of the proceeding, to have been frivolous or vexatious.

**793–807 Section numbers not used**

See footnote to section 1.

## **PART 3—OFFENCES**

### *Division 1—Offences for chapter 2*

#### **808 Unauthorised taking, supplying or interfering with water**

A person must not take, supply or interfere with water under this Act unless authorised under this Act to take, supply or interfere with the water.

Maximum penalty—1 665 penalty units.

#### **809 Using water contrary to water use plan**

A person must not use water in a water use plan area contrary to the plan.

Maximum penalty—1 665 penalty units.

#### **810 Using water contrary to approved land and water management plan**

If there is an approved land and water management plan for land, a person must not use water on the land contrary to the plan.

Maximum penalty—1 665 penalty units.

#### **811 Tampering with devices**

(1) A person must not tamper with a device used under this Act to measure the volume of water taken, or the rate and time of taking, by a person.

Maximum penalty—1 000 penalty units.

(2) A person must not tamper with a device installed by the chief executive to monitor water.

Maximum penalty—1 000 penalty units.

**812 Contravening conditions of water allocation, interim water allocation, water licence or permit**

The holder of a water allocation, interim water allocation, water licence or water permit must not contravene a condition of the allocation, licence or permit.

Maximum penalty—1 665 penalty units.

**813 Contravening condition of resource operations licence, interim resource operations licence or operations licence**

(1) A holder of a resource operations licence, an interim resource operations licence or an operations licence must not contravene a condition of the licence.

Maximum penalty—1 665 penalty units.

(2) Subsection (1) does not apply to a contravention for which a licence has been cancelled.

**814 Destroying vegetation, excavating or placing fill without permit**

(1) A person must not do any of the following activities unless the person has a permit under section 269 to carry out the activity—

- (a) *destroy vegetation in a watercourse, lake or spring;*
- (b) *excavate in a watercourse, lake or spring;*
- (c) *place fill in a watercourse, lake or spring.*

Maximum penalty—1 665 penalty units.

(2) Subsection (1) does not apply to—

- (a) *the destruction of vegetation, excavation or placing of fill—*
  - (i) *that is permitted or required, or happens as a necessary and unavoidable part of some other activity that is permitted or required, under a licence, permit, notice or other authority under another section of this Act or under the Integrated Planning Act 1997; or*
  - (ii) *that is permitted or required under the River Improvement Trust Act 1940; or*

- (iii) *that happens as a necessary and unavoidable part of extracting quarry material or forest products under the Forestry Act 1959; or*
  - (iv) *in a watercourse, lake or spring prescribed under a regulation; or*
  - (v) *in a watercourse, lake or spring in an area prescribed under a regulation; or*
  - (vi) *for the excavation or placing of fill—happening within the quantity limits prescribed under a regulation; or*
  - (vii) *that is permitted under a regulation; or*
- (b) *the destruction of vegetation—*
- (i) *that is required under a requisition under the Fire and Rescue Authority Act 1990, section 69, for reducing the risk of fire; or*
  - (ii) *that is permitted or required to be carried out under the Electricity Act 1994 to prevent the obstruction of, or interference with, an electric line or creation of an electrical hazard; or*
  - (iii) *that happens as a necessary part of works carried out under this Act, other than under a licence, permit or notice; or*
  - (iv) *that is regrowth, and does not consist of mulga or other fodder trees—following the destruction under a permit given under section 266 less than 2 years previously; or*
  - (v) *that has been lawfully planted for woodlot, fodder, agriculture, forestry, garden or horticultural purposes; or*
  - (vi) *that is necessary to prevent personal injury or property damage or to provide for emergency access.*

**(3)** *On the conviction of a person for an offence against subsection (1), the court may order the person to pay to the State the cost of any remedial work or rehabilitation necessary or desirable because of the commission of the offence.*

**(4)** *Subsection (3) does not limit the court's power under the Penalties and Sentences Act 1992 or another law.*

**815 Removing quarry material**

*(1) A person must not remove quarry material without an allocation notice.*

*Maximum penalty—1 665 penalty units.*

*(2) A person must not contravene the conditions of an allocation notice, unless the person has a reasonable excuse.*

*Maximum penalty—1 665 penalty units.*

*(3) On a conviction for an offence under subsection (1), the court in addition to imposing a penalty may order the offender pay to the chief executive royalty at the rate prescribed under a regulation for the State quarry material removed in contravention of subsection (1).*

*(4) Subsection (1) does not apply to a person who collects quarry material while fossicking under a licence under the Fossicking Act 1994 if the person does not collect more than 1 m<sup>3</sup> of quarry material in a year.*

**816 Unauthorised water bore activities**

*(1) An individual must not carry out any of the following activities unless the individual is licensed under chapter 2, part 10 to carry out the activity—*

- (a) drill, deepen, enlarge or case a water bore;*
- (b) remove, replace, alter or repair the casing, lining or screen of a water bore;*
- (c) decommission a water bore.*

*Maximum penalty—500 penalty units.*

*(2) Subsection (1) does not apply to an individual—*

- (a) who is under the constant physical supervision of an individual who is licensed under chapter 2, part 10; or*
- (b) carrying out an activity under the Petroleum Act 1923 or the Mineral Resources Act 1989 if the activity would not result in a water bore being left as a functional bore for the supply of water at the end of the activity.*

**817 Contravening requirements for mining and petroleum drilling**

*(1) Subsection (2) applies to an individual mentioned in section 816(2)(b) who is decommissioning a water bore.*

*(2) The individual, in carrying out the decommissioning, must comply with the requirements prescribed under a regulation, unless the person has a reasonable excuse.*

*Maximum penalty—500 penalty units.*

**818 Contravening condition of water bore driller's licence**

*A holder of a water bore driller's licence must not—*

- (a) contravene a condition of the licence; or*
- (b) carry out a water bore drilling activity—*
  - (i) of a class for which the holder is not licensed; or*
  - (ii) with equipment for which the holder does not have endorsement.*

*Maximum penalty—500 penalty units.*

**819 False or misleading advertising**

*A person must not, in relation to water bore drilling activities—*

- (a) advertise in a way that is false or misleading in a material particular; or*
- (b) advertise or hold himself or herself out as willing to undertake water bore drilling activities of a kind for which the person is not licensed.*

*Maximum penalty—500 penalty units.*

**820 Taking water without operations licence**

*A person must not, as a single operation, take water as an agent for 2 or more water entitlement holders under water allocations not managed*



*under a resource operations licence unless the person holds an operations licence.*

*Maximum penalty—1 000 penalty units.*<sup>34</sup>

### ***Division 2—Offences for chapter 3***

#### **821 Supplying unauthorised services**

A person must not supply a sewerage or water service unless the person is—

- (a) a service provider for the service; or
- (b) operating infrastructure for the service provider for the service.

Maximum penalty—1 000 penalty units.

#### **822 Connecting to service provider’s infrastructure without approval**

A person must not, without the written consent of a service provider, connect to the service provider’s infrastructure.

Maximum penalty—1 000 penalty units.

#### **833 Interfering with service provider’s infrastructure**

A person must not, without the written consent of a service provider, interfere with a service provider’s infrastructure.

Maximum penalty—1 000 penalty units.

#### **824 Discharging certain materials**

(1) A person must not discharge trade waste into a local government’s infrastructure, without the approval of the local government under section 469.

Maximum penalty—1 000 penalty units.

(2) A person must not discharge trade waste into a service provider’s infrastructure without the written consent of the service provider.

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<sup>34</sup> These sections had not commenced on or before the reprint date.

Maximum penalty—1 000 penalty units.

(3) A service provider must not discharge trade waste into a local government's infrastructure without the approval of the local government under section 469.

Maximum penalty—1 000 penalty units.

(4) A person must not discharge a prohibited substance into a service provider's infrastructure.

Maximum penalty—1 000 penalty units.

(5) A person in a service area must discharge all human and liquid waste from fixtures or appliances on the person's premises into the service provider's infrastructure.

Maximum penalty—500 penalty units.

### *Division 3—General offences*

#### **825 False or misleading statements**

(1) A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, 'false or misleading'.

#### **826 False or misleading documents**

(1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and

- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, ‘false or misleading’.

### **827 Obstructing and impersonating authorised officers**

(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

- (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person’s conduct an obstruction.

(3) A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

(4) In this section—

“**obstruct**” includes assault, hinder and threaten, and attempt to obstruct.

### **828 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive

officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **829–850 Section numbers not used**

See footnote to section 1.

## **CHAPTER 6—REVIEWS, APPEALS AND ARBITRATION**

### **PART 1—INTERPRETATION**

#### **851 Who is an interested person**

(1) In this part, a person who has been given an information notice or a compliance notice by the chief executive is an **“interested person”**.

(2) However, if the decision or action for which the notice was given is in relation to a resource operations plan, the interested person may only appeal to the extent—

- (a) the decision is inconsistent with the plan; or
- (b) a different decision, consistent with the plan, could have been made.

(3) In this part, a person who has been given an information notice or a compliance notice by the regulator is also an **“interested person”**.

(4) In this part, a rate payer or customer of a category 2 water authority who is dissatisfied with the authority’s decision about a rate or charge made and levied on the customer or ratepayer is an **“interested person”**.

(5) The decision or action for which a notice was given under subsection (1) or (3) or the decision mentioned in subsection (4) is an “**original decision**”.

### **852–860 Section numbers not used**

See footnote to section 1.

## **PART 2—INTERNAL REVIEW OF DECISIONS**

### **861 Appeal process starts with internal review**

Every appeal against an original decision must be, in the first instance, by way of an application for internal review.

### **862 Who may apply for internal review**

(1) An interested person, may apply for a review (an “**internal review**”) of an original decision mentioned in—

- (a) section 851(1)—to the chief executive (the “**reviewer**”); or
- (b) section 851(3)—to the regulator (also the “**reviewer**”); or
- (c) section 851(4)—to the chief executive officer of the category 2 water authority (also the “**reviewer**”).

(2) The application must be—

- (a) in the approved form; and
- (b) supported by enough information to enable the reviewer to decide the application.

### **863 Applying for an internal review**

(1) The application must be made within 30 business days after—

- (a) if the person is given an information notice about the decision or a compliance notice—the day the person is given the information notice or a compliance notice; or

(b) if paragraph (a) does not apply and notice of the decision is published—the day notice of the decision is published.

(2) The reviewer may extend the time for applying for an internal review.

(3) On or before making the application, the applicant must send the following documents to any other person who was given an information notice about the original decision—

- (a) notice of the application (the “**submitter notice**”);
- (b) a copy of the application and supporting documents.

(4) The submitter notice must inform the recipient that written submissions on the application may be made to the reviewer within 5 business days after the application is made to the reviewer.

(5) The application does not stay the original decision.

(6) The application must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(7) Subsection (6)—

- (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
- (b) does not apply to an original decision made by the chief executive; and
- (c) does not apply to an original decision made by a reviewer who is a category 2 water authority.

### **864 Review decision**

(1) If the reviewer is satisfied the applicant has complied with section 863(3) and (4), if applicable, the reviewer must, within 20 business days after receiving the application—

- (a) review the original decision; and
- (b) consider any properly made submissions by a recipient of the submitter notice; and
- (c) make a decision (the “**review decision**”) to—
  - (i) confirm the original decision; or

- (ii) amend the original decision; or
- (iii) substitute another decision for the original decision.

(2) Within 10 business days after making the review decision, the reviewer must give the applicant and any person who was given notice of the original decision notice (the “**review notice**”) of the review decision.

(3) If the review decision is not the decision sought by the applicant, the review notice must also state—

- (a) the reasons for the review decision; and
- (b) that the applicant may, within 30 business days after the applicant is given the notice—
  - (i) for a decision or action mentioned in section 851(3), other than a decision or action mentioned in subparagraph (iv)—apply for arbitration on the review decision under part 4; and
  - (ii) for a decision or action about a water bore driller’s licence—appeal against the review decision to the Magistrates Court; and
  - (iii) for a decision or action mentioned in section 851(1) or (4), other than a decision or action mentioned in subparagraph (ii)—appeal against the review decision to the Land Court; and
  - (iv) for a decision or action mentioned in section 489, 490 or 492—appeal against the review decision to the Planning and Environment Court; and
- (c) how to appeal; and
- (d) if the notice states under paragraph (b)(i), that the applicant may apply for arbitration—that the applicant may apply to a court of competent jurisdiction for a stay of the review decision; and
- (e) that the applicant may apply to the court mentioned in paragraph (b)(ii), (iii) or (iv) for a stay of the review decision.

(4) If the reviewer does not comply with subsection (1) or (2), the reviewer is taken to have made a decision confirming the original decision.

(5) If the review decision confirms the original decision, for the purpose of arbitration or an appeal to a court, the original decision is taken to be the review decision.

(6) If the review decision amends the original decision, for the purpose of arbitration or an appeal to a court, the original decision as amended is taken to be the review decision.

### **865 Stay of operation of original decision**

(1) If an application is made for an internal review of an original decision, the applicant may immediately apply for a stay of the original decision to—

- (a) if the applicant has applied for arbitration—a court of competent jurisdiction; and
- (b) if the applicant has appealed to the Magistrates Court—the Magistrates Court; and
- (c) if the applicant has appealed to the Land Court—the Land Court; and
- (d) if the applicant has appealed to the Planning and Environment Court—the Planning and Environment Court.

(2) The court may stay the original decision to secure the effectiveness of the review and—

- (a) if the applicant has applied for arbitration—the arbitration; or
- (b) if the applicant has appealed to a court—a later appeal to the court.

(3) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of the stay must not extend past the time when the reviewer makes a review decision about the original decision and any later period the court allows the applicant to enable the applicant to—

- (a) seek arbitration on the review decision; or
- (b) appeal against the review decision.

(5) The application affects the original decision, or carrying out of the decision, only if the decision is stayed.



**866–876 Section numbers not used**

See footnote to section 1.

**PART 3—APPEALS****877 Who may appeal**

(1) If an interested person has applied for a review of an original decision, any interested person for the original decision may appeal against the review decision to—

- (a) if the review decision was about an original decision or action about a water bore driller’s licence—the Magistrates Court; and
- (b) if the review decision was about an original decision or action mentioned in section 851(1) or (4), other than a decision mentioned in paragraph (a)—the Land Court; and
- (c) if the review decision was about an original decision or action mentioned in section 489, 490 or 492—the Planning and Environment Court.

(2) The Magistrates Court that has jurisdiction to hear the appeal is the court exercising jurisdiction at or nearest the place of the activity, proposed activity or land concerned.

**878 Starting an appeal**

(1) An appeal is started by—

- (a) filing a notice of appeal with the court; and
- (b) complying with rules of court applicable to the appeal.

(2) The notice of appeal must be filed within 30 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.

(3) The court may extend the period for filing the notice of appeal.

**879 Staying operation of review decision**

(1) The appellant may apply to the court to which the appellant could have applied for a stay of an original decision for a stay of the operation of the review decision to secure the effectiveness of the arbitration or appeal.

(2) The court may grant a stay of the operation of the review decision to secure the effectiveness of the arbitration or appeal.

(3) The stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of the stay must not extend past the time when the arbitration is determined or the court decides the appeal.

(5) The appeal affects the review decision, or carrying out of the decision, only if the decision is stayed.

**880 Hearing procedures**

(1) The procedure for an appeal must be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.

(2) An appeal is by way of rehearing, unaffected by the reviewer's decision.

**881 Assessors**

If the judge or member hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge or member may appoint 1 or more assessors to help the judge or member in deciding the appeal.

**882 Powers of court on appeal**

(1) In deciding an appeal, the court may—

- (a) confirm the review decision; or
- (b) set aside the review decision; or

- (c) amend the review decision in the way the court considers appropriate; or
- (d) send the matter back to the reviewer and give the directions the court considers appropriate; or
- (e) set aside the review decision and substitute it with a decision the court considers appropriate.

(2) If the court amends the review decision or substitutes another decision for the review decision, the amended or substituted decision is, for this Act (other than this part) taken to be the reviewer's decision.

(3) Each party to the appeal must bear the party's own costs for the appeal.

(4) However, the court may order costs for the appeal, including allowances to witnesses attending for giving evidence at the appeal, as it considers appropriate in the following circumstances—

- (a) the court considers the appeal was started merely to delay or obstruct;
- (b) the court considers the appeal, or part of the appeal, to have been frivolous or vexatious;
- (c) party has not been given reasonable notice of intention to apply for an adjournment of the appeal;
- (d) a party has incurred costs because the party is required to apply for an adjournment because of the conduct of another party;
- (e) a party has incurred costs because another party has defaulted in the court's procedural requirements;
- (f) without limiting paragraph (d), a party has incurred costs because another party has introduced, or sought to introduce, new material;
- (g) a party to the appeal does not properly discharge its responsibilities in the appeal.

(5) If the court makes an order under subsection (4), the court may also order the party ordered to pay costs under subsection (4) to pay to the other party an amount as compensation for loss or damage suffered by the other party because of the appeal if the court considers—

- (a) the appeal was started merely to delay or obstruct; or

- (b) the appeal, or part of the appeal, to have been frivolous or vexatious.

### **883–890 Section numbers not used**

See footnote to section 1.

## **PART 4—ARBITRATION**

### **891 Who may apply for arbitration**

(1) Subsection (2) applies to a review decision about an original decision mentioned in section 851(3), other than a decision under section 489, 490 or 492.

(2) An interested person who applied for the review decision and is dissatisfied with the decision may give the authority under the *Queensland Competition Authority Act 1997* a notice (a “**dispute notice**”) applying for arbitration on the decision.

(3) The dispute notice must—

- (a) be given within 30 business days after the day the interested person receives notice of the decision or the decision is taken to have been made; and
- (b) state—
- (i) the name and address of the interested person; and
- (ii) details of the review decision and the grounds on which arbitration is sought.

(4) The interested person must, at the same time, give a copy of the dispute notice to the regulator.

### **892 Acknowledging dispute notice**

On receiving the dispute notice, the authority must give the interested person and the regulator a notice acknowledging receipt of the dispute notice.

**893 Withdrawing dispute notice**

The interested person may withdraw the dispute notice at any time before the authority makes its determination on the dispute.

**894 Parties to arbitration**

The parties to the arbitration are the interested person and the regulator.

**895 Determination by authority**

(1) The authority must make a written determination in an arbitration on the dispute.

(2) When making the determination, the authority must give the parties its reasons for making the determination.

(3) However, the authority is not required to make a determination if it ends the arbitration and the authority is satisfied—

- (a) the giving of the dispute notice was vexatious; or
- (b) the subject matter of the dispute is trivial, misconceived or lacking in substance.

**896 Conduct of arbitration**

The *Queensland Competition Authority Act 1997*, part 7 applies to the arbitration.

**897–917 Section numbers not used**

See footnote to section 1.

## CHAPTER 7—LEGAL PROCEEDINGS

### PART 1—EVIDENCE

#### 918 Application of pt 1

This part applies to a proceeding under this Act.

#### 919 Appearance

A party to a proceeding may appear personally or by lawyer or agent.

#### 920 Appointments and authority

It is not necessary to prove—

- (a) the chief executive's appointment; or
- (b) the regulator's appointment; or
- (c) an authorised officer's appointment; or
- (d) the authority of the chief executive, regulator or an authorised officer to do anything under this Act.

#### 921 Evidentiary aids

(1) A certificate purporting to be signed by the chief executive or regulator stating any of the following matters is evidence of the matter—

- (a) a stated document is 1 of the following things made, given, granted or kept under this Act—
  - (i) an appointment;
  - (ii) an authority or licence;
  - (iii) a decision;
  - (iv) a notice, direction or requirement;
- (b) a stated document is a copy of a thing mentioned in paragraph (a);
- (c) on a stated day, or during a stated period, a stated person was or was not an authority holder;

- (d) on a stated day, or during a stated period, an authority—
  - (i) was or was not in force; or
  - (ii) as or was not subject to a stated condition; or
  - (iii) was or was not cancelled;
- (e) on a stated day, or during a stated period, a person’s appointment as an authorised officer was, or was not, in force;
- (f) on a stated day, a stated person was given a stated notice under this Act;
- (g) on a stated day, a stated requirement was made of a stated person.

(2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of the day it came to the complainant’s knowledge.

### **922–930 Section numbers not used**

See footnote to section 1.

## **PART 2—PROCEEDINGS**

### **931 Proceedings for offences**

(1) Subject to subsection (2), a proceeding for an offence by way of a summary proceeding under the *Justices Act 1886* must start within—

- (a) 1 year after the commission of the offence; or
- (b) 1 year after the offence comes to the complainant’s knowledge, but not later than 2 years after the commission of the offence.

(2) A proceeding for a prescribed offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(3) A proceeding must be before a magistrate if it is a proceeding—

- (a) with a view to the summary conviction of a person on a charge of a prescribed offence; or
- (b) for an examination of witnesses in relation to a charge for a prescribed offence.

(4) However, if a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

- (a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, requests, at the start of the proceeding, that the charge be prosecuted on indictment; or
- (b) the magistrate hearing and deciding a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

- (c) must not hear and decide the charge as a summary offence; but
- (d) must proceed by way of an examination of witnesses in relation to an indictable offence.

(6) If a magistrate acts under subsection (5)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding with a view to the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence the magistrate must make a statement to the person in accordance with the *Justices Act 1886*, section 104(2)(b).

(7) The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 500 penalty units or imprisonment for 1 year.

(8) If a person other than the chief executive brings a proceeding under this section, the person must, within 5 business days of starting the proceeding, give the chief executive notice of the proceeding.



**932 Proceedings for offences**

(1) Proceedings may only be brought by the Attorney-General or regulator for an offence against chapter 3, parts 1 to 3 or section 821 or 956.

(2) Subsection (1) applies for an offence against section 956 only if the appointment of the administrator was made for section 955(1)(a).

(3) Proceedings may only be brought by the Attorney-General or a local government for an offence against section 824.

(4) Proceedings may only be brought by the Attorney-General, the regulator or a local government for an offence against chapter 3, part 4, division 4 or section 822 or 823.

(5) This section applies despite section 931(1).

**933 Proceeding brought in a representative capacity**

(1) A proceeding under section 932(1) may be brought by the person on their own behalf or in a representative capacity.

(2) However, if the proceeding is brought in a representative capacity, 1 of the following consents must be obtained—

- (a) if the proceeding is brought on behalf of a body of persons or a corporation—the members of the governing body;
- (b) if the proceeding is brought on behalf of an individual—the individual.

**934 Magistrates Court may make orders**

(1) After hearing the complaint, the Magistrates Court may make an order on the defendant it considers appropriate.

(2) The order may be made in addition to, or in substitution for, any penalty the court may otherwise impose.

(3) The order may require the defendant to—

- (a) demolish, remove or modify a work that takes or interferes with water or other resources; or
- (b) to do or not to do another act in relation to failure impact assessment; or

- (c) pay an amount by way of damages to the complainant for injuries suffered by the complainant as the result of the defendant committing an offence against this Act.

(4) The order must state the time, or period, within which the order must be complied with.

(5) A person who knowingly contravenes the order commits an offence against this Act.

Maximum penalty—1 000 penalty units.

(6) If the order states that contravention of the order is a public nuisance, the chief executive or the regulator may undertake any work necessary to remove the nuisance.

(7) If the chief executive or the regulator carries out works under subsection (6), the chief executive or the regulator may recover the reasonable cost of the works as a debt due to the chief executive or the regulator from the person to whom the order was given.

### **935 Costs involved in bringing proceeding**

If the proceeding is brought in a representative capacity, the person on whose behalf the proceeding is brought may contribute to, or pay, the legal costs and expenses incurred by the person bringing the proceeding.

### **936 Responsibility for acts or omissions of representatives**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) 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
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

**“state of mind”** of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **937–954 Section numbers not used**

See footnote to section 1.

## **CHAPTER 8—MISCELLANEOUS**

### **PART 1—APPOINTMENT OF ADMINISTRATOR**

#### **955 Governor in Council may appoint administrator to operate infrastructure**

**(1)** This section applies if—

- (a) the Minister is satisfied, or reasonably believes—
  - (i) a service provider has not complied with a compliance notice given by the regulator under section 780; or
  - (ii) a service provider is likely to stop supplying a registered service and there is no other entity willing to take over the operation of all or part of the service provider’s infrastructure for the service; or
- (b) the chief executive has cancelled a resource operations licence or interim resource operations licence.

**(2)** The Governor in Council may, by gazette notice, authorise a following person (the **“administrator”**) to operate the infrastructure—

- (a) if the appointment is being made for subsection (1)(a)—the regulator; or
- (b) if the appointment is being made for subsection (1)(b)—the chief executive or any other person who has the necessary experience or qualifications to operate the infrastructure.

(3) The appointment has effect from the day the notice is published until the day a further notice withdrawing the appointment is published in the gazette.

(4) The appointment may deal with any matter necessary or convenient to help the administrator operate the infrastructure.

### **956 Effect of administrator operating infrastructure**

(1) If the administrator is authorised under section 955 to operate infrastructure, the infrastructure may be operated by the administrator or another person (the “**operator**”) appointed by the administrator.

(2) The administrator and operator may do all things necessary or convenient to ensure the effective operation of the infrastructure.

(3) A person in possession of premises on which the infrastructure operates must give the administrator and operator access to the premises to enable operation of the infrastructure.

Maximum penalty—500 penalty units.

(4) A person in possession of premises must not take action, or refuse to take action, if the taking or refusal, has the effect of preventing or hindering the administrator or operator from operating the infrastructure.

Maximum penalty—1 665 penalty units.

(5) Subsections (3) and (4) do not apply to an act done, or omission made, during or relating to industrial action as defined under the *Industrial Relations Act 1999*.

(6) The service provider or former holder of the resource operations licence or interim resource operations licence is liable for the administrator’s reasonable costs of—

- (a) operating the infrastructure; and
- (b) repairing, replacing or improving the infrastructure.

(7) The administrator must pay to the service provider or former holder any income received by the administrator from operating the infrastructure less all costs mentioned in subsection (6).

### **957 Effect of appointment of administrator**

(1) This section applies if the administrator is authorised under section 955(2) to operate a service provider's infrastructure.

(2) The registration of the service provider as a service provider is suspended from the day the notice is published in the gazette under section 955(2) until the further notice under section 955(3) is published.

(3) The administrator is taken to be the service provider for the period the administrator's appointment under section 955(2) is effective.

### **958 Withdrawing appointment of administrator**

(1) The Governor in Council may, by gazette notice, withdraw an authorisation given under section 955(2)(a).

(2) From the day the notice is published, the suspension of the service provider's registration is removed.

### **959–965 Section numbers not used**

See footnote to section 1.

## ***PART 2—RELATIONSHIP WITH INTEGRATED PLANNING ACT 1997***

### ***966 Additional criteria for assessing development applications***

(1) *Subsection (2) applies if the chief executive is the assessment manager or a referral agency for a development application under the Integrated Planning Act 1997 for—*

- (a) *operational work for the taking of or interfering with water; or*
- (b) *the removal of quarry material; or*

(c) *operational work that is the construction and maintenance of a referable dam.*

(2) *The chief executive must assess the development application against the purposes of this Act to the extent the purposes relate to—*

(a) *the taking of or interfering with water; or*

(b) *other resources; or*

(c) *referable dams.*

(3) *Subsection (2) does not limit section 3.3.15 or chapter 3, part 5, division 2 of the Integrated Planning Act 1997.*

**967 IPA approval for development is subject to approval under this Act**

(1) *Subsections (2) and (3) apply if—*

(a) *a person is entitled under this Act to take or interfere with water; and*

(b) *a development permit under the Integrated Planning Act 1997 is required for works associated with the taking or interfering.*

(2) *The person must not take or interfere with the water until the person has obtained the development permit.*

*Maximum penalty—1 665 penalty units.*

(3) *The application for the development permit must be supported by evidence of the entitlement or the written consent of the chief executive to the application being made without the evidence of entitlement.*

(4) *Nothing in this section stops the chief executive from giving—*

(a) *if the chief executive is the assessment manager for a development application for the taking or interfering with water—an entitlement and a development permit at the same time; and*

(b) *if the chief executive is a concurrence agency for a development application for the taking or interfering with water—a concurrence agency response under the Integrated Planning Act 1997, section 3.3.2 at the same time as the chief executive gives the entitlement.*

**968 Chief executive may direct works to be modified or removed**

(1) *This section applies to works—*

- (a) *that are used, or could be used, for taking or interfering with water; and*
- (b) *for which a development application under the Integrated Planning Act 1997 would be required if the works were to be constructed at the time the show cause notice is given under subsection (2).*

(2) *Despite the Integrated Planning Act 1997, the chief executive may give any of the following persons a show cause notice as to why the person should not be required to modify or remove the works—*

- (a) *a water entitlement holder under which the works are used for taking or interfering with water;*
- (b) *a person who has held a water entitlement under which the works were used for taking or interfering with water;*
- (c) *the owner of the land on which the works are situated.*

(3) *If, after considering any properly made submissions, the chief executive is still satisfied the works should be modified or removed, the chief executive may give the person a compliance notice requiring the person to modify or remove the works.*

(4) *If a development permit has been given under the Integrated Planning Act 1997 for the construction of the works, the permit is changed to the extent of the requirement mentioned in subsection (3).*

(5) *If an appeal against the compliance notice is dismissed or the person does not appeal against the notice, the person must comply with the notice, unless the person has a reasonable excuse.*

*Maximum penalty—1 665 penalty units.*

**969 Development applications for the removal of quarry material**

*A development application for the removal of quarry material must be supported by—*

- (a) *evidence of an allocation notice granted to the applicant under section 282; and*
- (b) *if the land, the subject of the application, is land leased under the Land Act 1994—*

- (i) *the written consent of the lessee of the land to arrangements about the route the applicant may use across the lessee's land for the removal of the quarry material; or*
- (ii) *if the lessee and the applicant can not agree on arrangements—the arrangements decided by a Magistrates Court.*

### **970 Allocation of quarry material is subject to IPA approval**

*(1) An allocation notice authorises the allocation holder, during the period for which the allocation notice is in force, to access quarry material.*

*(2) However, the holder must not remove any quarry material under the allocation notice until the holder has obtained a development permit for the removal.*

*(3) Nothing in this section stops the chief executive from giving—*

- (a) if the chief executive is the assessment manager for a development application for the removal—an allocation notice and a development permit at the same time; and*
- (b) if the chief executive is a concurrence agency for a development application for the removal—a concurrence agency response under the Integrated Planning Act 1997, section 3.3.2, at the same time as the chief executive gives the allocation notice.*

### **971 Development applications for referable dams**

*(1) Subsection (2) applies if a person makes a development application for the construction and maintenance of a referable dam.*

*(2) The development application must be supported by evidence that—*

- (a) the chief executive has accepted a failure impact assessment of the dam; and*
- (b) if the person is required to be a water entitlement holder to operate the dam—the owner or operator of the dam is a water entitlement holder for the dam.*



**972 When an applicant may appeal to the Land and Resources Tribunal**

(1) Subsection (2) applies if—

- (a) an applicant makes a development application for assessable development mentioned in the Integrated Planning Act 1997, schedule 8, part 1, items 3B and 3C; and
- (b) the assessable development is related to an activity authorised under the Mineral Resources Act 1989; and
- (c) the applicant has applied under the Mineral Resources Act 1989 for authorisation to carry out the activity.

(2) Despite the Integrated Planning Act 1997, chapter 4, if the applicant appeals against a decision about the development application, the appeal may be to the Land and Resources Tribunal.

**973–983 Section numbers not used**

See footnote to section 1.<sup>35</sup>

## PART 3—COMPENSATION

**984 Definitions for pt 3**

In this part—

“**change**”, for a water allocation, means a change to a water resource plan relating to the allocation.

“**owner**”, of a water allocation, means a registered owner of the allocation at the time a change to a water resource plan is made.

**985 Application of pt 3**

(1) Compensation is not payable under this Act except as provided in this part.

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35 This part had not commenced on or before the reprint date.

(2) Subsection (1) does not affect compensation that may be paid under section 765.

### **986 Compensation for reduced value of entitlement to water**

An owner of a water allocation is entitled to be paid reasonable compensation by the State if—

- (a) a change reduces the value of the allocation; and
- (b) the change is made within 10 years after the water resource plan is approved.

### **987 Limiting compensation for reduced value of entitlement to water**

(1) Despite section 986, compensation is not payable if the change has the same effect as another statutory instrument, in respect of which compensation is not payable.

(2) Also, compensation is not payable—

- (a) for a matter under this part if compensation has already been paid for the matter to a previous owner of the authority to take water; or
- (b) for anything done in contravention of this Act.

(3) If a matter for which compensation is payable under this part is also a matter for which compensation is payable under another Act, the claim for the compensation must be made under the other Act.

### **988 Time limits for claiming compensation**

A claim for compensation under this part must be given to the chief executive within 6 months after the day the approval of the plan or the amendment of the plan reducing the value of the water allocation.

### **989 Time limits for deciding and advising on claims**

(1) The chief executive must decide each claim for compensation within 60 business days after the day the claim is made.

(2) The chief executive must, within 10 business days after the day the claim is decided—

- (a) give the claimant an information notice; and
- (b) if the decision is to pay compensation—advise in the notice the amount of the compensation to be paid.

### **990 Deciding claims for compensation**

In deciding a claim for compensation under this part, the chief executive must—

- (a) grant the claim; or
- (b) grant part of the claim and refuse the rest of the claim; or
- (c) refuse the claim.

### **991 Calculating reasonable compensation involving changes**

(1) For compensation payable because of a change, reasonable compensation is the difference between the market values, appropriately adjusted having regard to the following matters, to the extent they are relevant—

- (a) any benefit accruing to the claimant from the change, including, but not limited to, the likelihood of improved water services;
- (b) if the claimant has an authority to take water in addition to the water allocation for which the claim is made, any benefit accruing to the authority because of—
  - (i) the change or any other change made before the claim for compensation was made; or
  - (ii) the construction of, or improvement to, infrastructure on the watercourse, other than infrastructure funded by the claimant, before the claim for compensation was made;
- (c) the effect of any other changes to the water resource plan made since the change.

(2) In this section—

**“difference between the market values”** is the difference between the market value of the water allocation immediately before the change came into effect and the market value of the allocation immediately after the change came into effect.

**992 When compensation is payable**

If compensation is payable under this part, the compensation must be paid within 30 business days after—

- (a) the last day an appeal could be made against the chief executive's decision about the payment of compensation; or
- (b) if an appeal is made—within 30 business days after the day the appeal is decided.

**PART 4—PROVISIONS ABOUT THE CORPORATISED ENTITY****993 Power to collect drainage rates**

(1) The corporatised entity may collect drainage rates prescribed under a regulation.

(2) Subsection (1) does not limit the ways in which a drainage rate may be made or levied under the regulation.

**994 Exemption from drainage rates**

Despite section 993, the regulation can not make and levy drainage rates for the following land—

- (a) unoccupied State land;
- (b) unallocated State land reserved for a public purpose;
- (c) land occupied by the State, other than land leased by the State from a person;
- (d) land prescribed under the regulation for this section.

**995 Interest on overdue drainage rates**

(1) An overdue drainage rate under section 993 bears interest at the annual rate, decided by the chief executive, of not more than—

- (a) 15%; or

(b) if another percentage is prescribed under a regulation—the other percentage.

(2) The interest must be calculated as simple interest.

(3) In this section—

**“overdue drainage rate”** means the amount of the rate that is not paid when it becomes payable.

### **996 Discount for payment of drainage rates**

(1) The chief executive may allow a discount for payment of a drainage rate.

(2) Unless a regulation prescribes otherwise, the discount must not be more than 15% of the drainage rate.

### **997 Recovering drainage rates**

The corporatised entity may recover an overdue drainage rate, and any interest payable on the overdue drainage rate, as a debt due to the corporatised entity by the person on whom the rate is made or levied.

### **998 Exemption from application of Freedom of Information Act 1992**

(1) For section 11A of the *Freedom of Information Act 1992*, a regulation may declare the activities of the GOC that are taken to be, or are taken not to be, activities conducted on a commercial basis.

(2) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the GOC in carrying out its excluded activities.

(3) In this section—

**“community service obligations”** has the same meaning as in the *Government Owned Corporations Act 1993*.

**“excluded activities”** means—

(a) activities conducted on a commercial basis; or

(b) community service obligations prescribed under the regulations.

**“the GOC”** means the GOC that was the commercialised business unit known as State Water Projects in the department.

**999–1003 Section numbers not used**

See footnote to section 1.

**PART 5—GENERAL PROVISIONS****1004 Referral panels**

(1) The chief executive may, at any time after a draft resource operations plan has been publicly notified, establish a referral panel to advise on matters about the draft plan.

(2) The panel must consist of at least 3 individuals and has the functions the chief executive decides.

(3) A member of the panel may be paid the fees and allowances decided by the Governor in Council.

(4) The chief executive may make available to the panel the technical, clerical, secretarial or other help the chief executive considers necessary for the performance of its functions and the conduct generally of its affairs.

**1005 Advisory councils**

(1) The Minister may establish as many advisory councils as the Minister considers appropriate for the administration of this Act, including, for example, for any of the following—

- (a) flood mitigation;
- (b) referable dams;
- (c) guidelines;
- (d) policy recommendations.

(2) An advisory council has the functions the Minister decides.

(3) A member of an advisory council may be paid the fees and allowances decided by the Governor in Council.

(4) The chief executive may make available to an advisory council the technical, clerical, secretarial or other help the chief executive considers necessary for the performance of its functions and the conduct generally of its affairs.

**1006 Declarations about watercourses**

A regulation may declare, by reference to a natural or artificial feature or the boundary of a parcel of land, the downstream or upstream limit, or both, of a watercourse.

**1007 Records to be kept by registrar of titles**

(1) If land is declared under section 20(7), the chief executive must give notice of the declaration to the registrar of titles.

(2) The registrar of titles must record the declaration in a way that a search of the register kept by the registrar under any Act relating to the land will show—

- (a) that the land has been declared under section 20(7); and
- (b) the particulars stated in the declaration.

(3) If the chief executive gives an owner or operator of a dam a notice under section 494(2) or (7), the chief executive must give a copy of the notice to the registrar of titles.

(4) The registrar of titles must record the notice in a way that a search of the register kept by the registrar under any Act relating to the land will show that—

- (a) a notice has been given under section 494(2) or (7) for the land; and
- (b) particulars of the notice may be obtained from the chief executive.

**1008 Exemption of conversions of water allocations from stamp duty**

(1) Subsection (2) applies to—

- (a) the conversion under section 121 of a water licence or an interim water allocation to a water allocation; and
- (b) an instrument giving effect to the conversion.

(2) Despite the *Stamp Act 1894*, stamp duty is not payable on the conversion or instrument, to the extent the instrument relates to the conversion.

**1009 Public inspection and purchase of documents**

(1) The chief executive or regulator must keep a copy of the following documents available for inspection by the public during office hours on business days at the head office, or at the appropriate regional office, of the department—

- (a) each information report prepared under section 39;
- (b) each overview report prepared under section 48;
- (c) until a water resource plan is approved for a plan area—the draft water resource plan publicly notified for the area under section 49;
- (d) each approved water resource plan;
- (e) each report prepared by the Minister under section 51;
- (f) each periodic report for a water resource plan prepared under section 53;
- (g) each approved water use plan;
- (h) guidelines for preparing land and water management plans;
- (i) until a resource operations plan is approved for a plan area—the draft resource operations plan publicly notified for the area under section 100;
- (j) each approved resource operations plan;
- (k) each resource operations licence;
- (l) each interim resource operations licence;
- (m) each interim water allocation;
- (n) each water licence;
- (o) each water permit, including seasonal water assignments;
- (p) each permit issued under section 269;
- (q) each allocation notice given to an applicant under section 283;
- (r) each operations licence;
- (s) each guideline for preparing a strategic asset management plan under section 408;
- (t) each guideline for preparing customer service standards under section 425;



- (u) each guideline for granting exemptions for small service providers under section 425;
- (v) each annual report prepared by the regulator;
- (w) each guideline for failure impact assessment of a dam under section 482.

(2) The chief executive may also keep a copy of a document mentioned in subsection (1) available for inspection by the public at other places the chief executive considers appropriate.

(3) A service provider must keep a copy of the following documents available for inspection by the public during office hours on business days at the office of the service provider—

- (a) each audit report prepared under section 417;
- (b) each annual report prepared under section 430;
- (c) each map of a service area prepared under section 451.

(4) The service provider may also keep a copy of a document mentioned in subsection (3) available for inspection by the public at other places the service provider considers appropriate.

(5) On payment of a fee, a person may buy a copy of a document available for inspection under this section.

(6) The fee for the copy of the document must not be more than the reasonable cost of publishing the copy.

### **1010 Protecting officials from liability**

(1) In this section—

“**official**” means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) an authorised officer; or
- (d) a person acting under the direction of an authorised officer; or
- (e) the regulator; or
- (f) a member of an advisory council; or

(g) a person acting under the direction of the Minister, the chief executive or the regulator.

(2) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

### **1011 Delegation by Minister**

The Minister may delegate the Minister's powers under this Act to an appropriately qualified public service officer or employee.

### **1012 Delegation by chief executive**

The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service officer or employee.

### **1013 Approved forms**

The chief executive and the regulator may approve forms for use under this Act.

### **1014 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may—

- (a) fix fees and charges payable under this Act including, for example, for the taking and supplying of water under this Act and for drainage and resource management services; and
- (b) create offences against the regulation and fix a maximum penalty of a fine of 20 penalty units for an offence against the regulation; and
- (c) state the minimum standards for the design and construction of water supply and sewerage infrastructure; and
- (d) regulate the use, including recreational use, and management of land owned by, or under the control of, a water authority; and

- (e) regulate the recreational use of water in a dam owned by, or under the control of, a water authority; and
- (f) approve a code against which development applications under the *Integrated Planning Act 1997* may be assessed by the chief executive as an assessment manager or concurrence agency under that Act; and
- (g) state the information to be contained in, the returns and the times for giving returns to the chief executive by a person about State quarry material or other material removed by the person from the bed or banks of a watercourse or lake.

### **1015–1036 Section numbers not used**

See footnote to section 1.

## **CHAPTER 9—TRANSITIONAL PROVISIONS AND REPEALS**

### **PART 1—TRANSITIONAL PROVISIONS FOR ALLOCATION AND SUSTAINABLE MANAGEMENT**

#### **1037 Local government authorities**

If, immediately before the commencement of this section, there was in force an authority for a local government to take or interfere with water, the authority continues under this Act until the authority is replaced with a water entitlement under this Act.

#### **1038 Approved water management plans**

(1) A water management plan approved under the repealed Act and in force immediately before the commencement of this section is taken to be a water resource plan under this Act.

(2) A reference in a plan mentioned in subsection (1) to section 25K of the repealed Act is taken to be a reference to section 57 of this Act.

**1039 Proposed water management plans**

(1) Subsection (2) applies if before the commencement of this section public notice of the proposed preparation of a water management plan under the repealed Act has been given under the repealed Act.

(2) The notice is taken to be—

- (a) a notice published under section 40 of this Act for the proposed preparation of a draft water resource plan for the proposed plan area; and
- (b) a moratorium notice for the proposed plan containing—
  - (i) the matters mentioned in sections 25N and 25O of the repealed Act; and
  - (ii) any matters contained in the notice published.

(3) However, sections 39 and 41 do not apply for the preparation of the draft water resource plan mentioned in subsection (2)(a).

**1040 Draft water management plans**

(1) Subsections (2) and (3) apply if, before the commencement of this section, public notice is given under the repealed Act that a draft water management plan has been prepared by the Minister.

(2) The draft plan is taken to be a draft water resource plan that does not provide for a framework for establishing water allocations.

(3) The public notice is taken to be a moratorium notice for the draft plan stating the matters mentioned in sections 25N and 25O of the repealed Act.

(4) For preparing the final draft water resource plan to which the notice relates, sections 39 to 49 are taken to have been complied with if the final draft water resource plan complies with section 46.

**1041 Completed water allocation and management plans**

(1) The water allocation and management plan published in December 1999 under the title *Water Allocation and Management Plan (Fitzroy Basin) 1999*—

- (a) is taken to be a water resource plan under this Act that provides a framework for establishing water allocations; and
- (b) may be reprinted under the *Reprints Act 1992*.

(2) For reprinting the *Water Allocation and Management Plan (Fitzroy Basin) 1999*, the plan may be amended to make it consistent with current legislative drafting practice without the need to advertise the amendment under chapter 2, part 3.

### **1042 Proposed water allocation and management plans and flow management plans**

(1) Subsection (2) applies to the following—

- (a) the proposed water allocation and management plan for the Barron Basin, incorporating a portion of the Mitchell Basin;
- (b) the proposed flow management plan for the Border Rivers;
- (c) the proposed water allocation and management plan for the Logan Basin;
- (d) the proposed water allocation and management plan for the Pioneer Valley.

(2) A notice under section 40, to provide a framework for establishing water allocations, is taken to have been published for each proposed plan.

(3) However, sections 39 and 41 do not apply for the preparation of the draft water resource plan for a plan mentioned in subsection (1).

(4) In the final draft water resource plan for the Border Rivers, the provisions about restricting the granting of or amending any entitlement issued under this Act or the repealed Act to take or interfere with water or water sharing under the plan may give priority to—

- (a) water users—
  - (i) located in the plan area; and
  - (ii) who had constructed, or started construction of, works for the taking of or interfering with overland flow water before 25 November 1999; and
- (b) water users who—
  - (i) hold entitlements issued under this Act or the repealed Act to take or interfere with water to which the plan applies; and
  - (ii) had constructed, or started construction of, works for the taking of or interfering with water under the entitlement before 25 November 1999.

**1043 Draft water allocation and management plans**

(1) Subsection (2) applies to the following draft water allocation and management plans publicly released under the repealed Act—

- (a) *Draft Water Allocation and Management Plan (Burnett Basin) June 2000;*
- (b) *Draft Water Allocation and Management Plan (Condamine-Balonne Basin) June 2000.*

(2) Each draft plan is taken to be a draft water resource plan that provides a framework for establishing water allocations.

(3) For preparing the final draft water resource plan for each draft plan, sections 39 to 49 are taken to have been complied with if the final draft water resource plan complies with section 46.

(4) In the final draft water resource plan mentioned in subsection (1)(b), the provisions about restricting the granting of or amending any entitlement issued under this Act or the repealed Act to take or interfere with water or water sharing under the plan may give priority to—

- (a) water users—
  - (i) located in the overland flow restrictions areas; and
  - (ii) who had constructed, or started construction of, works for the taking of or interfering with overland flow water before 14 June 2000; and
- (b) water users—
  - (i) located in the plan area but outside the areas mentioned in subsection (4)(a)(i); and
  - (ii) who had constructed, or started construction of, works for the taking of or interfering with overland flow water before 14 August 2000; and
- (c) water users who—
  - (i) hold entitlements issued under this Act or the repealed Act to take or interfere with water to which the plan applies; and
  - (ii) had constructed, or started construction of, works for the taking of or interfering with water under the entitlement before 14 August 2000.

(5) In this section—

**“overland flow restrictions areas”** means the areas shown in schedule 2 of the draft plan as areas subject to overland flow restrictions being more particularly—

- (a) the area shown in Department of Natural Resources registered plan number SW3185A3 and titled *Upper Condamine Floodplain Management and Briglow-Jimbour Floodplain Study Areas*; and
- (b) the areas shown as approximate extent of floodplain in drawings 1 to 13 in the report called the *Lower Balonne River System Floodplain Management Plan Phase 1 Study Volume 2*; and
- (c) the area shown in the schedule as a 2 km wide strip along the trunk stream.

#### **1044 Draft water management plan (Boyne River)**

(1) The draft water management plan publicly released in May 2000 under the title *Draft Water Management (Boyne River Basin) Plan 2000* is taken to be a draft water resource plan that provides a framework for establishing water allocations.

(2) The public notice of the proposed preparation of the draft plan given under the repealed Act is taken to be a moratorium notice for the draft plan containing—

- (a) the matters mentioned in section 25N of the repealed Act; and
- (b) any matters contained in the notice published.

(3) For preparing the final draft water resource plan to which the notice relates, sections 39 to 49 are taken to have been complied with if the final draft water resource plan complies with section 46.

#### **1045 Proposed water management plan (Atherton subartesian area)**

The proposed water management plan being prepared for the Atherton subartesian area immediately before the commencement of this section is taken to be a part of, and amalgamated with, the water allocation and management plan mentioned in section 1042(1)(a).

**1046 Declared subartesian areas**

- (1) A regulation may declare an area to be a subartesian area.
- (2) A regulation made under subsection (1) may, for a subartesian area—
  - (a) regulate the taking of, or interfering with, subartesian water; and
  - (b) state the types of works for taking subartesian water that are assessable or self-assessable development under the *Integrated Planning Act 1997*.
- (3) Subsection (2) has effect for the area, or a part of the area, until a water resource plan is approved for subartesian water in the area, or part of the area.

**1047 Existing land and water management plans**

- (1) If, immediately before the commencement of this section, an application made under the repealed Act for the approval of, or deferral of the requirement for, a land and water management plan had not been decided, the application must be decided as if the repealed Act had not been repealed.
- (2) Subsection (3) applies to—
  - (a) each land and water management plan or deferral approved under or for the repealed Act and in force immediately before the commencement; and
  - (b) each plan or deferral approved under subsection (1).
- (3) On the commencement—
  - (a) a plan mentioned in subsection (2) is taken to be a land and water management plan approved under section 77; and
  - (b) a deferral mentioned in subsection (2) is taken to be a deferral approved under section 82.
- (4) A plan mentioned in subsection (3)(a) and taken to be a plan under this Act is taken to be approved under this Act for 10 years from the day the plan was approved under the repealed Act.
- (5) A deferral mentioned in subsection (3)(b) and taken to be a deferral under this Act is a deferral for the period the deferral would have been in force if the repealed Act had not been repealed.



(6) The *Guidelines for Land and Water Management Plans Mareeba-Dimbulah Irrigation Area July 1999* are taken to be guidelines issued under section 72.

### ***1048 Existing applications, licences and permits***

(1) *If, immediately before the commencement of this section, an application made under the repealed Act for or about a licence or permit had not been decided, the application must be decided and a licence or permit granted as if the repealed Act had not been repealed.*

(2) *Despite subsection (1), if part of an application mentioned in subsection (1) is about a referable dam that is more than 8 m in height—*

(a) *subsection (1) does not apply to the part; and*

(b) *the applicant must ensure a failure impact assessment is completed and given to the chief executive within 1 year of the commencement if the dam, after its construction, will be—*

(i) *more than 8 m in height and have a storage capacity of more than 500 ML; or*

(ii) *more than 8 m in height and have a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level.*

(3) *Despite subsection (1), if part of an application mentioned in subsection (1) is about a referable dam that is 8 m or less in height, the part lapses.*

(4) *Despite subsection (1), if an application mentioned in subsection (1) is about water to which a plan approved under chapter 2, part 3 applies, the chief executive must consider the plan when deciding the application.*

(5) *Despite subsection (1), if a water resource plan or resource operations plan would prevent the approval of an application mentioned in subsection (1) if the application were made under this Act, the chief executive must refuse the application without publishing notice of the application under section 42(6) of the repealed Act.*

(6) *Subsection (7) applies to—*

(a) *each licence or permit granted under the repealed Act and in force immediately before the commencement; and*

- (b) *the part of each licence or permit granted under the repealed Act and that is not an interim water allocation under section 1114 and in force immediately before the commencement; and*
- (c) *each licence or permit granted under subsection (1).*

**(7) On the commencement—**

- (a) *if a licence mentioned in subsection (6)(a) or (c) was a licence for works under part 4 of the repealed Act—the licence is taken to be a water licence given under chapter 2, part 6, and its conditions that related to the works, are taken to be a development permit; and*
- (b) *if a part of a licence mentioned in subsection (6)(b) was a licence for works under part 4 of the repealed Act—the part is taken to be a development permit; and*
- (c) *if a permit mentioned in subsection (6) was a permit granted under section 56(2)(a) of the repealed Act—the permit is taken to be a water licence given under chapter 2, part 6, and its conditions that related to the works, are taken to be a development permit; and*
- (d) *if a permit mentioned in subsection (6) was a permit granted under section 56(2)(b) of the repealed Act—the permit is taken to be a water permit given under chapter 2, part 6; and*
- (e) *if a permit mentioned in subsection (6) was a permit granted under section 57 of the repealed Act to an owner of land abutting a watercourse lake or spring, the permit—*
  - (i) *to the extent it relates to the taking of water—ceases to exist; and*
  - (ii) *to the extent it relates to works for the taking of water and conditions that relate to the works—is taken to be a development permit; and*
- (f) *if a permit mentioned in subsection (6) was a permit granted under section 57 of the repealed Act to an owner of land abutting a weir, barrage or dam, the permit is taken to be a water licence given under chapter 2, part 6, and its conditions that related to the works, are taken to be a development permit; and*
- (g) *if a permit mentioned in subsection (6) was a permit granted under section 58 of the repealed Act—the permit is taken to be an allocation notice given under chapter 2, part 9, and its*

*conditions that related to removal of quarry material, are taken to be a development permit; and*

- (h) if a permit mentioned in subsection (6) was a permit granted under section 71 of the repealed Act—the permit is taken to be a permit given under chapter 2, part 8; and*
- (i) if a licence mentioned in subsection (6) was a driller's licence—the licence is taken to be a water bore driller's licence given under chapter 2, part 10.*

*(8) A licence or permit mentioned in subsection (7) and taken to be a licence, permit or allocation notice under this Act is a licence, permit or allocation notice for the period the licence or permit would have been in force if the repealed Act had not been repealed.*

*(9) For 1 year after the commencement, sections 311 and 816 do not apply to a person carrying out drilling activities for a subartesian bore in an area that was not a declared subartesian area under the repealed Act immediately before the commencement.<sup>36</sup>*

### **1049 Existing applications about water in irrigation or project areas**

**(1)** Subsection (2) applies if—

- (a) before the commencement of section 1111, an application is made under the repealed Act for—
  - (i) a licence or permit for the taking of water or an increase in the volume, rate or times when water, that will be managed by the corporatised entity under an interim resource operations licence, may be taken; or
  - (ii) an approval of an agreement under section 231 of that Act for the use of water that will be managed by the corporatised entity under an interim resource operations licence; and
- (b) the application has not been decided before the commencement.

**(2)** The chief executive must—

- (a) for an application mentioned in subsection (1)(a)(i)—refuse the application without publishing notice of the application under section 42(6) of the repealed Act; and

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<sup>36</sup> This provision had not commenced on or before the reprint date.

- (b) for an application mentioned in subsection (1)(a)(ii)—refuse the application.

***1050 Existing applications for approval under s 231 of the repealed Act (not in irrigation or project areas)***

**(1)** *Subsection (2) applies if—*

- (a) *before the commencement of this section an application is made for an approval of an agreement under section 231 of the repealed Act; and*
- (b) *the application relates to water that will not be managed by the corporatised entity under an interim resource operations licence; and*
- (c) *the application has not been decided before the commencement.*

**(2)** *The application must be decided as if the repealed Act had not been repealed.*

**(3)** *If the decision under subsection (2) approves the agreement, the applicant must be given a permit.*

**(4)** *The permit is taken to be a permit granted under chapter 2, part 6.<sup>37</sup>*

**1051 Applications before commencement of ch 2 pt 6 to add land to a licence under the repealed Act**

**(1)** Subsection (2) applies—

- (a) from the commencement of chapter 2, part 3 until the commencement of chapter 2, part 6; and
- (b) if a person has a licence under the repealed Act; and
- (c) the licence refers to land owned by the person.

**(2)** An application to amend the licence to include a reference to other land must not be approved unless the other land is owned by the person and is contiguous to the land already referred to in the licence.

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<sup>37</sup> This provision had not commenced on or before the reprint date.

**1052 Applications before commencement of ch 2 pt 6 about water to which a plan under chapter 2, part 3 applies**

(1) Subsection (2) applies—

- (a) from the commencement of chapter 2, part 3 until the commencement of chapter 2, part 6; and
- (b) to an application made under the repealed Act about water to which a plan approved under chapter 2, part 3 applies.

(2) The chief executive must consider the plan when deciding the application.

**1053 Applications before commencement of ch 2 pt 6 for approval under s 231 of the repealed Act**

(1) Subsection (2) applies from the commencement of this section until the commencement of chapter 2, part 6.

(2) The holder of an interim water allocation must not, in relation to the interim water allocation, apply for an approval under section 231 of the repealed Act.

**1054 Preserving existing downstream limits**

(1) The *Declaration of Downstream Limits Notification (No. 1) 2000*, made on 3 May 2000 and published in the gazette on 19 May 2000 is taken to be a regulation made under section 1006.

(2) Subsection (1) applies until the expiry of this section.

(3) This section expires 2 years after the day it commences.

**1055 Certain dealings with water licences for 2 years after the commencement of ch 2 pt 6**

(1) This section applies—

- (a) for 2 years after the day chapter 2, part 6 commences; and
- (b) despite chapter 2, part 6; and
- (c) only to a water licence or water licences under this Act that were originally issued under the repealed Act.

(2) *The chief executive may amalgamate, subdivide or amend a water licence or water licences with the consent of the licensee or all licensees.*

(3) *An action under subsection (2) must not increase the volume of water that may be taken by a licensee.*

(4) *Despite section 206, subsection (2) applies for amalgamating licences if—*

- (a) *the licences are held by the same licensee; and*
- (b) *the land relating to the licences is not contiguous; and*
- (c) *the conditions of the licences allow the total volume of water to be taken under the licences to be taken from, and used on, either parcel of land.<sup>38</sup>*

### **1056 Application of repealed Act to interim water allocations until ch 2 pt 6 commences**

(1) Subsection (2) applies until chapter 2, part 6 commences.

(2) For amending, cancelling, renewing, suspending or transferring, an interim water allocation, the allocation must be dealt with as if—

- (a) for an allocation for water that is managed in an area that was an irrigation area under the repealed Act—the allocation were a water licence granted under part 9 of the repealed Act; and
- (b) for all other allocations—the allocation were a water licence granted under part 4 of the repealed Act.

(3) Subsection (2) does not apply to a transfer under section 191 or 193.

### **1057–1059 Section numbers not used**

See footnote to section 1.

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38 This provision had not commenced on or before the reprint date.

## **PART 2—TRANSITIONAL PROVISIONS FOR SERVICE PROVIDERS, SERVICE AREAS, FAILURE IMPACT ASSESSING OF DAMS AND FLOOD MITIGATION**

### *Division 1—Service providers and service areas*

#### **1060 Registration of existing local governments, water authorities or other persons as service providers**

(1) Sections 370 and 821 do not apply to a local government, water authority or other person mentioned in section 370 and operating a similar business to that of a service provider at the commencement of this section until 1 January 2001.

(2) If a local government, water authority or other person mentioned in section 370 applies under section 371 before 1 January 2001 for registration as a service provider, the local government, water authority or other person is taken to be a service provider for section 821.

#### **1061 Service provider obligations for existing local governments, water authorities or other persons**

Chapter 3, part 3, divisions 1 to 3, does not apply to a local government, water authority or other person mentioned in section 370 and operating a similar business to that of a service provider at the commencement of this section until—

- (a) for a large service provider—2 years after the commencement; or
- (b) for a medium service provider—3 years after the commencement; or
- (c) for a small service provider—4 years after the commencement.

#### **1062 Water for fire fighting purposes**

Chapter 3, part 3, division 4 applies to a local government, water authority or other person mentioned in section 370 as if the local government, water authority or other person were a service provider on the commencement of this section.

**1063 Existing water or sewered areas**

(1) Subsection (2) applies if a resolution of a local government under the Sewerage and Water Supply Act 1949, declaring an area to be a water area or sewered area, is effective immediately before the commencement of this section.

(2) The water area or sewered area is a service area under this Act for the service for which the resolution was made.

**1064 Local governments to be service providers for existing services areas**

Until there is a service provider for a service area, chapter 3, part 4, divisions 3 and 4, applies as if the local government were the service provider for the area.

**Division 2—Failure impact assessing for dams****Subdivision 1—Hazardous dams****1065 Application of div 2**

(1) This division does not apply to a dam that immediately before the commencement of this section contained hazardous waste.

(2) To remove any doubt it is declared that, on and from the commencement the Environmental Protection Act 1994 applies to the dam.

(3) On and from the commencement if a licence was granted under section 43 of the repealed Act for the dam, the conditions about the safety of the dam that applied to the licence are taken to be conditions of the environmental authority issued under the Environmental Protection Act 1994 or a development approval, if any, for the dam.

**Subdivision 2—Other dams****1066 Application of ch 3, pt 6, div 1 to other dams**

Chapter 3, part 6, division 1, other than sections 483(1) and 486, also applies to each failure impact assessment required under this subdivision.



**1067 Failure impact assessing existing unlicensed dams**

(1) Subsection (2) applies to the owner of a dam in existence at the commencement of this section and for which a licence was not granted under section 43 of the repealed Act.

(2) The owner must have the dam failure impact assessed within 1 year after the commencement, if the dam is—

- (a) more than 8 m in height and has a storage capacity of more than 500 ML; or
- (b) more than 8 m in height and has a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level.

Maximum penalty—1 665 penalty units.

(3) Subsection (2) does not apply to the owner of a dam prescribed under a regulation.

(4) A dam mentioned in the regulation has the failure impact rating shown for the dam in the regulation.

**1068 Failure impact assessing prescribed licensed dams**

(1) Subsection (2) applies to a dam if—

- (a) a licence was granted under section 43 of the repealed Act for the dam; and
- (b) the dam is a dam prescribed under a regulation for this section.

(2) On the commencement of this section—

- (a) the dam is a referable dam; and
- (b) the dam has the failure impact rating shown for the dam in the regulation; and
- (c) the licence, including its conditions that related to the safety of the dam, is taken to be a development permit.

**1069 Failure impact assessing licensed dams not prescribed**

(1) Subsection (2) applies to a dam if—

- (a) a licence was granted under section 43 of the repealed Act for the dam; and

(b) *the dam is not a dam prescribed under a regulation for section 1068; and*

(c) *the dam is—*

(i) *more than 8 m in height and has a storage capacity of more than 500 ML; or*

(ii) *more than 8 m in height and has a storage capacity of more than 250 ML and a catchment area that is more than 3 times its maximum surface area at full supply level.*

(2) *On the commencement of this section—*

(a) *the dam is a referable dam; and*

(b) *the licence, including its conditions that related to the safety of the dam, is taken to be a development permit.*

(3) *The owner of each dam mentioned in subsection (2) must ensure a failure impact assessment for the dam is completed in accordance with chapter 3, part 6 and given to the chief executive within 5 years after the commencement.*

*Maximum penalty—1 665 penalty units.*

(4) *Subsection (3) does not apply if the chief executive gives the owner of the dam a notice under section 483(2) before the dam is failure impact assessed under subsection (3).*

(5) *If the dam is assessed as not having a category 1 or category 2 failure impact rating under subsection (3) or for an assessment mentioned in subsection (4)—*

(a) *the dam is no longer a referable dam; and*

(b) *the development permit is no longer subject to the conditions about the safety of the dam.*

### **1070 Failure impact assessing small licensed dams**

(1) *Subsection (2) applies to a dam if a licence was granted under section 43 of the repealed Act for the dam and the dam is not—*

(a) *more than 8 m in height and does not have a storage capacity of more than 500 ML; or*

(b) *more than 8 m in height and does not have a storage capacity of more than 250 ML and a catchment area that is not more than 3 times its maximum surface area at full supply level.*

(2) *On the commencement of this section, the conditions about the safety of the dam, that applied to the licence, no longer apply.*<sup>39</sup>

### ***Division 3—Flood mitigation***

#### **1071 Existing flood mitigation manuals**

A flood mitigation manual is taken to be flood mitigation manual approved by the chief executive under chapter 3, part 6, for the period expiring 5 years after the commencement of this section, if the manual was, immediately before the commencement in force as a manual—

- (a) approved under section 215F of the repealed Act; or
- (b) taken to be a flood mitigation manual under section 215Y of the repealed Act.

#### **1072–1082 Section numbers not used**

See footnote to section 1.

## **PART 3—TRANSITIONAL PROVISIONS FOR WATER AUTHORITIES**

#### **1083 Continuing former water areas and former water boards—general**

(1) This section does not apply to the Gladstone Area Water Board and its operational area established under the repealed GAWB Act.

(2) A former water area in existence immediately before the commencement of this section continues in existence, subject to this Act,

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<sup>39</sup> These provisions had not commenced on or before the reprint date.

and is taken to be an authority area established under this Act with the same name as the former water area.

(3) A former water board in existence immediately before the commencement continues in existence, subject to this Act, and is taken to be a water authority established under this Act—

- (a) with the same name as the former water board; and
- (b) carry out water activities.

(4) The former water board is taken to be—

- (a) for the Mount Isa Water Board—a category 1 water authority; or
- (b) for another former water board to which this section applies—a category 2 water authority.

(5) If the former water board was constituted under the repealed Act for a former water area in existence immediately before the commencement, the former water area is taken to be the water authority's authority area.

### **1084 Continuing Gladstone Area Water Board**

(1) The Gladstone Area Water Board established under the repealed GAWB Act continues in existence, subject to this Act, and is taken to be a water authority established under this Act—

- (a) with the same name; and
- (b) to carry out water activities generally in the State.

(2) The Gladstone Area Water Board is taken to be a category 1 water authority.

### **1085 Members of boards of former water boards, other than Gladstone Area Water Board**

(1) This section applies to a person who, immediately before the commencement of this section, was a member of a board of a former water board that is taken to be a water authority under section 1083(3).

(2) On the commencement, the person is taken to have been appointed under this Act as a director of the authority for the remainder of the person's term of appointment under the repealed Act.

(3) This section applies despite section 604.

**1086 Members of board of Gladstone Area Water Board**

(1) This section applies to a person who, immediately before the commencement of this section, was a member of the board of the Gladstone Area Water Board established under the repealed GAWB Act.

(2) On the commencement, the person is taken to have been appointed under this Act as a director of the Gladstone Area Water Board established under section 1084(1) for the remainder of the person's term of appointment under the repealed GAWB Act.

(3) This section applies despite section 605.

**1087 Existing employees of former water boards**

(1) This section applies to a person who, immediately before the commencement of this section, was an employee of a former water board that continues in existence as a water authority under section 1083(3) or 1084.

(2) On the commencement, the person becomes an employee of the water authority.

(3) The person—

- (a) must be employed on the person's existing or equivalent terms and conditions of employment; and
- (b) remains entitled to all existing and accruing rights of employment.

(4) Subsections (5) to (8) apply if, immediately before the commencement, the person was a contributor to a superannuation fund, superannuation scheme or provident fund (the **“former superannuation scheme”**) as an employee of the former water board.

(5) The person continues to be a contributor to the former superannuation scheme as if the person's service with the authority were continuous service with the former water board.

(6) If the authority establishes, maintains or takes part in a superannuation scheme (the **“authority's scheme”**) to provide superannuation benefits for its employees, the person, under arrangements prescribed under a regulation, may, but is not required to—

- (a) stop being a contributor to the former superannuation scheme; and

(b) become a member of the authority's scheme.

(7) If the Gladstone Area Water Board, as established under the repealed GAWB Act, was required, in relation to the person, to contribute to the former superannuation scheme under the repealed GAWB Act, section 114—

- (a) the requirement continues under this Act as a requirement of the Gladstone Area Water Board established as a water authority under this Act; and
- (b) an amount payable by the authority to the superannuation scheme is a debt due by the authority to the trustees or managers of the scheme.

### **1088 Authorised works in former water areas**

(1) Subsection (2) applies to works a former water board or the chief executive was authorised to construct under the repealed Act in a former water area.

(2) On the commencement of this section—

- (a) if immediately after the commencement there is a water authority for the area—the water authority is taken to hold a development permit for the works; or
- (b) if immediately after the commencement there is no water authority for the area—the chief executive is taken to hold a development permit for the works.

### **1089 Existing authorities to take, or interfere with, water**

(1) This section applies if a former water board or the chief executive was authorised under the repealed Acts or another Act to take or interfere with water.

(2) If the authorisation was given under the repealed Acts, it continues under that Act as if that Act had not been repealed until it is replaced with a water entitlement.

(3) If the authorisation was given under another Act, it continues under that Act until it is replaced with a water entitlement.

**1090 Existing contracts to supply water under GAWB Act**

(1) This section applies to a contract—

- (a) entered into, under the repealed GAWB Act, between the Gladstone Area Water Board established under that Act and an entity for the supply of water by the board to the entity; and
- (b) in force immediately before the commencement of this section.

(2) On the commencement, the contract is taken to have been made under this Act between the Gladstone Area Water Board established under this Act and the entity for the remainder of the contract's term.

(3) Despite the repeal of the repealed GAWB Act, sections 53, 54, 117 and 118 of that Act continue to apply to the parties' rights and obligations under the contract for the remainder of the contract's term.

**1091 References to former water areas and former water boards**

In an Act or document, if the context permits—

- (a) a reference to a former water area may be taken to be a reference to the authority area with the same name established under section 1083(2); and
- (b) a reference to a former water board may be taken to be a reference to the water authority with the same name established under section 1083(3).

**1092 Existing regulations and notices**

(1) The *Water Resources (Areas and Boards) Regulation 2000* in force under the repealed Act immediately before the commencement of this section—

- (a) is taken to be a regulation made under this Act; and
- (b) must be read with the changes necessary to make it consistent with this Act and adapt its operation to this Act.

(2) A requirement in the regulation for a particular person to be appointed, but not nominated, to a former water board by the Governor in Council must be read as if the requirement were for the person to be nominated by the chief executive.

(3) Subsection (4) applies to notices published—

- (a) under section 131 of the repealed Act; and
- (b) for a matter mentioned in section 129(8) of the repealed Act; and
- (c) after 1 January 1998; and
- (d) before the commencement of this section.

(4) The notice is taken to be a notice published for the matter under section 552 or 556 of this Act.

### **1093 Existing by-laws**

(1) This section applies to the *Gladstone Area Water Board By-Law 1989* in force under the repealed GAWB Act, and the *Mount Isa Water Board By-Law 1999* in force under the repealed Act, immediately before the commencement of this section.

(2) On the commencement, each by-law is taken to be a regulation made under this Act.

(3) The by-laws and this section expire 2 years after this section commences.

(4) This section, to the extent it applies to the *Gladstone Area Water Board By-Law 1989*, applies despite the *Statutory Instruments Act 1992*, section 54.

### **1094–1106 Section numbers not used**

See footnote to section 1.

## **PART 4—TRANSITIONAL PROVISIONS ABOUT STATE WATER PROJECTS AND ITS CUSTOMERS**

### *Division 1—State Water Projects before corporatisation*

#### **1107 Application of s 4 for State Water Projects**

(1) Chapter 3, part 6, division 1, does not apply to the State until the commercialised business unit previously within the department and known



as State Water Projects is corporatised under the *Government Owned Corporations Act 1993*.

(2) Subsection (1) has effect despite section 4.

### **1108 Delegated powers taken to have been validly exercised**

(1) Subsection (2) applies if—

- (a) on 30 June 2000 a person had a delegation to exercise a power under the *Water Resources Act 1989*; and
- (b) the person purported to exercise the power after 30 June 2000 but before 18 August 2000.

(2) The person is taken to have validly exercised the power.

## ***Division 2—State Water Projects after corporatisation***

### ***Subdivision 1—Preliminary***

#### **1109 Definitions for div 2**

In this division—

“**authority**” means—

- (a) a licence under part 4 or 9 of the repealed Act; or
- (b) an order in council under which water is supplied; or
- (c) an agreement for the supply of water made under section 15 of the repealed Act; or
- (d) another agreement for the supply of water under the repealed Act.

“**customer**” means a person supplied water by the corporatised entity under an authority.

#### **1110 Application of div 2**

This division applies—

- (a) if the commercialised business unit previously within the department and known as State Water Projects (the “**corporatised entity**”) was corporatised under the *Government Owned Corporations Act 1993* before the commencement of this division—on the commencement; or
- (b) if the commercialised business unit within the department known as State Water Projects (the “**corporatised entity**”) is corporatised under the *Government Owned Corporations Act 1993* on or after the commencement—the day the corporatised entity is corporatised.

***Subdivision 2—Granting interim resource operations licences and interim water allocations***

**1111 Granting interim resource operations licence to corporatised entity**

(1) Within 30 business days after this division commences, the chief executive must grant and give to the corporatised entity an interim resource operations licence for Julius Dam and for each irrigation or project area under the *Water Resources (Rates and Charges) Regulation 1992* the corporatised entity operated both immediately before and immediately after the entity was corporatised.

- (2) Each licence must state, for the licence—
- (a) all the elements mentioned in section 177; and
  - (b) the interim water allocations to be granted to the corporatised entity under section 1112 for water losses, unallocated water and water for the supply of customers who are not to be granted or taken to hold an interim water allocation under section 1113 or 1114; and
  - (c) details of existing customers of the corporatised entity who are to be granted interim water allocations other than those customers who hold interim water allocations taken to be granted under section 1114; and
  - (d) details of existing customers of the corporatised entity who are not to be granted or taken to hold interim water allocations; and
  - (e) details of other existing water supply responsibilities.

(3) Within 30 business days after the granting of the interim resource operations licence, the chief executive must give the customers mentioned in subsection (2)(c) and (d) information notice about the granting of the licence.

(4) Sections 178 to 186 apply to each licence as if the licence were a licence granted under chapter 2, part 5.

(5) Each licence takes effect from the day the holder of the licence is given the licence.

(6) Although a customer mentioned in subsection (2)(d) does not get an interim water allocation, the customer is entitled to the continued supply of water under the authority.

### **1112 Granting water entitlements to corporatised entity**

(1) On the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the chief executive—

- (a) must grant to the corporatised entity an interim water allocation in accordance with each interim resource operations licence the corporatised entity is given under section 1111(1); and
- (b) if the corporatised entity was involved before the interim resource operations licences were granted in the activity of taking water, other than water to which paragraph (a) applies—may grant to the entity a licence to continue each activity.

(2) The licence granted under subsection (1)(b) is taken to be a licence granted under part 4 of the repealed Act.

(3) On the day the grant is made under subsection (1), the chief executive must give the allocation and the licence to the entity.

(4) The allocation and licence take effect from the day the entity is given the allocation and licence.

### **1113 Granting interim water allocations to customers under interim resource operations licences**

(1) On the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the chief executive must grant each customer of the corporatised entity, mentioned in

section 1111(2)(c), an interim water allocation in accordance with the interim resource operations licence for the allocation.

(2) Before the chief executive grants an interim water allocation under subsection (1), the chief executive must consider, for the granting of the interim water allocation, the following matters in relation to the customers existing authority—

- (a) whether the authority stated that the customer was granted nominal allocation of the water;
- (b) whether the authority was in existence when the relevant irrigation area or project was established;
- (c) whether the supply of water under the authority had an end date;
- (d) whether the customer has, over the term of the authority, paid the full commercial value for the supply of water under the authority;
- (e) whether the customer has paid the full commercial value for all or part of the supply of the water under the authority and it is reasonable that a proportion of the authority should be granted to the customer as an interim water allocation.

(3) On the day the grant is made under subsection (1), the chief executive must give the allocation to the grantee.

(4) Each interim water allocation attaches to the land of the grantee unless the grantee is—

- (a) a local government; or
- (b) a water authority; or
- (c) an entity prescribed under a regulation.

(5) Each interim water allocation takes effect from the day the grantee is given the allocation.

(6) Subsection (7) applies if—

- (a) a person, immediately before the commencement of this division, was supplied water under an authority; and
- (b) the person owed an amount of money to the State under a financial arrangement under the authority for nominal allocation of the water; and
- (c) the person is granted an interim water allocation under this section for the water.

(7) On the commencement—

- (a) the amount owed by the person, immediately before the commencement, is a debt due by the person to the corporatised entity; and
- (b) repayment of the amount to the corporatised entity is a condition of the interim water allocation.

### **1114 Authorities under part 4 or 9 of the repealed Act**

(1) Subsection (2) applies if—

- (a) an authority under part 4 or part 9 of the repealed Act was in force immediately before the day the chief executive grants the corporatised entity interim resource operations licences under section 1111; and
- (b) the authority was to take water in an irrigation area or project under the repealed Act; and
- (c) the authority provided for the nominal allocation of water under the repealed Act; and
- (d) the water is managed by the corporatised entity using the entity's water infrastructure.

(2) On and from the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the authority, to the extent it relates to the volume of water nominally allocated under the authority, is an interim water allocation.

(3) Each interim water allocation attaches to the land to which the authority attached unless the holder of the authority is—

- (a) a local government; or
- (b) a water authority; or
- (c) an entity prescribed under a regulation.

(4) Subsection (5) applies if a customer granted an interim water allocation under subsection (2) owed an amount of money to the State under a financial arrangement under the authority.

(5) On the commencement—

- (a) the amount owed by the customer, immediately before the commencement, is a debt due by the customer to the corporatised entity; and
- (b) repayment of the amount to the corporatised entity is a condition of the interim water allocation.

### **1115 Review of grant of interim water allocation**

(1) Subsection (2) limits the right of a customer given an information notice under section 1111(3).

(2) The customer may apply for a review of the decision mentioned in the notice only so far as the decision is about the customer not being granted an interim water allocation for all or part of the authority previously held by the customer.

(3) If the customer has, before the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, been supplied with water under the authority, the customer may apply for the review only on 1 or more of the following grounds—

- (a) the authority stated that the customer was granted nominal allocation of the water;
- (b) the authority was in existence when the relevant irrigation area or project was established;
- (c) the supply of water did not have an end date and the customer has, over the term of the authority, paid the full commercial value for the supply of water under the authority;
- (d) the customer has paid the full commercial value for all or part of the supply of the water under the authority and it is reasonable that a proportion of the authority should be granted to the customer as an interim water allocation.

(4) The corporatised entity is taken to be—

- (a) for sections 863(3) and 864(2)—a person who was given notice of the original decision; and
- (b) for an appeal against the review decision—an interested person for the original decision.

(5) If, on a review or appeal, it is decided that the customer be granted an interim water allocation, the interim water allocation granted to the

corporatised entity must be reduced by the interim water allocation granted to the customer under the decision.

(6) For subsection (5), the chief executive must do all things necessary to give effect to the decision.

### *Subdivision 3—Supply contracts*

#### **1116 Minister must approve standard supply contracts**

(1) On the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the Minister must approve standard supply contracts for the storage and delivery by the corporatised entity of water under interim water allocations, other than an interim water allocation to which an agreement mentioned in section 1117 relates.

(2) The supply contracts may be different for different areas of the State or different services provided by the entity.

(3) The Minister must gazette the approval of each standard supply contract.

(4) Subsection (5) applies if a contract approved under subsection (1) applies to water to which section 1114(2) applies.

(5) To the extent that the terms of supplying the water under an interim water allocation are inconsistent with the terms of supplying water under the standard supply contract approved by the Minister, the terms of the standard supply contract approved by the Minister prevail.

(6) Subsection (5) applies until the corporatised entity and the customer enter into a different supply contract for supplying the water.

(7) Within 1 year after the day the Minister approves a standard supply contract for an area or service, the corporatised entity and a customer council constituted under the statement of corporate intent for the corporatised entity must review the contract.

#### **1117 Supply under written agreements or orders in council**

(1) Subsection (2) applies—

- (a) to written agreements for the supply of water that is managed under an interim resource operations licence; and

- (b) if the agreement was effective, immediately before the day the chief executive grants the corporatised entity interim resource operations licences under section 1111.

(2) The provisions of the agreement, other than the provisions that deal with the allocation of water, continue to have effect after the interim resource operations licences are granted.

(3) Also, if the agreement is an agreement that was made under section 15 of the repealed Act, the conditions in section 15 that deal with the storage and delivery of water by the corporatised entity continue to have effect, for the agreement, after the interim resource operations licences are granted.

(4) Subsection (5) applies if an order in council or other order for the supply of water that is managed under an interim resource operations licence was in force, immediately before the day the chief executive grants the corporatised entity interim resource operations licences under section 1111.

(5) The provisions of the order in council or other order, other than the provisions that deal with the allocation of water, continue to have effect after the interim resource operations licences are granted.

(6) This section does not apply to an interim water allocation mentioned in section 1114(2).

### **1118 Application of Water Resources (Rates and Charges) Regulation 1992**

(1) Subsection (2) applies if—

- (a) immediately before the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, a person owes an amount of money to the State for a rate or charge made under the Water Resources (Rates and Charges) Regulation 1992; and
- (b) the person, after the day mentioned in paragraph (a), becomes a customer of the corporatised entity or the person owed the amount for a drainage rate.

(2) The amount owing by the person to the State is a debt due by the person to the corporatised entity.

(3) On and from the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the rates



and charges that applied under the regulation are the charges of the corporatised entity until the corporatised entity sets new charges.

### **1119 Application of repealed Act to interim water allocations until ch 2, pt 6 commences**

(1) Subsection (2) applies until chapter 2, part 6 commences.

(2) For amending, cancelling, renewing or transferring, an interim water allocation, the allocation must be dealt with as if—

- (a) for an allocation for water that is managed in an area that was an irrigation area under the repealed Act—the allocation were a water licence granted under part 9 of the repealed Act; and
- (b) for all other allocations—the allocation were a water licence granted under part 4 of the repealed Act.

### **1120 Minister's and Treasurer's power to give joint directions to corporatised entity**

(1) The Minister and Treasurer may give the corporatised entity a written joint direction if the Minister and Treasurer are satisfied it is necessary to give the direction—

- (a) to give effect to this Act; or
- (b) to facilitate water industry reform in the State; or
- (c) to ensure a financially viable water industry in the State.

(2) The corporatised entity must comply with the direction.

(3) The Minister must gazette a copy of the direction within 21 days after it is given.

(4) This section expires 3 years after it commences.

### **1121 Application of powers until interim resource operations licences are granted**

(1) From the commencement of this division until the day the chief executive grants the corporatised entity interim resource operations licences under section 1111, the corporatised entity must exercise the powers of an interim resource operations licence holder under this Act to supply customers with water.

(2) Subsection (1) applies even though the corporatised entity does not hold an interim resource operations licence.

### **1122–1128 Section numbers not used**

See footnote to section 1.

## **PART 5—GENERAL**

### **1129 References in Acts and documents**

A reference in an Act or document to—

- (a) the *Gladstone Area Water Board Act 1984* may, if the context permits, be taken to be a reference to chapter 4 of this Act; and
- (b) the *Water Resources Act 1989*, the *Water Act 1926* or the *Rights in Water and Water Conservation and Utilization Act 1910* may, if the context permits, be taken to be a reference to this Act; and
- (c) a water entitlement of a particular type under the repealed Act may, if the context permits, be taken to be a reference to a similar entitlement under this Act; and
- (d) a water entitlement holder under the repealed Act may, if the context permits, be taken to be a reference to the holder of a similar entitlement under this Act; and
- (e) the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context permits, be taken to be a reference to this Act; and
- (f) a section of the repealed Act, or the *Land Act 1897*, the *Land Act 1902* or the *Land Act 1910*, may, if the context permits, be taken to be a reference to the corresponding section in this Act.

### **1130 Transitional regulation-making power**

(1) A regulation (a “**transitional regulation**”) may make provision about a matter for which—

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and
- (b) this Act does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement of this section.

(3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire 1 year after the commencement of this section.

### **1131 Regulations continue to have effect**

(1) The following regulations and order in council, made under the repealed Act, as well as any definitions in the repealed Act relevant to the regulations, continue to have effect, and may be amended, as if they had been made under this Act—

- (a) the *Water Resources Regulation 1999*;
- (b) the *Water Resources (Areas and Boards) Regulation 2000*;
- (c) the *Water Resources (Quarry Material) Regulation 1992*;
- (d) the *Water Resources (Rates and Charges) Regulation 1992*;
- (e) the *Water Resources (Watercourse Protection) Regulation 1993*.

(2) The regulations and order must be read with the changes necessary to make them consistent with this Act and to adapt their operation to the provisions of this Act.

(3) Subsection (1) has effect despite the repeal of the repealed Act.

(4) This section expires on 1 July 2002.

### **1132–1136 Section numbers not used**

See footnote to section 1.

## **PART 6—REPEALS**

### **1137 Repeals**

The following Acts are repealed—

- (a) *Gladstone Area Water Board Act 1984*;
- (b) *Water Resources Act 1989*.<sup>40</sup>

### **1138–1143 Section numbers not used**

See footnote to section 1.

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<sup>40</sup> This paragraph had not commenced on or before the reprint date.

## SCHEDULE 1

### PROHIBITED SUBSTANCES

schedule 4, def “prohibited substance”

**1.** A solid or viscous substance in a quantity, or of a size, that can obstruct sewerage, or interfere with the operation of sewerage.

*Examples of solids or viscous substances that are prohibited substances if of a size or in the quantity mentioned in item 1—*

- ash, cinders, sand, mud, straw and shavings
- metal, glass and plastics
- paper and plastic dishes, cups and milk containers whether whole or ground by garbage grinders
- rags, feathers, tar and wood
- whole blood, paunch manure, hair and entrails
- oil and grease
- cement laden waste water, including, wash down from exposed aggregate concrete surfaces.

**2.** A flammable or explosive solid, liquid or gaseous substance (including petrol).

**3.** Floodwater, rainwater and stormwater, and roof water, seepage water, subsoil water and surface water.

**4.** A substance that, given its quantity, is capable alone, or by interaction with another substance discharged into sewerage, of—

- (a) inhibiting or interfering with a sewage treatment process; or
- (b) causing damage or a hazard to sewerage; or
- (c) causing a hazard for humans or animals; or
- (d) creating a public nuisance; or
- (e) creating a hazard in waters into which it is discharged; or
- (f) contaminating the environment in places where effluent or sludge from a sewage treatment plant is discharged or reused.

SCHEDULE 1 (continued)

*Example of substance under item 4—*

A substance with a pH lower than 6.0 or greater than 10.0, or having another corrosive property.

**5.** A substance at a temperature of more than—

- (a) if the local government has approved a maximum temperature for the substance—the approved maximum temperature; or
- (b) if paragraph (a) does not apply—38°C.

**SCHEDULE 4****DICTIONARY**

section 3

**“administrator”** means a person appointed under section 955(2) to operate a service provider’s infrastructure.

**“allocation notice”** see section 283.

**“alternative institutional structure”** includes a cooperative, corporation and trust.

**“annual report”**—

1. “Annual report”, for a water authority, means its annual report under the *Financial Administration and Audit Act 1977*.
2. “Annual report”, for a service provider, means a report prepared by the service provider under section 430(1).

**“application day”**, for an application, means—

- (a) if the chief executive does not request further information from the applicant about the application—the day the chief executive received the application; or
- (b) if the chief executive requests further information from the applicant about the application—the day the chief executive receives the information.

**“appointer”** see section 739(1).

**“appropriately qualified”**, for a person to whom a power may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

**“approved form”** means a form approved under section 1013.

**“artesian bore”** includes a shaft, well, gallery, spear or excavation, and any works constructed in connection with the shaft, well, gallery, spear or excavation, that taps an aquifer and the water flows, or has flowed, naturally to the surface.

**“artesian water”** means water that occurs naturally in, or is introduced artificially into, an aquifer, which if tapped by a bore, would flow naturally to the surface.

SCHEDULE 4 (continued)

“**assessment manager**” has the meaning given by the *Integrated Planning Act 1997*, section 3.1.7.<sup>41</sup>

“**authorised officer**” means a person appointed as an authorised officer under section 739.

“**authorised person**”, of a service provider, means a person authorised by the service provider under chapter 3, part 2, division 4.

“**authority area**”, for a water authority, see section 413(1).

“**available for inspection and purchase**” see section 1009.

“**bed and banks**”, for a watercourse or lake, means land over which the water of the watercourse or lake normally flows or that is normally covered by the water, whether permanently or intermittently; but does not include land adjoining or adjacent to the bed or banks that is from time to time covered by floodwater.

“**board**” see section 597.

“**bulk water service provider**” means a service provider who sells water on a wholesale basis to another service provider.

“**capital structure**”, for a water authority, means the authority’s level of debt compared to its level of equity.

“**category 1 water authority**” means—

- (a) the Gladstone Area Water Board; or
- (b) the Mount Isa Water Board.

“**category 2 water authority**” means a water authority other than a category 1 water authority.

“**commercialisation**” see section 637.

“**community service obligations**”, of a category 1 water authority, means the obligations to do anything the authority is satisfied—

- (a) are not in the authority’s commercial interests to perform; and

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41 Under section 3.1.7 (Assessment manager) of the *Integrated Planning Act*, the “**assessment manager**”, for an application for a development approval is generally the local government for the area in which the development is to be carried out. However, in some circumstances, it may be another entity prescribed under a regulation under that Act or decided by the Minister administering that Act.



SCHEDULE 4 (continued)

- (b) arise because of—
  - (i) a direction by the Minister or a joint direction by the Minister and Treasurer; or
  - (ii) notice by the Minister of a public sector policy that is to apply to the authority; and
- (c) do not arise because of the application of the following key commercialisation principles and their elements—
  - (i) principle 3—accountability for performance;
  - (ii) principle 4—competitive neutrality.

**“compliance notice”** means a notice given under section 780.

**“concurrence agency”**, for a development application, has the meaning given by the *Integrated Planning Act 1997*.<sup>42</sup>

**“connection”** means a property service that supplies either water supply services or sewerage services, or both, to a premises.

**“convicted”** includes a finding of guilty, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**“corporatised entity”** see section 1110.<sup>43</sup>

**“customer”**—

1. “Customer”, of a service provider that is a local government, means a ratepayer of the local government who enjoys registered services supplied by the local government.
2. “Customer”, of a service provider other than a local government, means a person who purchases registered services supplied by the service provider on premises other than a public place or premises owned by a service provider.
3. “Customer”, of a water authority, means a person, other than a ratepayer, for whom the authority carries out water activities.

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42 Under the *Integrated Planning Act*, the concurrence agency for a development application is the entity prescribed under a regulation under that Act as a concurrence agency for the application or, if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

43 See also the *Government Owned Corporations (State Water Projects Corporatisation) Regulation 2000*.

SCHEDULE 4 (continued)

**“customer service standard”**—

1. “Customer service standard” means a standard prepared under section 424.
2. The term includes the standard, as revised under section 428.

**“dam”**—

1. “Dam” means—
  - (a) works that include a barrier, whether permanent or temporary, that does or could or would impound water; and
  - (b) the storage area created by the works.
2. The term includes an embankment or other structure that controls the flow of water and is incidental to works mentioned in item (1)(a).
3. The term does not include a rainwater tank.

**“de facto spouse”** means either 1 of 2 persons, whether of the same or the opposite sex, who are living or have lived together—

- (a) on a genuine domestic basis in a relationship based on intimacy, trust and personal commitment to each other; and
- (b) not only as cotenants.

**“destruction”**, of vegetation, means the removing, clearing, killing, cutting down, felling, ringbarking, digging up, pushing over, pulling over or poisoning of the vegetation.

**“development”** has the meaning given by the *Integrated Planning Act 1997*, section 1.3.2.<sup>44</sup>

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44 *Integrated Planning Act 1997*, section 1.3.2 (Meaning of “development”)—

**1.3.2. “Development”** is any of the following—

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) configuring a lot;
- (e) making a material change of use of premises.

Chapter 1, part 3, division 3 of the *Integrated Planning Act* contains supporting definitions and explanations for the term “development”.

SCHEDULE 4 (continued)

**“development application”** means an application for a development approval.

**“development approval”** means a development approval as defined under the *Integrated Planning Act 1997*.<sup>45</sup>

**“development condition”**—

1. “Development condition”, of a development approval, means a condition of the approval imposed by, or imposed because of a requirement of, the chief executive as assessment manager or concurrence agency for the application for the approval.
2. “Development condition”, includes—
  - (a) a safety condition; or
  - (b) a condition mentioned in section 1068 or 1069.

**“development permit”** means a development permit as defined under the *Integrated Planning Act 1997*.

**“director”**, for a water authority, means a person appointed as a director of the authority’s board under section 600.

**“dispute notice”** means a notice given under section 891(2).

**“dividend”**, for chapter 4, includes an amount in the nature of a dividend.

**“document certification requirement”** see section 760(5).

**“document production requirement”** see section 760(6).

**“domestic purposes”** includes irrigating a garden, not exceeding .25 ha, being a garden cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden.

**“ecological outcome”** means a consequence for an ecosystem in its component parts specified for aquifers, drainage basins, catchments, subcatchments and watercourses.

**“ecosystem”** means a dynamic combination of plant, animal and micro-organism species and communities and their non-living

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45 Under the *Integrated Planning Act 1997*, a development approval is required for certain development. A development approval may be in the form of a preliminary approval, a development permit or a combination of both of them.

SCHEDULE 4 (continued)

environment and the ecological processes between them interacting as a functional unit.

**“environmental flow objective”**, for a water resource plan, means a flow objective for the protection of the health of natural ecosystems for the achievement of ecological outcomes.

**“environmental management rules”**, for a resource operations plan, means the environmental management rules included in the plan.

**“establishment proposal”**, for a water authority, means the proposal, notice of which was given under section 552(1), to establish the authority.

**“establishment regulation”** means a regulation made under section 598 establishing a water authority.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“failure”**, of a referable dam, means—

- (a) the physical collapse of all or part of the dam; or
- (b) the uncontrolled release of any of its contents.

**“failure impact assessment”** see section 482.

**“fill”**, for chapter 2, part 8, means any kind of material in solid form (whether or not naturally occurring) capable of being deposited at a place.

**“fire fighting purposes”** includes training for fire fighting and testing fire fighting equipment.

**“fire fighting system”** means a system of water pipes, fire hydrants and water storage or pumping facilities connected to a water service provider’s infrastructure solely for fire fighting purposes.

**“flood mitigation manual”** means a manual prepared under section 496.

**“floodwater”** means water overflowing, or that has overflowed, from a watercourse or lake onto or over riparian land that is not submerged when the watercourse or lake flows between or is contained within its bed and banks.

SCHEDULE 4 (continued)

**“flow conditions”**, for a water entitlement or a moratorium notice, means—

- (a) the rate of flow of water a watercourse, lake or spring or overland; or
- (b) the level of water in a watercourse, lake, spring, aquifer, dam or weir.

**“former water area”** means a drainage area or water supply area established under the repealed Act.

**“former water board”** means a drainage board, water board or water supply board established under the—

- (a) the repealed GAWB Act; or
- (b) part 10 of the repealed Act.

**“full cost pricing”**, for a category 1 water authority, is charging for goods or services taking into account the full cost of providing the goods or services, including amounts equivalent to—

- (a) government taxes that are not otherwise payable to the Commonwealth, State or local government; and
- (b) debt guarantee fees for State guarantees.

**“full supply level”** means the level of the water surface when the water storage is at maximum operating level when not affected by flood.

**“hazardous waste”** means any substance, whether liquid, solid or gaseous, derived by, or resulting from, the processing of minerals that tends to destroy life or impair or endanger health.

**“height”**, for a weir, barrage or dam, means the measurement of the difference in level between the natural bed of the watercourse at the downstream toe of the barrier or, if the barrier is not across a watercourse, between the lowest elevation of the outside limit of the barrier and the top of the barrier.

**“indirect financial or personal interest”**, for a director, includes a financial or personal interest of the director’s spouse, relative, partner or person with whom the director lives in a domestic relationship.

**“information notice”**, for a decision of the Minister, chief executive or regulator, means a notice stating the following—

SCHEDULE 4 (continued)

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person given the notice may appeal against the decision within 30 business days after the day the notice is given and how the person may appeal.

**“interested person”** see section 851.

**“interim enforcement order”** see section 784(1).

**“interim resource operations licence”** means a licence granted under section 175.

**“interim water allocation”** means—

- (a) an authority to take water managed under an interim resource operations licence that represents a volumetric share of water; and
- (b) any conditions attaching to the authority.

**“internal review”** see section 862(1).

**“interstate law”** means a law of another State, including a repealed law, regulating the taking or using of water or the drilling of a water bore.

**“interstate resource operations licence”** means a licence that is granted under an interstate law and authorises the licence holder to manage the taking or using of water by other licensees.

**“irrigation service”** means the supply of water or drainage services for irrigation of crops or pastures for commercial gain.

**“key commercialisation principles”** see section 638.

**“lake”** includes—

- (a) a lagoon, swamp or other natural collection of water, whether permanent or intermittent; and
- (b) in a provision about the exercise of the authority to the use, flow and control of water—
  - (i) the bed and banks; and
  - (ii) the elements that confine or contain the water.

**“large service provider”** means—

SCHEDULE 4 (continued)

- (a) a service provider primarily providing bulk water services; or
- (b) for a retail water service or sewerage service—a service provider with more than 25 000 connections to a registered service; or
- (c) for an irrigation service—a service provider with—
  - (i) more than 500 users; and
  - (ii) a volume throughput, in any of the last 5 financial years, of more than 10 000 ML.

**“medium service provider”** means—

- (a) for a retail water service or sewerage service—a service provider with more than 1 000 but not more than 25 000 connections to a registered service; or
- (b) for an irrigation service—a service provider with—
  - (i) more than 100 but not more than 500 users; and
  - (ii) a volume throughput, in any of the last 5 financial years, of more than 10 000 ML.

**“moratorium notice”** see section 42.

**“notice”** means written notice.

**“occupier”**, of land, means the person in actual occupation of the land or, if there is no person in actual occupation, the person entitled to possession of the land.

**“officer”**, of a water authority, means—

- (a) a director of the authority; or
- (b) the authority’s chief executive officer; or
- (c) another person who is concerned, or takes part, in the authority’s management.

**“original decision”** see section 851(5).

**“other resources”** means quarry material and riverine vegetation.

**“overdue charge”** see section 574(3).

**“overdue rate”** see section 574(3).

**“overland flow water”**—

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SCHEDULE 4 (continued)

1. “Overland flow water” means water, including floodwater, flowing over land, otherwise than in a watercourse or lake—
  - (a) after having fallen as rain or in any other way; or
  - (b) after rising to the surface naturally from underground.
2. “Overland flow water” does not include—
  - (a) rainfall or runoff that naturally infiltrates the soil in normal farming operations, including infiltration occurring in farming activity such as clearing, replanting and broadacre ploughing; or
  - (b) tailwater from irrigation if the tailwater recycling meets best practice requirements; or
  - (c) water collected from roofs for rainwater tanks.

“**owner**”, of a referable dam, means the owner of land on which the referable dam is constructed, or is to be constructed.

“**owner**”, of land, means any of the following, and includes the occupier of the land—

- (a) the registered proprietor of the land;
- (b) the lessee or licensee under the *Land Act 1994* of the land;
- (c) the holder of a mineral development licence or mining lease under the *Mineral Resources Act 1989*;
- (d) the person or body of persons who, for the time being, has lawful control of the land, on trust or otherwise;
- (e) the person who is entitled to receive the rents and profits of the land.

“**performance indicator**” means a measure that can be calculated and is stated in a water resource plan to assess the impact of an allocation and management decision or proposal on water entitlements and natural ecosystems.

“**performance plan**”, for a water authority, means the authority’s performance plan agreed to by the Minister under section 656, or taken to be agreed to by the Minister under section 657(2) or (4).

“**placing of fill**” in a watercourse, lake or spring includes doing something that, in conjunction with other acts (regardless of who does those acts)



## SCHEDULE 4 (continued)

or happenings (regardless of who, if anyone, causes those happenings) is likely to result in the depositing of fill in the watercourse, lake or spring.

**“plan area”**, for any plan under this Act, means the part of Queensland to which the plan applies.

**“premises”** means—

- (a) a lot as defined under the *Integrated Planning Act 1997*, section 1.3.5; or
- (b) for a lot under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*—the common property for the lot.

**“prescribed offence”** means an offence against this Act for which the maximum penalty of imprisonment is 2 or more years.

**“priority group”**, for water allocations managed under a resource operations licence, means the allocations that have the same water allocation security objective.

**“process”**, for sections 46(2)(e), 98(2)(c) and (d), 108, 122, 176, 189 and 212, includes selling or dealing with water entitlements, interim resource operations licences or resource operations licences by public auction, public ballot or public tender.

**“prohibited substance”**, for sewerage, means a matter stated in schedule 1.

**“properly made submission”** means a submission that—

- (a) is made by a person invited to make the submission; and
- (b) is in writing and is signed by each person who made the submission; and
- (c) is received on or before the last day for the making of the submission; and
- (d) states the name and address of each person who made the submission; and
- (e) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and

SCHEDULE 4 (continued)

- (f) is received by the person stated in the notice inviting the submission.

**“property service”** means a short pipe installed for connecting premises to a service provider’s infrastructure.

**“proposed plan area”**—

- (a) for a draft water resource plan—means the part of Queensland to which a water resource plan, if approved, will apply; or
- (b) for a draft resource operations plan—means the part of the plan area for a water resource plan to which a resource operations plan, if approved, will apply.

**“publish”**—

1. “Publish”, for a notice under section 21, 208 or 246 means to publish the notice—
  - (a) in a newspaper circulating generally throughout the area for which the notice is published; or
  - (b) by notice to an affected licensee or permittee.
2. “Publish”, for a notice under section 22 or chapter 2, part 3 or 4, means to publish the notice—
  - (a) in a newspaper circulating generally throughout the area for which the notice is published; and
  - (b) in any other newspaper the Minister considers appropriate; and
  - (c) on the department’s web site on the internet.
3. “Publish”, for a notice under another provision of this Act, means to publish the notice—
  - (a) in a newspaper circulating generally throughout the area for which the notice is published; and
  - (b) in any other newspaper the chief executive considers appropriate.

SCHEDULE 4 (continued)

**“quarry material”**—

1. “Quarry material” means material, other than a mineral within the meaning of any Act relating to mining, in a watercourse or lake.
2. “Quarry material” includes stone, gravel, sand, rock, clay, earth and soil unless it is removed from the watercourse or lake as waste material.

**“ratepayer”**, for a water authority, means a person on whom the authority may levy a rate under section 572.

**“reasonably believes”** means believes on grounds that are reasonable in the circumstances.

**“referable dam”** see section 481.

**“referral agency”**, for a development application, has the meaning given by the *Integrated Planning Act 1997*.

**“registered owner”**, of land, means—

- (a) the registered owner of the land under the *Land Title Act 1994*; or
- (b) the lessee or licensee of the land under the *Land Act 1994*.

**“registered professional engineer”** means a registered professional engineer, a registered professional engineering company or a registered professional engineering unit as defined under the *Professional Engineers Act 1988*.

**“registered service”**, for a service provider, means a water or sewerage service for which the service provider is registered.

**“registrar”** means the registrar appointed under section 147.

**“regular audit”** means an audit conducted under section 417.

**“regulator”** means the chief executive.

**“repealed Act”** means the *Water Resources Act 1989*.

**“repealed Acts”** means the—

- (a) repealed GAWB Act; or
- (b) repealed Act.

**“repealed GAWB Act”** means the *Gladstone Area Water Board Act 1984*.

SCHEDULE 4 (continued)

**“resource operations licence”** means a licence granted under chapter 2, part 4, division 3.

**“resource operations plan”** means a plan approved under section 103(2).

**“retail water service”**—

1. “Retail water service” means a reticulated water service in a service area for a water service.
2. The term does not include the supply of a water service for irrigation and bulk water supply purposes in any area.

**“review decision”** see section 864(1).

**“reviewer”** see section 862(1).

**“review notice”** see section 864(2).

**“safety condition”**, for a dam, means a condition for a referable dam decided by the chief executive under section 491 or changed under section 492.

**“seasonal water assignment”**, for a water allocation or water licence, means the assignment by the holder of the allocation or licence of the benefit under the allocation or licence to another person, for a water year, of all or part of the water that may be taken under the allocation or licence.

**“seasonal water assignment rules”** means the rules stated in a regulation or resource operations plan that allow approval of applications for proposed seasonal water assignments.

**“service area”** means an area declared under section 449 for either or both of the following—

- (a) a retail water service to customers;
- (b) a sewerage service to customers.

**“service provider”** means a water service provider or a sewerage service provider.

**“service provider register”** means the register kept under section 516.

**“sewerage”** means a sewer, access chamber, vent, engine, pump, structure, machinery, outfall or other work used to receive, store, transport or treat sewage.

SCHEDULE 4 (continued)

**“sewerage service”**—

1. “Sewerage service” means—
  - (a) sewage treatment; or
  - (b) the collection and transmission of sewage through infrastructure; or
  - (c) the disposal of sewage or effluent.
2. For chapter 3, part 2, the term does not include a service supplied by infrastructure, if—
  - (a) the infrastructure is used solely for mining purposes; or
  - (b) the only user of the service is the owner of the infrastructure or the owner’s guests or employees, including, for example, guests at a resort.

**“sewerage service provider”** means a person registered under chapter 3, part 2, as a service provider for a sewerage service.

**“show cause notice”** means a notice that complies with section 779.

**“small service provider”** means—

- (a) for a retail water service or sewerage service—a service provider with 1 000 or less connections to a registered service; or
- (b) for an irrigation service—a service provider with—
  - (i) 100 or less users; or
  - (ii) a volume throughput, in any of the last 5 financial years, of 10 000 ML or less.

**“spot audit”** means an audit conducted under section 419.

**“spouse”** includes a de facto spouse.

**“spring”** means the land to which water rises naturally from below the ground and the land over which the water then flows.

**“State quarry material”** means—

- (a) quarry material that is the property of the State under section 279; and

SCHEDULE 4 (continued)

- (b) if quarry material not mentioned in paragraph (a) is reserved under the *Land Act 1994*, section 22, and is in a watercourse or lake—the quarry material.

**“storage capacity”** means the capacity of water ordinarily stored in a thing.

**“stormwater drainage”** means a drain, channel, pipe, chamber, structure, outfall or other work used to receive, store, transport or treat stormwater.

**“strategic asset management plan”** means a plan certified by a registered professional engineer under chapter 3, part 3.

**“subartesian bore”** includes a shaft, well, gallery, spear or excavation, and any works constructed in connection with the shaft, well, gallery, spear or excavation, that taps an aquifer and the water does not flow and never has flowed naturally to the surface.

**“subartesian water”** means water that occurs naturally in, or is introduced artificially into, an aquifer, which if tapped by a bore, would not flow naturally to the surface.

**“submitter”** means a person who made a properly made submission under this Act.

**“submitter notice”** see section 863(3).

**“supply contract”** means a contract for the storage and supply of water under a water entitlement.

**“sustainable management”** see section 10(2).

**“taking”**, for water, includes diverting water.

**“top of the barrier”**, for a weir, barrage or dam, means the level of the top of the barrier exclusive of any parapet or ancillary structure or, if the barrier includes a spillway, the level of the top of the abutment walls adjoining the spillway exclusive of any parapet or ancillary structure.

**“trade waste”** means water-borne waste from business, trade or manufacturing premises, other than—

- (a) waste that is a prohibited substance; or
- (b) human waste; or
- (c) stormwater.

SCHEDULE 4 (continued)

**“trade waste approval”** see section 469.

**“transfer”**, of a resource operations licence, an interim resource operations licence or a water allocation, means the passing of the legal or beneficial interest in the licence or allocation.

**“underground water”** means artesian water and subartesian water.

**“vegetation”** means any native plants, and includes any native trees, shrubs, bushes, seedlings, saplings and reshoots.

**“water”** means—

- (a) water in a watercourse, lake or spring; or
- (b) underground water; or
- (c) overland flow water; or
- (d) water that has been collected in a dam.

**“water activity”**, for a water authority, includes an activity for the following—

- (a) water conservation;
- (b) water supply;
- (c) irrigation;
- (d) drainage, including stormwater drainage;
- (e) flood prevention;
- (f) floodwater control;
- (g) underground water supply improvement or replenishment;
- (h) sewerage;
- (i) anything else dealing with water management.

**“water allocation”** means an authority granted under section 121 or 122 to take water.

**“water allocation security objective”** means an objective that may be expressed as a performance indicator and is stated in a water resource plan for the protection of the probability of being able to obtain water in accordance with a water allocation.

**“water allocations register”** means the register kept under section 148.

## SCHEDULE 4 (continued)

**“water allocation transfer rules”**—

1. “Water allocation transfer rules”, for a resource operations plan, means the water allocation transfer rules included in the plan.
2. “Water allocation transfer rules”, for a resource operations plan, includes rules in the plan for changes to water allocations.

**“water authority”** means a water authority established under this Act.

**“water bore”** means an artesian bore or a subartesian bore.

**“watercourse”**—

1. “Watercourse” means a river, creek or stream in which water flows permanently or intermittently—
  - (a) in a natural channel, whether artificially improved or not; or
  - (b) in an artificial channel that has changed the course of the watercourse;

but, in any case, only—

- (c) unless a regulation under paragraph (d) otherwise declares—at every place upstream of the point to which the spring tide normally flows and reflows, whether due to a natural cause or an artificial barrier; or
  - (d) if a regulation has declared an upstream or downstream limit, or both, for the watercourse, the part of the river, creek or stream within the limit.
2. “Watercourse” includes the bed and banks and any other element of a river, creek or stream confining or containing water.

**“water entitlement”** means a water allocation, interim water allocation or water licence.

**“water infrastructure”** means works operated by the State or the holder of an interim resource operations licence, resource operations licence or other authorisation that is relevant to the management of water entitlements.

**“water licence”** means a licence granted under chapter 2, part 6, division 2.

**“water permit”** means a permit granted under chapter 2, part 6, division 4.



SCHEDULE 4 (continued)

**“water resource plan”** means a plan approved under section 50(2).

**“water restriction”** see section 388(2).

**“water service”**—

1. “Water service” means—
  - (a) water harvesting or collection, including, for example, water storages, groundwater extraction or replenishment and river water extraction; or
  - (b) the transmission of water; or
  - (c) the reticulation of water; or
  - (d) drainage, other than stormwater drainage; or
  - (e) water treatment or recycling.
2. For chapter 3, part 3, the term does not include a service supplied by infrastructure, if—
  - (a) the infrastructure is used solely for mining purposes; or
  - (b) the only user of the service is the owner of the infrastructure or the owner’s guests or employees, including, for example, guests at a resort.

**“water service provider”** means a person registered under chapter 3, part 2, as a service provider for a water service.

**“water sharing rules”**, for a resource operations plan, means the water sharing rules included in the plan.

**“water year”**, for a resource operations plan, interim resource operations licence or water licence, means—

- (a) the accounting period prescribed under a regulation for the plan or licence; or
- (b) until a period is prescribed under paragraph (a)—the accounting period stated in the plan or licence for taking water under the plan or licence.

**“weir”** means a barrier constructed across a watercourse below the banks of the watercourse that hinders or obstructs the flow of water in the watercourse.

SCHEDULE 4 (continued)

**“works”** means—

- (a) operations of any kind and all things constructed, erected or installed for the purposes of this Act; and
- (b) any land used for the operations.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 July 2001. Future amendments of the Water Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	4 May 2001

## 5 List of legislation

### Water Act 2000 No. 34

date of assent 13 September 2000

ch 1, ch 2 pts 1–2 (except s 20(3)) pt 3 divs 1–2, ch 5 pts 1–2, 3 div 3, ch 6 pts 1–3, ch 7, ch 8 ss 1006–1007, 1009–1014, ch 9 pt 1 ss 1037–1045, 1051–1052, 1054, 1108, pt 5, sch 2 amdts 1 and 14 of the Integrated Planning Act 1997, sch 3 amdts of the Aboriginal Land Act 1991, Forestry Act 1959, State Development and Public Works Organisation Act 1971, Torres Strait Islander Land Act 1991, amdts 1–6 and 11 of the Water Resources Act 1989 commenced on date of assent (see s 2(2))

ch 2 pt 3 div 3, pts 4–5, 7, ch 3 pts 1–3, 6 div 2, pt 7, ch 4, ch 5 pt 3 ss 808–813, div 2, ch 6 pt 4, ch 8 pts 1, 3–4, ss 1004–1005, 1008, ch 9 ss 1046–1047, 1049, 1053, 1056, 1060–1062, 1071, pt 3, pt 4 (other than s 1108), s 1137(a), ch 10 s 1144, sch 2 to the extent sch 2 amdts the Local Government Act 1993 amdt 1, ch 10 s 1145, sch 3 to the extent sch 3 amdts the Freedom of Information Act 1992, the Queensland Competition Authority Act 1997, the Townsville/Thuringowa Water Supply Board Act 1987 and the Water Resources Act 1989 amdts 7–8, schs 1 and 4 commenced 1 October 2000 (2000 SL No. 257)

sch 2 amdts 18–19 of the Integrated Planning Act 1997, amdt 2 of the Local Government Act 1993 commenced 1 July 2000 (see s 2(1))

remaining provisions not yet proclaimed into force

as amended by

### Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

## **6 List of annotations**

**Application of particular Acts to a water authority**  
s 551 amd 2001 No. 45 s 29 sch 3

**Termination of appointment as director**  
s 607 amd 2001 No. 45 s 29 sch 3

### **CHAPTER 10—AMENDMENTS**

ch 10 (ss 1144–1145) om R1 (see RA s 40)

### **SCHEDULE 2—AMENDMENTS ABOUT PLANNING MATTERS**

sch 2 om R1 (see RA s 40)

### **SCHEDULE 3—OTHER AMENDMENTS**

sch 3 om R1 (see RA s 40)