



# **Water Supply (Safety and Reliability) Act 2008**

**Reprinted as in force on 18 December 2009**

**Reprint No. 1H**

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Queensland

# Water Supply (Safety and Reliability) Act 2008

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# Water Supply (Safety and Reliability) Act 2008

[as amended by all amendments that commenced on or before 18 December 2009]

**An Act to provide for the safety and reliability of water supply and to amend other Acts for particular water related purposes**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Water Supply (Safety and Reliability) Act 2008*.

*Editor's note—*

Some section numbers have been deliberately left blank at the end of some parts because of the size and complexity of this Act. If this Act is amended in the future, this will assist in adding sections.

### 2 Commencement

- (1) Sections 677 to 679 commence on 1 August 2008.
- (2) The remaining provisions of this Act, other than the following provisions, commence on a day to be fixed by proclamation—
  - chapter 10, part 3, other than section 663
  - sections 666, 674 to 676, 680 to 682, 684 to 692, 695, 696, 715 to 721, 735(1) to (3) and 736
  - section 738, to the extent it inserts part 3A
  - sections 739, 743 and 744

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- section 745, to the extent it inserts division 11 heading and sections 1166 and 1167
- section 747(3)
- chapter 11
- schedule 2, amendment of the *Water Resource (Fitzroy Basin) Plan 1999*.

### **3 Purpose of Act and its achievement**

- (1) The purpose of this Act is to provide for the safety and reliability of water supply.
- (2) The purpose is achieved primarily by—
  - (a) providing for—
    - (i) a regulatory framework for providing water and sewerage services in the State, including functions and powers of service providers; and
    - (ii) a regulatory framework for providing recycled water and drinking water quality, primarily for protecting public health; and
    - (iii) the regulation of referable dams; and
    - (iv) flood mitigation responsibilities; and
  - (b) protecting the interests of customers of service providers.

### **4 Definitions**

The dictionary in schedule 3 defines particular words used in this Act.

### **5 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*.

## **Chapter 2      Infrastructure and service**

### **Part 1              Preliminary**

#### **6              Application of ch 2 to local governments**

Nothing in this chapter affects the powers of a local government or an authorised person under the Local Government Act.

#### **7              Sections 7–9 not used**

See editor’s note for section 1.

### **Part 2              The regulator**

#### **10              Who is the regulator**

The regulator is the chief executive.

#### **11              Regulator’s general functions**

- (1) The regulator’s general functions are—

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- (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 Act; and
  - (c) to monitor compliance with this Act; 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.
- (3) In this section—  
*function* includes power.

## **12 Register of service providers**

- (1) The regulator must keep a register of service providers.
- (2) The register may be kept in the form, including electronic form, the regulator considers appropriate.
- (3) The register must contain the following for each person registered by the regulator as a service provider—
  - (a) the service provider's name and contact details;
  - (b) the service provider's nominated contact officer;
  - (c) details of the infrastructure operated by the service provider;
  - (d) if the service provider is not the operator of infrastructure used for the relevant water or sewerage service—the operator's name and contact details;
  - (e) the nature of the services offered by the service provider;
  - (f) any other particulars the regulator considers necessary.
- (4) 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.



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### **13 Requirement for responsible entity to give information**

- (1) The regulator may, by notice, require a responsible entity to give the regulator, within a stated reasonable period, information the regulator reasonably requires to perform the regulator's functions.
- (2) When making the requirement, the regulator must warn the responsible entity it is an offence to fail to comply with the requirement unless the responsible entity has a reasonable excuse.
- (3) The responsible entity must comply with the requirement unless the responsible entity has a reasonable excuse.

Maximum penalty—200 penalty units.

- (4) If the responsible entity is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information might tend to incriminate the responsible entity.
- (5) In this section—

*responsible entity* means each of the following—

- (a) a distribution service provider under the Water Act;
- (b) a grid service provider under the Water Act;
- (c) a recycled water provider or other declared entity for a recycled water scheme;
- (d) a service provider;
- (e) the SEQ Water Grid Manager;
- (f) the scheme manager for a multiple-entity recycled water scheme.

### **14 Reports and other publications by regulator**

- (1) The regulator may prepare reports under this part about the regulator's activities.
- (2) The regulator may—

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- (a) include in a report any information the regulator obtains under this Act (*relevant information*); and
  - (b) publish relevant information by way of television, newspaper, radio, the internet or another form of communication.
- (3) However, subsection (2) does not apply to—
- (a) personal information under the *Information Privacy Act 2009*, other than information identifying an individual as a service provider; or
  - (b) information that, under section 580, the regulator must take all reasonable steps to ensure not to disclose.

## 15 Delegation by regulator

- (1) The regulator may delegate the regulator's functions under this Act to an appropriately qualified officer of the department.
- (2) A regulation may state a particular function of the regulator—
  - (a) may not be delegated; or
  - (b) may be delegated only to a particular person.
- (3) In this section—  
*function* includes power.

## 16 Sections 16–19 not used

See editor's note for section 1.

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## **Part 3                      Service providers**

### **Division 1                      Registration of service providers**

#### **20                      Who must apply for registration as a service provider**

- (1) The following persons must, before starting to operate as the supplier of a water or sewerage service, apply for registration as a service provider—
  - (a) a local government that owns infrastructure for supplying water or sewerage services;
  - (b) a water authority that owns infrastructure for supplying water or sewerage services;
  - (c) each person who is—
    - (i) the owner of 1 or more elements of infrastructure for supplying water or sewerage services for which a charge is intended to be made; or
    - (ii) if a person is nominated in a regulation as a related entity of a person mentioned in subparagraph (i)—the person nominated.
- (2) However, subsection (1) does not apply to a person who owns infrastructure that produces and supplies recycled water unless the person also owns other infrastructure for supplying a water or sewerage service.

#### **21                      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.
- (2) The regulator may require—

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- (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.

## **22 Registration as a service provider**

- (1) If the regulator is satisfied the applicant has complied with section 21, 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.

## **23 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 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 amendments, as registered in the register.

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## **24 Notice of transfer of infrastructure**

- (1) This section applies if a service provider (the *transferor*) intends to transfer 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.

## **25 Registering transferee as a service provider**

- (1) If the regulator is satisfied the transferor has complied with section 24, 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—

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- (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 the transferor a compliance notice 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.

## **26 Notice of intention to stop operating as a service provider**

- (1) This section 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 at least 60 business days notice of the possible stoppage unless the service provider has a reasonable excuse for not giving the notice.

*Note—*

See section 530(1)(a) (Governor in Council may appoint administrator to operate infrastructure).

Maximum penalty—1000 penalty units.

- (3) The notice must—
  - (a) be in the approved form; and
  - (b) state the day by which the service provider intends to stop supplying the service.
- (4) The regulator may require—
  - (a) the service provider to give additional information about the notice; or
  - (b) any information included in the notice, or any additional information required under paragraph (a), to be verified by statutory declaration.
- (5) If the service provider fails, without reasonable excuse, to comply with the requirement within the reasonable period stated in the requirement, the notice given under subsection (2) is of no effect.
- (6) If the service provider continues supplying the service after the day stated in the notice—
  - (a) the notice ceases to have effect as a notice for subsection (2); and
  - (b) if the service provider is again likely to stop supplying the service—the service provider must give a further notice under subsection (2).
- (7) If the service provider stops supplying the service, the service provider must give the regulator notice within 5 business days after stopping supply.
- (8) The notice must—
  - (a) be in the approved form; and
  - (b) state the day on which the provider stopped supplying the service.

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## **27 Cancellation of registration**

If the regulator receives a notice under section 26(7), the regulator must—

- (a) cancel the service provider's registration as a service provider for the infrastructure and services shown in the notice; and
- (b) give the service provider notice of the cancellation under paragraph (a).

## **28 Applying for cancellation of registration as service provider**

- (1) A service provider may apply to the regulator to have the provider's registration cancelled if the provider has not supplied, and does not intend to start supplying, the service for which the provider is registered.
- (2) The application must be—
  - (a) made in the approved form; and
  - (b) supported by sufficient information to enable the regulator to decide the application.
- (3) 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.
- (4) If the regulator is satisfied the applicant has complied with subsections (1), (2) and (3), the regulator must—
  - (a) cancel the service provider's registration as a service provider for the infrastructure and services shown in the application; and
  - (b) give the service provider notice of the cancellation under paragraph (a).



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**29 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 service provider to a water entitlement or a resource operations licence.

**30 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.
- (3) On receiving the notice, the regulator must—
  - (a) record the changes in the service provider register; and
  - (b) give the service provider a copy of the service provider's details, including the changes, as registered in the service provider register.

**Division 2 General powers of service providers and authorised persons**

**31 Definition for div 2**

In this division—

*place* does not include a part of a place used for residential purposes.

**32 Application of div 2**

This division applies only to the services for which a service provider is registered.

[s 33]

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### **33 Power to disconnect unauthorised connections**

- (1) This section 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 period stated in the notice, why the service provider should not disconnect the connection.
- (3) The period stated in the notice must not be less than 48 hours after the notice is given.
- (4) If the service provider is not satisfied, within the period stated in the notice, that the connection should not be disconnected—
  - (a) an authorised person of the service provider 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—
    - (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—
    - (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 the person who appears to the

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authorised person to be the owner of, or in control of, the place, a notice 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 leave the notice at the place in a conspicuous position and in a reasonably secure way.

### **34 Power to direct remedial work**

- (1) This section applies to the owner of—
- (a) defective or improper equipment connected to, or adversely affecting, a service provider's infrastructure; or
  - (b) land on which there is situated vegetation or any other thing adversely affecting the service provider's infrastructure or ability to provide the services for which the service provider is registered.
- (2) The service provider may give the owner a notice to do work, within the reasonable period stated in the notice, to—
- (a) rectify the equipment; or
  - (b) remove the vegetation or other thing.
- (3) If the owner does not do the work within the period stated in the notice—
- (a) an authorised person may, under section 36, enter the place where the work is required and do the work; and
  - (b) the service provider may recover from the owner as a debt the cost of the work.

### **35 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.

[s 36]

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- (2) The meter is the property of the service provider even if it is installed inside the boundary of the premises.

### **36 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, or install, under section 169, a device to reduce the water supply to premises, 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 the person who appears to the authorised person to be the owner of, or in control of, the place, a notice 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 leave the notice at the place in a conspicuous position and in a reasonably secure way.
- (6) This section does not limit section 37.

### **37 Power to enter place to read, check, maintain or replace meter**

- (1) An authorised person may enter a place at any reasonable time—
  - (a) to read a meter; or

- (b) to check the accuracy of a meter; or
  - (c) to maintain or replace a meter.
- (2) In this section—

*meter*, in relation to a place, means a device, including equipment related to the device, for measuring the volume of water supplied to the place and installed on infrastructure that supplies retail water services at the place.

### **38 Notice of damage**

- (1) This section applies if—
- (a) an authorised officer damages property when exercising or purporting to exercise a power under this division; 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 a person who appears to the authorised officer to be an 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 where the damage happened in a conspicuous position and in a reasonably secure way.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—
- owner*, of property, includes a person in possession or control of it.

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### **39 Compensation**

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under this division, the person may claim compensation from the service provider.
- (2) Without limiting subsection (1), compensation may also be claimed for loss or expense incurred in complying with a requirement made of the person under this division.
- (3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (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.
- (5) For this section, loss or expense does not include loss or expense caused by the act of—
  - (a) removing an unauthorised connection; or
  - (b) rectifying defective or improper equipment; or
  - (c) removing vegetation or any other thing.

### **40 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 material, if it is not material the service provider has authorised to be discharged, into the service provider's infrastructure; or

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- (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 the amount of the loss or the reasonable cost of repairing the damage.

## **Division 3                    Power to restrict water supply**

### **41            Restricting water supply**

- (1) If a water service provider considers it necessary, the water service provider may restrict—
- (a) the volume of water taken by or 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 *service provider water restriction*) only if—
- (a) there is an urgent need for it because of climatic conditions or water conservation needs; 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 strategy for demand management for water and the restriction is essential to ensure the aims of the strategy are met; or
  - (d) the service provider has an outdoor water use conservation plan and the restriction is a measure to be implemented under the plan; or

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- (e) the Minister has published a notice under the Water Act, section 22, or a regulation has been made under the Water Act, section 23, and the restriction is for the purposes of the notice or regulation; or

*Editor's note—*

Water Act, section 22 (Limiting or prohibiting taking, or interfering with, water during emergencies) or 23 (Regulation may limit taking or interfering with water for 1 year)

- (f) the water service provider is directed, under a water supply emergency declaration, a water supply emergency regulation or an approved water supply emergency response, to impose the restriction; or
  - (g) the water service provider is directed by the regulator, under section 42(2), to impose the restriction.
- (3) A water service provider may apply a restriction imposed under subsection (1) to water taken from a rainwater tank connected to the service provider's reticulated supply.
  - (4) 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.
  - (5) A restriction may provide an exemption from all or part of the restriction.
  - (6) In this section, the power to restrict includes the power to prohibit.

## **42 Regulator may direct restriction**

- (1) This section applies if the regulator considers—
  - (a) there is a significant threat to sustainable and secure water supply in an area outside the SEQ region or a designated region; and
  - (b) it is necessary or desirable to impose a restriction under section 41 on the area.



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- (2) The regulator may, after consultation with the water service provider, direct the water service provider to—
    - (a) impose a restriction, under section 41, in the area within a stated period; and
    - (b) provide a written response to the regulator, within a stated period, stating the steps the water service provider intends to take to ensure the restriction is complied with.
  - (3) A service provider to whom a direction is given under subsection (2) must comply with the direction.

Maximum penalty—200 penalty units.

- (4) If the regulator is satisfied the response is adequate to ensure compliance with the restriction, the regulator must—
  - (a) approve the response; and
  - (b) give the service provider notice of the approval.
- (5) If the regulator is not satisfied the response is adequate to ensure compliance with the restriction, the regulator must—
  - (a) change the response to make it adequate; and
  - (b) approve the changed response; and
  - (c) give the service provider notice of the approval.
- (6) A service provider must comply with the approved response by taking the steps stated in the response for ensuring the restriction is complied with.

Maximum penalty for subsection (6)—200 penalty units.

#### **43 Notice of service provider water restriction must be given**

- (1) A water service provider must give notice of a service provider water restriction imposed by the service provider to anyone affected by it in the way the service provider considers appropriate having regard to the circumstances in which the restriction is imposed.

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- (2) The service provider water restriction does not have effect until the beginning of the day after the notice is given.
- (3) A person must not contravene a service provider water restriction.  
Maximum penalty—
  - (a) for a non-residential customer—1665 penalty units; or
  - (b) for any other person—200 penalty units.
- (4) Subsections (5) and (6) apply if a water service provider, directed under a water supply emergency declaration, a water supply emergency regulation or an approved water supply emergency response to impose service provider water restrictions, does not comply with the direction.
- (5) The Minister may give notice of the service provider water restrictions, required under the declaration, regulation or response to be imposed, to anyone affected by the restrictions in the way the Minister considers appropriate.
- (6) Notice given by the Minister under subsection (5)—
  - (a) imposes the service provider water restrictions stated in the notice; and
  - (b) is taken to be notice given by the service provider under subsection (1).
- (7) Evidence of compliance with a relevant part of a service provider water restriction includes—
  - (a) an authorised person is satisfied the premises meets the requirements for the restriction; or
  - (b) the person produces a certificate from a licensed plumber certifying that the premises meets the requirements for the restriction; or
  - (c) the person produces a statutory declaration declaring the premises meets the requirements for the restriction.

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#### **44 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 anyone likely to be affected by the shutting off of 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 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**

#### **45 Appointing authorised persons**

A service provider may appoint a person to be an authorised person of the service provider if—

- (a) the service provider is satisfied the person has the necessary expertise or experience to be an authorised person; or

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- (b) the person has satisfactorily finished training approved by the service provider.

#### **46 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 of the service provider; and
  - (d) include an expiry date.

#### **47 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.

#### **48 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

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person must produce the identity card for the other person's inspection at the first reasonable opportunity.

## Division 5                      Liability of service providers

### 49            Liability of service providers for negligence

(1) A service provider, owner of land, operator of water infrastructure, operator of relevant water infrastructure or lessee of a service provider or operator of water infrastructure (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* 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, or the quality, of water, including manufactured water flowing, or released, from water infrastructure, relevant water infrastructure or works.

*manufactured water* means water, including desalinated or recycled water or any substance resulting from the production of desalinated or recycled water, from any source.

*relevant water infrastructure* means infrastructure that is—

- (a) infrastructure the subject of—

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- (i) a water supply emergency declaration or water supply emergency regulation; or
- (ii) works to be undertaken, including works included in a program of works approved by the Governor in Council, under the *State Development and Public Works Organisation Act 1971*; and
- (b) a prescribed project under the *State Development and Public Works Organisation Act 1971*; and
- (c) infrastructure the Minister declares in a gazette notice to be relevant water infrastructure for the purposes of this section.

## **Division 6                      Water efficiency management plans**

### **50            Purpose of div 6**

The purpose of this division is to promote water savings by non-residential customers.

### **51            Application of div 6**

- (1) This division applies only for a non-residential customer—
  - (a) outside the SEQ region or a designated region (the *region*); and
  - (b) who does not hold a water entitlement.
- (2) However, if this division would not apply to a non-residential customer because of subsection (1), but the customer takes water from a water service provider in the region under another arrangement, this division applies for the other arrangement.
- (3) Also—
  - (a) if a customer to whom this division applies is also a customer to whom the Water Act, chapter 2A, part 5,

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division 3 applies, the customer is taken to be a customer under that division only; and

*Editor's note—*

Water Act, chapter 2A (Water supply and demand management), part 5 (Implementation of and compliance with regional water security programs), division 3 (Water efficiency management plans)

- (b) if a customer to whom this division applies is a customer of more than 1 water service provider in the region, the water service provider who provides the customer with the most water is the water service provider for the customer for this division.

## **52 When water efficiency management plan may be required**

- (1) The chief executive may, by written direction, require a water service provider to give a customer, or type of customer, a written notice—
- (a) to prepare a plan (a *water efficiency management plan*); and
- (b) to give it to the water service provider within the reasonable period stated by the chief executive.
- (2) The water service provider must comply with the direction.
- Maximum penalty—500 penalty units.
- (3) A water service provider may, without direction, give a customer, or type of customer, a written notice, approved by the chief executive—
- (a) to prepare a plan (also a *water efficiency management plan*); and
- (b) to give it to the water service provider within the reasonable period stated by the water service provider.
- (4) The customer must comply with a notice given by the water service provider under subsection (1) or (3).

Maximum penalty—500 penalty units.

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- (5) A plan prepared as a water efficiency management plan under a requirement of a service provider water restriction is also a *water efficiency management plan* for this section.
- (6) This division applies to the preparation and approval of a plan mentioned in subsection (1), (3) or (5).

### **53 Content of water efficiency management plan**

- (1) A water efficiency management plan prepared under section 52(1) must comply with any guidelines made by the chief executive for preparing the plan.
- (2) A water efficiency management plan prepared under section 52(3) must comply with—
  - (a) any guidelines made by the chief executive for preparing the plan; or
  - (b) if the chief executive has not made any guidelines—any guidelines made by the water service provider for preparing the plan.
- (3) A water efficiency management plan must also state the following—
  - (a) the name of the customer and the location where the plan applies;
  - (b) an outline of the customer's current water use at the location and the source of the water used;
  - (c) the water savings and efficiencies that will be achieved by implementing the plan;
  - (d) the time frames for implementing the plan.

### **54 Approving water efficiency management plan**

- (1) For deciding whether or not to approve a water efficiency management plan, the water service provider may require the customer to give additional information about the plan within the reasonable period stated by the water service provider.



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- (2) The water service provider must approve, with or without conditions, or refuse to approve the plan—
    - (a) if additional information is not required—within 60 business days after receiving the plan; or
    - (b) if additional information is required—within 60 business days of when the information is received or should have been given, whichever is earlier.
  - (3) Within 10 business days after making a decision under subsection (2), the water service provider must give the customer an information notice.
  - (4) If the water service provider does not approve the plan, the customer must—
    - (a) amend the plan to address the reasons for the decision; and
    - (b) within 20 business days after receiving a notice under subsection (3) or the extended period under subsection (5), give the water service provider the revised plan.

Maximum penalty—200 penalty units.

- (5) The water service provider may extend the period of 20 business days mentioned in subsection (4).
- (6) This division applies for a revised plan, with any necessary changes to give effect to the division.
- (7) Chapter 7 applies for the information notice—
  - (a) as if it were a notice given by a local government; and
  - (b) as if a reference to a local government were a reference to the water service provider; and
  - (c) with any necessary changes to give effect to paragraphs (a) and (b).

*Editor's note—*

chapter 7 (Reviews, appeals and arbitration)

- (8) The water service provider may recover from the customer as a debt an application fee for the approval of the customer's

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water efficiency management plan that is not more than the cost to the water service provider of approving the plan.

## **55 Complying with water efficiency management plan**

A customer must comply with the customer's approved water efficiency management plan.

Maximum penalty—1665 penalty units.

## **56 Reporting under water efficiency management plan**

(1) A customer to whom an approved water efficiency management plan applies must give the water service provider a written report each year advising—

- (a) the extent to which the plan has been implemented; and
- (b) the water savings and efficiencies achieved by implementing the plan; and
- (c) any change of circumstances in relation to the matters mentioned in section 57(1)(a).

Maximum penalty—100 penalty units.

(2) The report must be given within 10 business days after the anniversary day for the plan.

(3) The chief executive may at any time ask a water service provider to give the chief executive—

- (a) a copy of an approved water efficiency management plan; or
- (b) information about a plan that has not yet been approved; or
- (c) a report summarising progress by the water service provider's customers in achieving water savings and efficiencies.

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- (4) The water service provider must comply with the request within 20 business days.

Maximum penalty for subsection (4)—100 penalty units.

**57 Amending or replacing water efficiency management plan by chief executive direction**

- (1) This section applies if the chief executive is satisfied that there is or there is likely to be—

- (a) a severe water supply shortage; or
- (b) an increase in the severity of a water supply shortage.

- (2) The chief executive may, by written direction, require a water service provider to give a customer, or type of customer, a written notice requiring the customer to—

- (a) amend an approved water efficiency management plan and give it to the water service provider within the reasonable period stated by the chief executive; or
- (b) prepare a new water efficiency management plan and give it to the water service provider within the reasonable period stated by the chief executive.

- (3) The water service provider must comply with the direction.

Maximum penalty—500 penalty units.

- (4) The customer must comply with a notice given under subsection (2).

Maximum penalty—500 penalty units.

- (5) This division, other than section 52, applies for preparing the amended or new plan, with any necessary changes to give effect to the division.

**58 Amending or replacing water efficiency management plan by water service provider direction**

- (1) This section applies if a water service provider is satisfied that—

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- (a) for a customer, or a type of customer, production output or water consumption has increased significantly; or
  - (b) the cost effectiveness of implementing an approved water efficiency management plan is likely to have changed significantly; or
  - (c) there is or there is likely to be a severe water supply shortage.
- (2) The water service provider must give the customer a written notice requiring the customer to—
- (a) amend the plan and give it to the water service provider within the reasonable period stated by the water service provider; or
  - (b) prepare a new water efficiency management plan and give it to the water service provider within the reasonable period stated by the water service provider.
- (3) The customer must comply with the notice.  
Maximum penalty—500 penalty units.
- (4) This division, other than section 52, applies for preparing the amended or new plan, with any necessary changes to give effect to the division.

## **59 Amending or replacing water efficiency management plan by request**

- (1) A customer may request an amendment of an approved water efficiency management plan or that a new water efficiency management plan be prepared.
- (2) If the water service provider approves the request the customer must—
  - (a) amend the plan and give it to the water service provider within the reasonable period stated by the water service provider; or

- (b) prepare a new water efficiency management plan and give it to the water service provider within the reasonable period stated by the water service provider.
- (3) This division, other than section 52, applies for preparing the amended or new plan, with any necessary changes to give effect to the division.

#### **60 Notice to comply with water efficiency management plan**

- (1) This section applies if a water service provider is satisfied or reasonably believes a customer to whom an approved water efficiency management plan applies has not complied with the plan.
- (2) The water service provider may give the customer a notice requiring the customer to comply with the plan within the reasonable period stated in the notice.

#### **61 Reviewing water efficiency management plans**

- (1) A water service provider must ensure a customer to whom an approved water efficiency management plan applies reviews the plan when the water service provider considers it appropriate.
- (2) The customer must give the water service provider a copy of the review report within the reasonable period stated by the water service provider.
- (3) A review must occur at least every 5 years.

### **Division 7 Miscellaneous**

#### **62 No charge for water in rainwater tank**

A service provider must not make a charge for water that—

- (a) has been collected from a roof; and
- (b) is in, or taken from, a rainwater tank.

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**63 Sections 63–69 not used**

See editor’s note for section 1.

## **Part 4 Service provider obligations**

### **Division 1 Strategic asset management plans**

**70 Requirement for strategic asset management plan**

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.

**71 Preparing strategic asset management plan**

- (1) A service provider must prepare a strategic asset management plan for approval by the regulator.
- (2) 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, including customer service, and performance indicators for the service;
  - (d) an operation, maintenance and renewals strategy that demonstrates how each standard will be achieved.
- (3) 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) state the service provider's proposed arrangements for financing the implementation of the plan; and
- (c) have regard to best practice industry standards for the registered services; and
- (d) demonstrate how the service provider will comply with any system operating plan applying to the service provider; and
- (e) be prepared in accordance with the guidelines, if any, made by the regulator for preparing the plan.

## **72 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.

## **73 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.

## **74 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—

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- (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 108—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.

## **75 Refusing to approve 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 period 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 period stated in the notice; or



- (b) a new plan must be prepared, certified and given to the regulator within the reasonable period stated in the notice.
- (5) The service provider must comply with the requirements given to the provider under subsection (4) and give the regulator a copy of the revised plan or new plan for approval under section 74.

Maximum penalty for subsection (5)—500 penalty units.

## **76 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) If the service provider has an approved recycled water management plan, the regulator may, by notice given to the provider, require the provider to change the strategic asset management plan in the way, and within the reasonable period, stated in the notice to reflect the recycled water management plan.
- (3) The service provider must comply with a requirement under subsection (2).

Maximum penalty—500 penalty units.

- (4) The plan, as changed in the way agreed or required by the regulator, is taken to be approved by the regulator.

## **77 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.

Maximum penalty—1665 penalty units.

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## **Division 2                    System leakage management plans**

### **Subdivision 1            Preliminary**

#### **78            Application of div 2**

This division applies to a water service provider other than a water service provider who supplies only drainage services.

### **Subdivision 2            Preparing and submitting plan**

#### **79            Requirement for system leakage management plan**

Each water service provider must have an approved system leakage management plan directed at minimising water losses from leakage from the water service provider's distribution system.

#### **80            Preparing system leakage management plan**

- (1) A water service provider must prepare a system leakage management plan for approval by the regulator.
- (2) The plan must be prepared in accordance with any guidelines made by the regulator for preparing the plan and state—
  - (a) the registered services to which the plan applies; and
  - (b) the infrastructure for providing the services; and
  - (c) details of system leakage and how it was worked out; and
  - (d) details of measures to reduce the leakage; and
  - (e) details of a cost-benefit analysis, for the distribution system, in relation to implementing the measures; and

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- (f) the water service provider's plan for implementing, including proposed timing for implementing, the measures that are cost-effective to implement; and
  - (g) the amount of money the water service provider intends to spend, and when the money is to be spent, to implement the plan.
- (3) The plan may be part of a document prepared for another purpose if the part fulfils the requirements of subsection (2).

### **81 Certifying system leakage management plan**

- (1) The system leakage management plan must be certified by a registered professional engineer as being appropriate for the water service provider's infrastructure and registered services.
- (2) The certification must include the engineer's name and registration details.

### **82 Submitting system leakage management plan for approval**

The water service provider must, within 2 years after the day the service provider is registered, give a copy of the system leakage management plan, prepared for the purposes of section 80 and certified for the purposes of section 81, to the regulator for approval.

Maximum penalty—200 penalty units.

## **Subdivision 3 Exemption from preparing plan**

### **83 Application for exemption**

- (1) A water service provider may apply to the regulator for an exemption from complying with subdivision 2.
- (2) The application must be—
  - (a) in the approved form; and

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- (b) supported by sufficient information to enable the regulator to decide the application.
- (3) For approval under section 84(1)(b)(iv), (v), (vi) or (vii), the application must include details of the current water leakage from the distribution system.
- (4) Also, for approval under section 84(1)(b)(vii), the application must include details of—
  - (a) available measures to reduce the current water leakage; and
  - (b) an analysis of whether the cost of implementing the measures would outweigh the benefits to be gained.
- (5) The application must be certified as being accurate for the water service provider's infrastructure and registered services—
  - (a) for approval under section 84(1)(b)(i), (ii), (iii), (v) or (vi)—by the chief executive officer, however named, of the water service provider; or
  - (b) for approval under section 84(1)(b)(iv) or (vii)—by a registered professional engineer.
- (6) A certification under subsection (5)(b) must include the engineer's name and registration details.

## **84 Deciding the application**

- (1) The regulator must grant the application if—
  - (a) the application complies with section 83; and
  - (b) the regulator is satisfied—
    - (i) the water service provider's distribution system is considered relatively new under guidelines made by the regulator; or
    - (ii) the water service distributes underground water from the Great Artesian Basin primarily for stock and domestic purposes; or

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- (iii) the water service provider's distribution system is designed to operate as a groundwater recharge system; or
  - (iv) current water leakage from the distribution system is considered low under the guidelines; or
  - (v) current water leakage from the distribution system is considered high under the guidelines but the water service provider does not have the financial capacity to undertake a cost-benefit analysis for the distribution system; or
  - (vi) current water leakage from the distribution system is considered high under the guidelines but the cost of undertaking a cost-benefit analysis for the distribution system is more than the cost of the water that could be recovered; or
  - (vii) a cost-benefit analysis for the distribution system shows that it is not cost-effective to implement any measures to reduce leakage.
- (2) Otherwise, the regulator must refuse to grant the application.
  - (3) Within 10 business days after deciding the application, the regulator must give the water service provider an information notice about the decision.

## **85 Conditions of exemption**

- (1) An exemption applies only for the period for which it is granted.
- (2) An exemption granted under section 84(1)(b)(iv), (v), (vi) or (vii) is subject to the following conditions—
  - (a) the water service provider must have in place a leakage control system of a standard approved under guidelines made by the regulator;
  - (b) the water service provider must, for each 2 year period the exemption is in force, give the regulator a report on the leakage levels.

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- (3) The exemption applies only if the conditions are complied with.

## **86 Cancellling or amending an exemption**

- (1) If the circumstances under which an exemption was given change, the water service provider must immediately give the regulator notice of the change.
- (2) The regulator may amend or cancel an exemption—
  - (a) after receiving notice under subsection (1); or
  - (b) if the regulator otherwise becomes aware of a change in the circumstances under which an exemption was given.
- (3) If the regulator amends or cancels an exemption, the regulator must give the water service provider an information notice about the decision to amend or cancel.

## **Subdivision 4 Approving or refusing to approve plan**

### **87 Approving system leakage management plan**

- (1) The regulator must, within 3 months after receiving, under section 82, a system leakage management plan for approval, approve the plan, and give the water service provider notice of the approval, if the regulator is satisfied—
  - (a) the plan was certified by a registered professional engineer; and
  - (b) the plan is adequate in all material particulars.
- (2) A notice given under subsection (1) must tell the water service provider—
  - (a) the intervals, of not less than 1 year, at which regular reviews of the approved plan must be conducted; and

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- (b) if the regulator requires regular audits of the approved plan under section 108—the intervals, of not less than 2 years, at which the audits must be conducted.

## **88 Refusing to approve system leakage management plan**

- (1) If the regulator is not satisfied that the system leakage management plan has been certified by a registered professional engineer, the regulator must—
  - (a) return the plan to the water service provider; and
  - (b) give the water 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 period stated in the notice.
- (2) The water service provider must comply with the notice.  
Maximum penalty—200 penalty units.
- (3) If the regulator is not satisfied that the plan is adequate in all material particulars, the regulator must return the plan to the water service provider and give the service provider an information notice about the decision not to approve the plan.
- (4) For deciding if a plan is inadequate in a material particular, the regulator must, in considering any material particular, take account of cost considerations for the water service provider and its customers.
- (5) The information notice must also state how the plan is inadequate in any material particular and include a requirement that—
  - (a) the plan be revised to make it adequate and returned to the regulator within the reasonable period stated in the notice; or
  - (b) a new plan that is adequate be prepared, certified and given to the regulator within the reasonable period stated in the notice.

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- (6) The water service provider must comply with a requirement included in the information notice under subsection (5).

Maximum penalty for subsection (6)—200 penalty units.

## **89 Regulator may seek further information**

- (1) If the regulator is not satisfied about a matter mentioned in section 87(1) in relation to a plan received, the regulator may require the water service provider to provide further information about the matter.
- (2) If the water service provider does not provide the information within the reasonable period stated in the request, the regulator—
- (a) must refuse to approve the plan; and
  - (b) must give an information notice under section 88(3) stating that the plan is inadequate on the basis that the information has not been given.

## **Subdivision 5 Miscellaneous**

### **90 Changing system leakage management plan**

- (1) A water service provider may, with the regulator's agreement, change a system leakage 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.

### **91 Complying with approved system leakage management plan**

A water service provider must comply with the provider's approved system leakage management plan when supplying water services to the service provider's customers.

Maximum penalty—200 penalty units.



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## **Division 3            Drinking water quality management**

### **Subdivision 1        Offences**

#### **92            Offence to carry out drinking water service without approved drinking water quality management plan**

A drinking water service provider must not carry out a drinking water service unless there is an approved drinking water quality management plan for the drinking water service.

Maximum penalty—1665 penalty units.

#### **93            Offence about compliance with drinking water quality management plan**

A drinking water service provider who has an approved drinking water quality management plan must comply with—

- (a) the plan; and
- (b) the conditions of the plan.

Maximum penalty—1665 penalty units.

### **Subdivision 2        Drinking water quality management plans**

#### **94            Purpose of drinking water quality management plan**

The purpose of a drinking water quality management plan is to protect public health.

#### **95            Preparing drinking water quality management plan**

- (1) Each drinking water service provider must prepare a drinking water quality management plan for the provider's drinking

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water service and apply to the regulator for approval of the plan.

- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) a copy of the drinking water quality management plan; and
    - (ii) the fee prescribed under a regulation.
- (3) The drinking water quality management plan—
  - (a) must be prepared in accordance with the guidelines, if any, made by the regulator about preparing the plan; and
  - (b) must—
    - (i) state the registered services to which the plan applies; and
    - (ii) include details of the infrastructure for providing the services; and
    - (iii) identify the hazards and hazardous events the drinking water service provider considers may affect the quality of water to which the services relate; and
    - (iv) include an assessment of the risks posed by the hazards and hazardous events; and
    - (v) demonstrate how the drinking water service provider intends to manage the risks posed by the hazards and hazardous events; and
    - (vi) include details of the operational and verification monitoring programs under the plan, including the parameters to be used for indicating compliance with the plan to the extent the plan requires the provider to maintain water quality in accordance with the water quality criteria for drinking water.

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**96 Additional information may be required**

- (1) The regulator may, by notice given to the drinking water service provider, require the provider to give additional information about the drinking water quality management plan, including, for example, information about arrangements relating to the supply of water to or from the provider's drinking water service.
- (2) If the drinking water service provider fails, without reasonable excuse, to comply with the requirement within the reasonable period stated in the notice, the application is taken to have been withdrawn.
- (3) A requirement under this section is an *information requirement*.

**97 Regulator may obtain advice about application**

The regulator may obtain advice from an advisory council or any other entity the regulator considers appropriate before deciding the application.

**98 Consideration of application**

- (1) The regulator must consider each application and decide to approve, with or without conditions, or refuse to approve, the drinking water quality management plan—
  - (a) if an information requirement is not made in relation to the plan—within 3 months after receiving the plan; or
  - (b) if an information requirement is made in relation to the plan—within 3 months after the requirement has been complied with.
- (2) In considering an application, the regulator must have regard to the following—
  - (a) the drinking water quality management plan and any additional information about the plan given to the regulator under section 96;

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- (b) the guidelines, if any, made by the regulator about preparing the plan;
- (c) any advice obtained by the regulator under section 97;
- (d) the water quality criteria for drinking water.

## **99 Notice of decision**

- (1) Within 10 business days after deciding the application, the regulator must give the drinking water service provider—
  - (a) if the decision is to approve the drinking water quality management plan without conditions—notice of the decision; or
  - (b) if the decision is to approve the plan with conditions, or refuse to approve the plan—an information notice for the decision.
- (2) If the regulator approves the drinking water quality management plan, the notice of the decision or information notice for the decision must state all of the following—
  - (a) the conditions, if any, of the approval;
  - (b) the intervals at which regular reviews of the approved plan must be conducted;
  - (c) if the regulator requires regular audits of the approved plan—the intervals at which the audits must be conducted.
- (3) An interval mentioned in subsection (2)(b) must not be less than 1 year.
- (4) An interval mentioned in subsection (2)(c) must not be less than 2 years.

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**100 Amendment of drinking water quality management plan—application**

- (1) This section applies if a drinking water service provider proposes to amend the provider's approved drinking water quality management plan.
- (2) The drinking water service provider must apply to the regulator for approval of the proposed amended drinking water quality management plan.
- (3) Sections 95(2) and (3) and 96 to 99 apply to the application—
  - (a) as if a reference in the sections to the drinking water quality management plan were a reference to the amended drinking water quality management plan; and
  - (b) as if a reference in the sections to the plan were a reference to the amended plan.

**101 Amendment of drinking water quality management plan—requirement of regulator**

- (1) The regulator may, under this section, require a drinking water service provider to amend the provider's drinking water quality management plan if the regulator is satisfied the amendment is required to protect public health.
- (2) Before requiring the drinking water service provider to amend the drinking water quality management plan, the regulator must give the provider a show cause notice about the proposed amendment.
- (3) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should be made, the regulator must—
  - (a) give the drinking water service provider a notice requiring the provider—
    - (i) to amend the drinking water quality management plan in the way stated in the notice; and

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- (ii) to give the regulator a copy of the amended plan, within the reasonable period of at least 30 business days stated in the notice, for approval; and
  - (b) give the drinking water service provider an information notice for the decision.
- (4) The drinking water service provider must comply with the notice mentioned in subsection (3)(a).  
Maximum penalty—1665 penalty units.
- (5) If the regulator is satisfied the drinking water quality management plan has been amended in the way stated in the notice mentioned in subsection (3)(a)—
  - (a) the plan as amended is taken to be the approved plan; and
  - (b) the regulator must give the drinking water service provider notice that the plan as amended is taken to be the approved plan.
- (6) The amended drinking water quality management plan takes effect from the day the notice mentioned in subsection (5)(b) is given to the drinking water service provider.
- (7) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should not be made, the regulator must give the drinking water service provider notice that the plan need not be amended.

### **Subdivision 3      Miscellaneous**

#### **102      Notice of particular matter**

- (1) This section applies if a drinking water service provider becomes aware that the quality of water supplied from the provider's drinking water service does not comply with the provider's drinking water quality management plan to the

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extent the water's quality under the plan must be consistent with any water quality criteria for drinking water.

- (2) The drinking water service provider must, unless the provider has a reasonable excuse, immediately give the regulator details of the noncompliance and the circumstances that gave rise to the noncompliance (the *relevant information*).

Maximum penalty—1665 penalty units.

- (3) It is not a reasonable excuse for the drinking water service provider to fail to give the relevant information that giving the information might tend to incriminate the provider.
- (4) However, if the drinking water service provider is an individual, evidence of, or evidence directly or indirectly derived from, the relevant information that might tend to incriminate the provider is not admissible in evidence against the provider in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.
- (5) If the drinking water service provider complies with subsection (2) by giving the regulator the relevant information orally, the provider must as soon as practicable give the regulator notice of the relevant information in the approved form.

Maximum penalty for subsection (5)—200 penalty units.

### **103 Requirement about giving water quality information**

- (1) This section applies if a drinking water service provider obtains water for the provider's drinking water service from a water storage or other infrastructure that is not part of a water service for which there is a drinking water quality management plan.
- (2) The drinking water service provider may, by notice given to the owner of the water storage or other infrastructure, ask the owner to give the drinking water service provider the information reasonably required by the provider about the quality of water in the water storage or infrastructure.

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- (3) The notice must—
  - (a) include enough details about the information reasonably required to enable the owner of the water storage or other infrastructure to comply with the request; and
  - (b) state the reasonable period within which the information must be given.
- (4) The owner of the water storage or other infrastructure must comply with the notice, unless the owner has a reasonable excuse.

Maximum penalty—500 penalty units.
- (5) The owner of the water storage or other infrastructure may recover from the drinking water service provider the reasonable costs incurred by the owner in obtaining the information.
- (6) The owner of the water storage or other infrastructure may recover, as a debt due to the owner, any amount the owner is entitled to recover under subsection (5).

#### **104 Requirement about operation of drinking water service**

A drinking water service provider must ensure that there are persons engaged in the operation of the provider's drinking water service who have the qualifications or experience prescribed under a regulation for section 586(2)(d)(i).

Maximum penalty—1665 penalty units.

### **Division 4                      Audit reports and reviews**

#### **105 Application of div 4**

This division applies to strategic asset management plans, system leakage management plans, drought management plans and drinking water quality management plans.



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## 106 Reviewing plans

- (1) A service provider must regularly review the service provider's strategic asset management plan, in accordance with the notice given by the regulator under section 74.

Maximum penalty—500 penalty units.

- (2) A service provider must regularly review the service provider's system leakage management plan, in accordance with the notice given by the regulator under section 87.

Maximum penalty—200 penalty units.

- (3) The purpose of the review under subsection (1) or (2) is to ensure the plan remains relevant having regard to best practice industry standards for the types of services provided by the service provider.

- (4) A service provider must regularly review the service provider's drinking water quality management plan, in accordance with the notice given by the regulator under section 99.

Maximum penalty—500 penalty units.

- (5) The purpose of the review under subsection (4) is to ensure the plan remains relevant having regard to the operation of the water service provided by the service provider.

- (6) The service provider must, in its annual report, state—
  - (a) the outcome of any review under this section; and
  - (b) how the service provider has addressed matters raised in the review.

## 107 Changing plans 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.

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(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) Sections 72, 74 and 75 apply to the modified plan.

*Editor's note—*

sections 72 (Certifying strategic asset management plan), 74 (Approving strategic asset management plan) and 75 (Refusing to approve strategic asset management plan)

(4) Within 30 business days after the review of a system leakage management plan ends, the service provider must—

(a) if the review indicates the plan needs to be changed to reflect best practice industry standards for the types of services provided by the service provider—give the regulator a copy of a new plan indicating the actions taken or planned to be taken and improvements made or planned to be made since the plan being reviewed was approved; or

(b) otherwise—give the regulator a further copy of the existing plan.

Maximum penalty—200 penalty units.

(5) Sections 81, 87 and 88 apply to a plan given to the regulator under subsection (4).

*Editor's note—*

sections 81 (Certifying system leakage management plan), 87 (Approving system leakage management plan) and 88 (Refusing to approve system leakage management plan)

(6) Subsection (7) applies if a review of a drinking water quality management plan indicates the plan needs to be changed to reflect changes to the operation of the water service provided by the service provider.

(7) Within 30 business days after the review ends, the service provider must—

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- (a) amend the drinking water quality management plan to reflect the changes to the operation of the water service; and
  - (b) apply to the regulator for approval of the amended plan.
- Maximum penalty—200 penalty units.
- (8) The amended drinking water quality management plan must indicate the way the plan has been amended.
  - (9) Sections 95(2) and (3), and 96 to 99 apply to the application for approval of the amended drinking water quality management plan—
    - (a) as if a reference in the sections to the drinking water quality management plan were a reference to the amended drinking water quality management plan; and
    - (b) as if a reference in the sections to the plan were a reference to the amended plan.

## **108 Providing regular audit reports**

- (1) The service provider must, in accordance with the requirements of this section, arrange for regular audit reports about the service provider's plans and compliance with the plans to be prepared and given to the regulator.  
Maximum penalty—
  - (a) in relation to a strategic asset management plan—500 penalty units; or
  - (b) in relation to a system leakage management plan—200 penalty units; or
  - (c) in relation to a drinking water quality management plan—500 penalty units.
- (2) A regular audit report must be prepared in accordance with the notice given by the regulator—
  - (a) for a strategic asset management plan—under section 74; and

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- (b) for a system leakage management plan—under section 87; and
  - (c) for a drinking water quality management plan—under section 99.
- (3) The purpose of the regular audit report for a plan mentioned in subsection (2)(a) or (b) 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.
- (4) The regular audit report for a plan mentioned in subsection (2)(a) or (b) must be—
  - (a) prepared by a registered professional engineer 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 business days after its completion; and
  - (c) available for inspection and purchase.
- (5) The purpose of the regular audit report for a plan mentioned in subsection (2)(c) is—
  - (a) to verify the accuracy of the monitoring and performance data provided to the regulator under the plan; and
  - (b) to assess the service provider’s compliance with the plan; and
  - (c) to assess the relevance of the plan in relation to the provider’s drinking water service.

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- (6) The regular audit report for a plan mentioned in subsection (2)(c) must be—
- (a) prepared by a person, other than an employee of the service provider or someone employed in operating the service provider’s infrastructure, who—
    - (i) is certified under the Drinking Water-Quality Management System Auditor Certification Scheme to conduct an audit of the type to which the report relates; or
    - (ii) has a qualification the regulator is satisfied is at least equivalent to the qualification mentioned in subparagraph (i); and
  - (b) prepared in accordance with the guidelines, if any, made by the regulator about preparing regular audit reports; and
  - (c) given to the regulator within 30 business days after its completion; and
  - (d) available for inspection and purchase.

## **109 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.

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- (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.

## **110 Spot audits of 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, system leakage management plan or drinking water quality management plan; or
    - (ii) a service provider's strategic asset management plan, system leakage management plan or drinking water quality 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 108; or
    - (ii) give the regulator a copy of an audit report under section 108.

- (2) In addition to any regular audit mentioned in section 108, 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, system leakage management plan or drinking water quality management plan.
- (3) The spot audit report for a strategic asset management plan or system leakage management plan must be prepared by a registered professional engineer.
- (4) The spot audit report for a drinking water quality management plan must be prepared by a person who—
  - (a) is certified under the Drinking Water-Quality Management System Auditor Certification Scheme to conduct an audit of the type to which the report relates; or
  - (b) has a qualification the regulator is satisfied is at least equivalent to the qualification mentioned in paragraph (a).
- (5) The regulator must give the service provider a copy of the report within 30 business days after its completion.
- (6) Subsections (7) to (9) apply if the report states either or both of the following—
  - (a) the service provider's strategic asset management plan, system leakage management plan or drinking water quality management plan is inadequate in a material particular;
  - (b) the service provider has not properly carried out the plan.
- (7) The regulator must give the service provider an information notice requiring the service provider, within the reasonable period stated in the notice—
  - (a) if subsection (6)(a) applies—to rectify the inadequacy; or

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- (b) if subsection (6)(b) applies—to properly carry out the plan.
- (8) The service provider must comply with the notice unless the service provider has a reasonable excuse.
- Maximum penalty—
- (a) for a notice about a strategic asset management plan—1665 penalty units; or
  - (b) for a notice about a system leakage management plan—670 penalty units; or
  - (c) for a notice about a drinking water quality management plan—1665 penalty units.
- (9) The regulator may recover from the service provider an amount equal to the cost of completing the report.

### **111 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 109(4).

### **112 Access for conducting audit reports**

- (1) For conducting an audit under this division or the Water Act, chapter 2A, part 5, division 2, subdivision 4, a service provider must give the following persons free and uninterrupted access to the service provider's infrastructure and any records relating to the infrastructure—
  - (a) the auditor;
  - (b) any person employed or authorised by the auditor to participate in conducting the audit.

*Editor's note—*

Water Act, chapter 2A (Water supply and demand management), part 5 (Implementation of and compliance with regional water security



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programs), division 2 (System operating plans), subdivision 4 (Spot audit reports)

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 5                      Customer service standards**

### **113      Purpose of div 5**

The purpose of this division is to ensure customers who do not have a contract with the service provider for the supply of registered services (a *service contract*) are protected by standards relating to the supply.

### **114      Application of div 5**

- (1) This division applies to a service provider if the service provider does not have a service contract with all of its customers.
- (2) Sections 118 and 119 do not apply to a service provider that is an agency to which the *Ombudsman Act 2001* applies.

### **115      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 supply of its registered 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 service contract.

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## **116 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, made by the regulator for preparing customer service standards.

## **117 Complying with customer service standard**

The service provider must comply with the customer service standard when supplying services to the service provider's customers who do not have a service contract.

## **118 Customer complaints**

- (1) This section applies if—
  - (a) a customer who does not have a service contract considers—
    - (i) there is a significant deficiency in the customer service standard; or
    - (ii) 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.

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- (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—stating that the regulator will not take any further action.
- (5) The notice is taken to be a compliance notice to which section 465(4) does not apply.

*Editor's note—*

section 465 (Who may give compliance notice)

- (6) The regulator must give the customer an information notice about the action taken under subsection (4).

## **119 Revising customer service standard**

If, under section 118, 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 who does not have a service contract, a copy of the revised standard.

## **120 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

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each customer of the service provider who does not have a service contract, a copy of the changed standard.

## **Division 6                    Drought management plans**

### **121    Purpose of div 6**

The purpose of this division is to ensure water service providers have drought management plans in place to minimise the impact on communities of water shortages caused by drought.

### **122    Application of div 6**

This division applies to a water service provider but does not apply to—

- (a) a water service provider to the extent the provider is supplying water services to a customer who holds a water entitlement; or
- (b) a water service provider who supplies only drainage services.

### **123    Preparing drought management plans**

- (1) Each water service provider must have a drought management plan for—
  - (a) each service area in which the water service provider supplies a retail water service; and
  - (b) if the water service provider is a water authority established for an authority area—the authority area; and
  - (c) if the water service provider is the owner of 1 or more elements of infrastructure for supplying water services for which a charge is intended to be made—each area in

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which the water service provider supplies a water service.

*Note—*

Failure to comply with this provision results in a report being tabled in the Legislative Assembly under section 131.

- (2) In preparing the drought management plan, the water service provider must—
- (a) consult with the water service provider's customers and, if the water is being managed under an interim resource operations licence or resource operations licence, the holder of the interim resource operations licence or resource operations licence; and
  - (b) consider the following—
    - (i) the needs of classes of customers and whether the needs vary according to the location to which water is being supplied;
    - (ii) the likely future requirements of customers for water;
    - (iii) the contractual rights of customers and classes of customers;
    - (iv) the availability and proposed use of water from various sources, including sources intended to be used only in an emergency; and
  - (c) ensure the plan is consistent with any requirements, about drought or critical water supply management—
    - (i) under the resource operations plan for the area; or
    - (ii) in a plan prepared under the resource operations plan for the area; or
    - (iii) in a plan prepared for an interim resource operations licence in the area.
- (3) The drought management plan must be prepared in accordance with any guidelines made by the regulator for preparing the plan and state—

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- (a) the registered water service and area to which the plan applies; and
  - (b) the infrastructure for providing the services; and
  - (c) details of the situations in which the water service provider intends to act under part 3, division 3 or take other measures to minimise the impact of water shortages; and
- Editor's note—*
- part 3 (Service providers), division 3 (Power to restrict water supply)
- (d) details of the actions intended to be taken under part 3, division 3 or other measures intended to be taken.
- (4) The drought management plan may be part of a document prepared for another purpose if the part fulfils the requirements of this section.

- (5) In this section—

***authority area***, for a water authority, see the Water Act, section 548(1).

***resource operations plan*** means a plan approved under the Water Act, section 103(2).

## 124 Certifying drought management plan

The drought management plan must be certified by the chief executive officer, however named, of the water service provider as being the drought management plan for the provider.

## 125 Submitting drought management plan for registration

The water service provider must, within 1 year after the day the service provider is registered for a water service—

- (a) prepare a drought management plan for the service; and
- (b) give a copy of the plan to the regulator for registration.

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**126 Exemption from preparing drought management plan**

- (1) A water service provider may apply to the regulator for an exemption from complying with this division for an area in which the provider supplies a water service.
- (2) The application must be—
  - (a) in the approved form; and
  - (b) supported by sufficient information to enable the regulator to decide the application.
- (3) The regulator must approve the application if the regulator is satisfied the water service provider supplies at least 70% of the water service for the area from a source or sources that can not be affected by drought.

*Examples of sources—*

- desalinated sea water
  - underground water from the Great Artesian Basin
- (4) Unless the regulator is satisfied under subsection (3), the regulator must refuse the application.
  - (5) Within 10 business days after deciding the application, the regulator must give the water service provider an information notice about the decision.

**127 Cancelling or amending exemption from preparing drought management plan**

- (1) If the circumstances under which an exemption was given change, the water service provider must immediately give the regulator notice of the change.
- (2) The regulator may amend or cancel an exemption—
  - (a) after receiving notice under subsection (1) for the exemption; or
  - (b) if the regulator becomes aware of a change in the circumstances under which the exemption was given.

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- (3) If the regulator amends or cancels an exemption, the regulator must give the water service provider an information notice about the decision to amend or cancel the exemption.

### **128 Registering a drought management plan**

- (1) If the regulator is satisfied a drought management plan complies with the registration criteria in any guidelines made by the regulator for preparing the plan, the regulator must, as soon as practicable after receiving a copy of the plan—
  - (a) register the plan; and
  - (b) give the water service provider notice of the registration.
- (2) The notice must also tell the water service provider the intervals, of not less than 1 year, at which regular reviews of the plan must be conducted.
- (3) Registration under subsection (1) is not approval by the regulator of the contents of the plan.

### **129 Changing a drought management plan**

- (1) The water service provider may change the drought management plan after it is registered.
- (2) As soon as practicable after changing the drought management plan, the water service provider must—
  - (a) have the changed plan certified under section 124; and
  - (b) give a copy of the changed plan to the regulator for registration under section 128.

### **130 Complying with drought management plan**

The water service provider must comply with the drought management plan when supplying water services to the service provider's customers.

Maximum penalty—200 penalty units.



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### 131 Tabling in Legislative Assembly

The Minister must, as soon as practicable after 1 January each year—

- (a) prepare a list of the water service providers who—
  - (i) do not have a drought management plan registered under section 128; and
  - (ii) do not have an exemption under section 126 from preparing a drought management plan; and
- (b) table the list in the Legislative Assembly.

## Division 7 Outdoor water use conservation plan

### 132 Application of div 7

This division applies to a service provider who provides a retail water service outside the SEQ region or a designated region.

### 133 Water service provider to have outdoor water use conservation plan

- (1) Each water service provider must have a plan (an *outdoor water use conservation plan*), for reducing outdoor water use and promoting efficient outdoor water use by customers of the service provider, that—
  - (a) complies with subsection (2); and
  - (b) is approved by the regulator.Maximum penalty—200 penalty units.
- (2) The plan must be prepared in accordance with any guidelines made by the regulator for preparing the plan and state—
  - (a) any service provider water restrictions imposed, or to be imposed, by the service provider; and

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- (b) details of measures to reduce outdoor water use and promote efficient outdoor water use by the service provider's customers; and
  - (c) the way the service provider intends to implement the measures, including the timing for implementing the measures and the way the service provider intends to ensure compliance with the measures.
- (3) The plan may be part of a document prepared for another purpose if the part fulfils the requirements of subsection (2).
- (4) If a water service provider appeals a decision made by the regulator under section 134(4), the provider does not contravene subsection (1) in relation to the failure to have a plan until the day the appeal is decided.

*Note—*

See also section 627 (Application of provision about outdoor water use conservation plan) for application of this section to particular water service providers.

### **134 Approving outdoor water use conservation plan**

- (1) The regulator must, after receiving an outdoor water use conservation plan for approval—
- (a) approve the plan and give the water service provider notice of the approval; or
  - (b) return the plan to the water service provider and give the service provider a notice—
    - (i) stating how the plan must be changed to make it comply with section 133(2); and
    - (ii) requiring that the plan be amended in the way stated and returned to the regulator within the reasonable period stated in the notice.
- (2) The water service provider must comply with a requirement included in a notice given under subsection (1)(b).

Maximum penalty—200 penalty units.

- (3) When considering whether to approve a plan, the regulator must take account of cost considerations for the water service provider and its customers.
- (4) If, after considering the amended plan, the regulator decides to refuse the plan, the regulator must give the water service provider an information notice about the decision.

### **135 Changing outdoor water use conservation plan**

- (1) A water service provider may, with the regulator's agreement, change an outdoor water use conservation 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.

### **136 Complying with outdoor water use conservation plan**

A water service provider must comply with the provider's outdoor water use conservation plan when supplying water services to the service provider's customers.

Maximum penalty—200 penalty units.

## **Division 8 Other service provider obligations**

### **Subdivision 1 Residential premises**

#### **137 Application of sdiv 1**

This subdivision applies if—

- (a) a water service provider provides a retail water service to residential premises; and
- (b) the supply of water to the premises is measured and charged by the water service provider, or a related local government, only in relation to the premises; and

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- (c) the premises are not common property under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*.

### **138 Guidelines for rate notice or account for supply of water to residential premises**

- (1) A rate notice or account issued by the water service provider, or the related local government, for the supply of water to the residential premises, must comply with guidelines made by—
  - (a) for the SEQ region or a designated region—the commission; or
  - (b) for an area outside the SEQ region or a designated region—the regulator.

Maximum penalty—200 penalty units.

- (2) The guidelines may state—
  - (a) the frequency at which a rate notice or account must be issued for the supply of water to residential premises; and
  - (b) the type of information to be included in the rate notice or account about the volume of water supplied to the premises during each billing period for the premises.
- (3) This section applies despite the Local Government Act, sections 973(4) and 1008(3).

*Note—*

See also section 606 (Application of provision about guidelines for rate notice or account for water supply) for application of this section to particular water service providers or a related local government.

### **139 Service provider to give occupier water advice**

- (1) This section applies if the owner of the residential premises is not an occupier of the residential premises.
- (2) The water service provider must give a notice (a *water advice*), in the approved form, to an occupier of the premises

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stating the volume of water supplied to the premises during each billing period for the premises.

Maximum penalty—200 penalty units.

- (3) The water advice must not include any information about any other rates or charges mentioned in the Local Government Act, section 963.

*Editor's note—*

Local Government Act, section 963 (Power to make and levy rates and charges)

- (4) However, the water advice may include other information, including information about—
- (a) ways to reduce the volume of water used at the premises; or
  - (b) service provider water restrictions or commission water restrictions applying to the premises.
- (5) In this section—

*occupier*, of residential premises, means a person who ordinarily resides at the premises.

*Note—*

See also section 607 (Application of provision about water advices) for application of this section to particular water service providers.

## **Subdivision 2      Premises with more than 1 sole-occupancy unit**

### **140      Service provider to give information about water usage**

- (1) This section applies to premises if—
- (a) a building located on the premises includes more than 1 sole-occupancy unit; and

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- (b) after 1 January 2008 meters are installed in relation to a compliance request made under the *Plumbing and Drainage Act 2002* after 31 December 2007—
  - (i) for measuring the supply of water to each sole-occupancy unit; and
  - (ii) on infrastructure that supplies retail water services for the premises.
- (2) A rate notice or account issued by a water service provider or a related local government for the provision of a retail water service to the premises must—
  - (a) state the volume of water supplied through each meter during each billing period for the premises; and
  - (b) the amount of the total charge for the retail water service that relates to the volume of water supplied through each meter.
- (3) In this section—

***Building Code of Australia*** see the *Plumbing and Drainage Act 2002*.

***premises*** does not include scheme land under the *Body Corporate and Community Management Act 1997*.

***sole-occupancy unit***, in relation to a building, means—

- (a) a room or other part of the building for occupation by one or a joint owner, lessee, tenant, or other occupier to the exclusion of any other owner, lessee, tenant, or other occupier, including, for example—
  - (i) a dwelling; or
  - (ii) a room or suite of associated rooms in a building classified under the Building Code of Australia as a class 2, 4, 5, 6, 7 or 8 building; or
- (b) any part of the building that is a common area.

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## **Division 9                      Annual reports**

### **141      Service provider to report annually**

- (1) A service provider must prepare an annual report that complies with section 142—
  - (a) for each financial year after a financial year in which a strategic asset management plan, system leakage management plan or drinking water quality management plan has been approved; and
  - (b) for each financial year after a financial year in which a system operating plan applying to the service provider has been made; and
  - (c) for each financial year after a financial year in which a customer service standard has been given to the regulator; and
  - (d) for each financial year after a financial year in which the service provider gives a water advice to an occupier of residential premises under section 139.
- (2) An annual report mentioned in subsection (1)(a), (b), (c) or (d) may be combined with 1 or both of the other reports mentioned in the subsection.
- (3) The service provider must give a copy of an annual report to the regulator within 120 business days after the end of the financial year to which it relates.

Maximum penalty—500 penalty units.

- (4) Subsections (1) and (3) do not apply to a service provider that is—
  - (a) a local government if—
    - (i) the local government includes the information mentioned in section 142 in a report required under the Local Government Act, section 531; and

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*Editor's note—*

Local Government Act, section 531 (Annual report to be prepared and adopted)

- (ii) the local government gives a copy of the report to the regulator within 30 business days after the report is adopted; or
- (b) the chief executive if—
  - (i) the chief executive includes the information mentioned in section 142 in a report required under the *Financial Accountability Act 2009*, section 63; and
  - (ii) if the chief executive and the regulator are not the same entity—the chief executive gives the regulator a copy of the report within 30 business days after the report is given to the Minister.
- (5) A copy of a report mentioned in this section must be available for inspection and purchase.

## **142 Contents of annual report**

- (1) For an annual report mentioned in section 141(1)(a) that relates to a strategic asset management plan or system leakage management plan, the report must—
  - (a) be prepared in accordance with the guidelines, if any, made by the regulator about the preparation of annual reports; and
  - (b) 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 and the system leakage management plan for the services; and
  - (c) document the actions taken by the service provider to implement the plan including the application of funds to support implementation of the plan; and



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- (d) state the outcome of any review of the plan and how the service provider has addressed matters raised in the review; and
  - (e) 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.
- (2) For an annual report mentioned in section 141(1)(a) that relates to a drinking water quality management plan, the report must—
- (a) be prepared in accordance with the guidelines, if any, made by the regulator about the preparation of annual reports; and
  - (b) document the actions taken by the drinking water service provider to implement the plan; and
  - (c) state the outcome of any review of the plan in the financial year to which the annual report relates, and how the service provider has addressed matters raised in the review; and
  - (d) contain a summary of the findings of, and any recommendations stated in, an audit report about a regular audit given to the regulator in the financial year; and
  - (e) contain a summary of the information given to the regulator under section 102 in the financial year; and
- Editor's note—*
- section 102 (Notice of particular matter)
- (f) contain a summary of the provider's compliance with the plan in relation to the water quality criteria for drinking water; and
  - (g) if the provider supplies drinking water to customers—a summary of any complaints made to the provider about the provider's drinking water service.
- (3) For an annual report mentioned in section 141(1)(b), the report must measure the service provider's performance with

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the desired levels of service objectives and other obligations and requirements that apply to the provider under the plan.

- (4) For an annual report mentioned in section 141(1)(c), the report must—
  - (a) 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
  - (b) state the outcome of any review of the standard and how the service provider has addressed matters raised in the review.
- (5) For an annual report mentioned in section 141(1)(d), the report must document the number of water advices given to occupiers of residential premises and the nature of any complaints received about the giving of water advices during the period covered by the report.

## **Division 10                      Water for fire fighting**

### **143      Application of div 10**

This division applies to a service provider who provides a retail water service.

### **144      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 or a service provider's hydrant for fire fighting purposes.
- (2) However, the service provider may fix either or both of the following to any private fire fighting system—
  - (a) a meter;
  - (b) a seal.

- (3) Within 24 hours after a seal is broken, the occupier of the premises must give the service provider written notice of the breaking unless the occupier has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

## **145 Water to be used only for fire fighting purposes**

- (1) A person must not take water from a fire fighting system or a service provider's hydrant without the permission of the service provider unless the water is taken for fire fighting purposes.

*Note—*

Under the *Fire and Rescue Service Act 1990*, section 53(2)(h), the Queensland Fire and Rescue Service may take water for fire fighting purposes from any source whether natural or artificial.

Maximum penalty—1000 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 the amount of the loss or the reasonable cost of repairing any damage caused by the unlawful taking of the water.

## **Division 11 Exemptions for small service providers**

### **146 Small service providers may apply for exemption**

- (1) A small service provider may apply to the regulator for an exemption from complying with—
  - (a) divisions 1 and 4 in relation to a strategic asset management plan; or
  - (b) division 5; or
  - (c) all or part of division 9 in relation to a strategic asset management plan.

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*Editor's note—*

divisions 1 (Strategic asset management plans) and 4 (Audit reports and reviews), or 5 (Customer service standards) or 9 (Annual reports)

- (2) The application must be in the approved form.

### **147 Deciding application for exemption**

- (1) This section applies if the regulator is satisfied it is not reasonably practicable for the small service provider to comply with 1 or more of the provisions mentioned in section 146(1)(a), (b) or (c) because the cost of complying would outweigh the benefits.
- (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, made by the regulator for granting exemptions under this division.
- (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.

### **148 Notice of decision on application for exemption**

- (1) If the regulator grants an exemption, 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.

*Editor's note—*

*Statutory Instruments Act 1992*, sections 24 (Statutory instrument may be of general or limited application), 25 (Statutory instrument may make different provision for different categories) and 26 (Statutory instrument may authorise determination etc. by specified person etc.)

- (5) If the regulator refuses to grant the exemption, the regulator must give the service provider an information notice about the refusal.

## **149 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.

## **150 Sections 150–159 not used**

See editor's note for section 1.

## **Part 5                      Service areas**

### **Division 1                Preliminary**

#### **160    Application of pt 5**

This part applies to a service provider who supplies a retail water service or sewerage service in a service area.

### **Division 2                Service areas**

#### **161    Declaration of service area**

- (1) A local government may, by resolution, declare—
  - (a) all or part of its local government area to be a service area for a retail water service or a sewerage service; 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 may, by resolution, 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) otherwise—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

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has already been declared for another retail water service or sewerage service.

### **162 Notice of declaration of service area**

If a local government makes or amends a declaration under section 161, 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.

### **163 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**

### **164 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

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- (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 or sewerage service.

### **165 Recovering cost of giving access to registered service**

The service provider may recover from a customer the reasonable cost of complying with section 164 for the customer's premises.

### **166 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**

### **167      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.

*Note—*

If the work is development as defined under the Planning Act, that Act applies to the work.

- (3) If the owner satisfactorily completes the work and pays the connection fee, the service provider must connect the owner's property to the infrastructure.

### **168      Notice requiring connection to registered service**

- (1) The service provider may, by notice given to the owner of premises in the service area, require the owner to carry out works for connecting the premises to a registered service.
- (2) The notice must state—

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- (a) the work to be carried out on the premises to enable the service to be supplied; and

*Note—*

The Planning Act provides for the process of granting approvals for the work.

- (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**

### **169      Restricting domestic water supply in particular 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 service provider water restriction or a commission water restriction; or
    - (ii) does not pay the rate or charge for the service; and

- (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.

#### **170 Sections 170–179 not used**

See editor's note for section 1.

## **Part 6 Trade waste**

### **180 Trade waste approvals**

- (1) A local government that is a sewerage service provider may give a person an approval (a *trade waste approval*) to discharge trade waste 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

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- (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, within the meaning of the *Environmental Protection (Water Policy) 1997*—the proposed discharge into the sewerage is consistent with the plan.
- (4) The local government must not give an approval if the regulator has given the local government a trade waste compliance notice prohibiting the local government from giving a trade waste approval for the discharge of trade waste into its sewerage infrastructure.

- (5) 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.

## 181 Approval may be conditional

- (1) 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.
- (2) If the regulator has given the local government a trade waste compliance notice requiring the local government to impose conditions stated in the notice about the discharge of trade waste into its sewerage infrastructure, the trade waste approval must be given subject to the conditions.

## **182 Criteria for suspending or cancelling trade waste approval**

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.

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### **183 Suspending or cancelling trade waste approval**

- (1) Before the local government acts under section 182, the local government must give the approval holder a show cause notice about the proposed action.
- (2) If, after considering any properly made submissions by the approval holder, 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.
- (3) Within 30 business days after making a decision under subsection (2), the local government must give the approval holder an information notice about the decision.
- (4) If, after considering any properly made submissions by the approval holder, 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.
- (5) A decision under subsection (2), 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.

### **184 Immediate suspension or cancellation**

- (1) Despite section 183(1), the local government may suspend or cancel the approval without giving a 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.
- (2) Also, a local government must cancel any trade waste approval given by the local government if the local government has been given a trade waste compliance notice prohibiting the local government from giving a trade waste approval for the discharge of trade waste into its sewerage infrastructure.
- (3) If the local government acts under subsection (1) or (2), the local government must give the approval holder an information notice about the action.

## **185 Amending trade waste approval**

- (1) This section applies if—
  - (a) a local government receives a trade waste compliance notice stating conditions the local government must impose on a trade waste approval for the discharge of trade waste into its sewerage infrastructure; and
  - (b) a trade waste approval that has been given by the local government is not consistent with the conditions mentioned in paragraph (a).
- (2) The local government must, by notice given to the approval holder, amend the trade waste approval to ensure it is consistent with the conditions mentioned in subsection (1)(a).
- (3) The notice must, for the purpose of subsection (2)—
  - (a) if the approval is subject to conditions—state how the conditions of the approval are amended; and
  - (b) state any other conditions to which the approval is subject.
- (4) If the local government gives an approval holder a notice under this section, the trade waste approval is taken to be amended in the way stated in the notice when the notice is given.

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**186 Sections 186–189 not used**

See editor’s note for section 1.

## **Part 7 Offences**

**190 Supplying unauthorised services**

A person must not supply a sewerage or water service unless the person—

- (a) is a service provider for the service; or
- (b) is operating infrastructure for the service provider for the service.

Maximum penalty—1000 penalty units.

**191 Connecting to or disconnecting from service provider’s infrastructure without approval**

A person must not, without the written consent of a service provider, connect to, or disconnect from, the service provider’s infrastructure.

Maximum penalty—1000 penalty units.

**192 Interfering with service provider’s infrastructure**

- (1) A person must not, without the written consent of a service provider, interfere with a service provider’s infrastructure.

Maximum penalty—1000 penalty units.

- (2) A person must not, without the written consent of a service provider, build over, interfere with access to, increase or reduce the cover over, or change the surface of land in a way



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causing ponding of water over an access chamber for, a service provider's infrastructure.

Maximum penalty—500 penalty units.

### **193 Discharging particular materials**

- (1) A service provider must not discharge trade waste into a local government's infrastructure without the approval of the local government under section 180.

Maximum penalty—1665 penalty units.

- (2) A person, other than a service provider, must not discharge trade waste into a local government's infrastructure without the approval of the local government under section 180.

Maximum penalty—1665 penalty units.

- (3) A person must not discharge trade waste into a service provider's infrastructure without the written consent of the service provider.

Maximum penalty—1665 penalty units.

- (4) A person must not discharge a prohibited substance, surface water, soil, sand or rock into a service provider's infrastructure.

Maximum penalty—1665 penalty units.

- (5) A person must not discharge water from an ornamental pond, a swimming pool or the filtration system of a swimming pool into a service provider's infrastructure without the written consent of the service provider.

Maximum penalty—500 penalty units.

### **194 Polluting water**

A person must not do anything likely to pollute water in a service provider's water service.

Maximum penalty—1000 penalty units.

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## **195 Taking water without approval**

- (1) A person must not, without a service provider's written approval, take water from a service provider's infrastructure.  
Maximum penalty—1000 penalty units.
- (2) If water is supplied to premises by a service provider's infrastructure for domestic purposes, a person must not, without the service provider's written approval, take water from a supply pipe on the premises for use off the premises, other than for the domestic purposes of the owner or occupier of the premises.  
Maximum penalty—1000 penalty units.
- (3) However, a person may take water from a service provider's infrastructure—
  - (a) for fire fighting purposes; or
  - (b) if the water is supplied for general public use.

# **Chapter 3 Recycled water management**

## **Part 1 Particular offences**

### **196 Offence about supplying recycled water**

- (1) The recycled water provider for a single-entity recycled water scheme must not supply recycled water under the scheme unless there is an approved recycled water management plan for the supply of the water.  
Maximum penalty—1665 penalty units.
- (2) A recycled water provider or other declared entity for a multiple-entity recycled water scheme must not supply

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recycled water under the scheme unless there is an approved recycled water management plan for the supply of the water.

Maximum penalty—1665 penalty units.

- (3) Subsection (1) does not apply to a recycled water provider who supplies recycled water under an exemption for the scheme.

### **197 Offences about compliance with exemption or recycled water management plan**

- (1) A recycled water provider who has an exemption for the provider's recycled water scheme must comply with the conditions of the exemption.

Maximum penalty—1665 penalty units.

- (2) A recycled water provider who has an approved recycled water management plan for the provider's single-entity recycled water scheme must comply with—
- (a) the plan; and
  - (b) the conditions of the plan.

Maximum penalty—1665 penalty units.

- (3) The scheme manager and each recycled water provider or other declared entity for a multiple-entity recycled water scheme must comply with—
- (a) the approved recycled water management plan for the scheme to the extent it applies to the scheme manager, recycled water provider or other entity; and
  - (b) the conditions of the plan to the extent the conditions apply to the scheme manager, recycled water provider or other entity.

Maximum penalty—1665 penalty units.

### **198 Sections 198–199 not used**

See editor's note for section 1.

## **Part 2**                      **Recycled water management planning**

### **200 Purpose of recycled water management plan**

The purposes of a recycled water management plan are—

- (a) to protect public health; and
- (b) if the plan is for a critical recycled water scheme—to ensure the continuity of operation of the scheme.

### **201 Preparing particular plans**

- (1) The recycled water provider for a single-entity recycled water scheme must prepare a recycled water management plan for the scheme unless the provider has an exemption for the scheme.
- (2) The scheme manager for a multiple-entity recycled water scheme must prepare a scheme manager plan for the scheme.
- (3) Each recycled water provider and other declared entity for a multiple-entity recycled water scheme must prepare a scheme provider plan for the scheme.
- (4) A recycled water management plan, scheme manager plan and scheme provider plan must be prepared in accordance with the guidelines, if any, made by the regulator about—
  - (a) preparing recycled water management plans; and
  - (b) validating recycled water schemes.
- (5) A recycled water management plan must—
  - (a) describe the recycled water scheme to which the plan relates; and
  - (b) include details of the infrastructure for the production or supply of recycled water under the scheme, and how the infrastructure is to be maintained; and

- (c) identify the hazards and hazardous events that may affect the quality of the recycled water; and
- (d) include an assessment of the risks posed by the hazards and hazardous events; and
- (e) demonstrate how the risks posed by the hazards and hazardous events are proposed to be managed; and
- (f) include details of the operational and verification monitoring programs under the plan, including the parameters to be used for indicating compliance with the plan to the extent the plan requires water quality to be maintained in accordance with the water quality criteria for recycled water; and
- (g) if recycled water is supplied under the recycled water scheme to premises by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in laundries—include details of an education and risk awareness program for customers of the scheme.

## **202 Application for approval of recycled water management plan**

- (1) The relevant entity for a recycled water scheme must apply to the regulator for approval of the recycled water management plan for the scheme.
- (2) An application under this section must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) a copy of the recycled water management plan; and
    - (ii) the fee prescribed under a regulation.
- (3) Subsection (4) applies if, under a recycled water scheme, recycled water is proposed to be supplied to augment a supply of drinking water.

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- (4) Despite subsection (1), a relevant entity for the recycled water scheme must not apply for approval of the recycled water management plan for the scheme unless there is an approved validation program for the scheme.

### **203 Additional information may be required**

- (1) The regulator may, by notice given to the relevant entity, require—
  - (a) the entity to give additional information about the recycled water management plan, including, for example, information about arrangements relating to the supply of recycled water under the scheme; or
  - (b) any information included in the plan, or any additional information required under paragraph (a), to be verified by statutory declaration.
- (2) If the relevant entity fails, without reasonable excuse, to comply with the requirement within the reasonable period stated in the notice, the application is taken to have been withdrawn.
- (3) A requirement under this section is an *information requirement*.
- (4) In this section—

*relevant entity*, in relation to a multiple-entity recycled water scheme, includes any recycled water provider or other declared entity for the scheme.

### **204 Regulator may obtain advice about application**

The regulator may obtain advice from an advisory council or any other entity the regulator considers appropriate before deciding the application.

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## 205 Consideration of application

- (1) The regulator must consider each application and decide to approve, with or without conditions (*regulator conditions*), or refuse to approve, the recycled water management plan—
  - (a) if an information requirement is not made in relation to the plan—within 80 business days after receiving the plan; or
  - (b) if an information requirement is made in relation to the plan—within 80 business days after the requirement has been complied with.
- (2) In considering an application, the regulator must have regard to the following—
  - (a) the recycled water management plan and any additional information about the plan given to the regulator under section 203;
  - (b) the guidelines, if any, made by the regulator about preparing recycled water management plans and validating recycled water schemes;
  - (c) the approved validation program for the recycled water scheme to which the plan relates, if the scheme involves the supply of recycled water to augment a supply of drinking water;
  - (d) any advice obtained by the regulator under section 204;
  - (e) the water quality criteria for recycled water.

## 206 Notice of decision

- (1) Within 10 business days after deciding the application, the regulator must give the relevant entity—
  - (a) if the decision is to approve the recycled water management plan without regulator conditions—notice of the decision; or

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- (b) if the decision is to approve the plan with regulator conditions, or refuse to approve the plan—an information notice for the decision.
- (2) If the regulator approves the recycled water management plan, the notice of the decision or information notice for the decision must state all of the following—
- (a) the regulator conditions, if any, of the approval;
  - (b) the intervals at which regular reviews of the approved plan must be conducted;
  - (c) the intervals at which internal audits of the approved plan must be conducted;
  - (d) the intervals at which regular audits of the approved plan must be conducted.
- (3) An interval mentioned in subsection (2)(b) must not be less than—
- (a) if the recycled water management plan is for a critical recycled water scheme—3 years; or
  - (b) otherwise—5 years.
- (4) An interval mentioned in subsection (2)(c) must not be less than 2 years.
- (5) An interval mentioned in subsection (2)(d) is the interval decided by the regulator.

## **207 When regulator must not approve recycled water management plan**

- (1) This section applies to a recycled water scheme if—
- (a) recycled water is proposed to be supplied under the scheme to augment a supply of drinking water; and
  - (b) the supply of the recycled water is into a water storage of a drinking water service provider that, under chapter 2, part 4, division 3, must have a drinking water quality management plan.



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- (2) The regulator must not approve the recycled water management plan for the recycled water scheme unless there is an approved drinking water quality management plan for the water storage.

**208 Statutory condition of approved recycled water management plans**

- (1) An approved recycled water management plan for a single-entity recycled water scheme is subject to the conditions stated in subsections (2) and (3).
- (2) If the recycled water provider for the scheme stops or intends to stop the production or supply of recycled water under the scheme, other than as provided for under the recycled water management plan or permanently, the provider must as soon as practicable give the regulator notice of the stoppage or proposed stoppage.
- (3) If the recycled water provider for the scheme becomes aware that an entity to whom the provider supplies recycled water is using the water other than in a way or for the purpose provided for under the plan, the provider must stop supply of the water to the entity.
- (4) An approved recycled water management plan for a multiple-entity recycled water scheme is subject to the conditions stated in subsections (5) and (6).
- (5) If a recycled water provider or other declared entity for the scheme stops or intends to stop the production or supply of recycled water under the scheme, other than as provided for under the recycled water management plan or permanently, the scheme manager for the scheme must as soon as practicable give the regulator notice of the stoppage or proposed stoppage.
- (6) If a recycled water provider or other declared entity for the scheme becomes aware that an entity to whom the provider or declared entity supplies recycled water is using the water other than in a way or for the purpose provided for under the

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plan, the provider or declared entity must stop supply of the water to the entity.

*Note—*

For when a notice must be given to the regulator if supply of recycled water is to stop permanently, see section 230.

## **209 Amending recycled water management plan by agreement**

- (1) The relevant entity for a recycled water scheme may, with the regulator's agreement, amend the recycled water management plan for the scheme if the amendment—
  - (a) is only to correct a minor error in the plan or make another change that is not a change of substance; or
  - (b) is to record a change of name or change of ownership of—
    - (i) for a single-entity recycled water scheme—the recycled water provider for the scheme; or
    - (ii) for a multiple-entity recycled water scheme—the scheme manager, a recycled water provider or other declared entity for the scheme.
- (2) The recycled water management plan as amended is taken to be the approved recycled water management plan.

## **210 Amendment of recycled water management plan for single-entity recycled water scheme—requirement of regulator**

- (1) The regulator may, under this section, require the recycled water provider for a single-entity recycled water scheme to amend the recycled water management plan for the scheme if the regulator is satisfied the amendment is required—
  - (a) to protect public health; or
  - (b) if the scheme is a critical recycled water scheme—to ensure the continuity of operation of the scheme.

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- (2) Before requiring the recycled water provider to amend the recycled water management plan, the regulator must give the provider a show cause notice about the proposed amendment.
  - (3) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should be made, the regulator must—
    - (a) give the recycled water provider a notice requiring the provider—
      - (i) to amend the recycled water management plan in the way stated in the notice; and
      - (ii) to give the regulator, within the reasonable period of at least 30 business days stated in the notice, a copy of the amended plan for approval; and
    - (b) give the provider an information notice for the decision.
  - (4) The recycled water provider must comply with the notice mentioned in subsection (3)(a).

Maximum penalty—1665 penalty units.
  - (5) If the regulator is satisfied the recycled water management plan has been amended in the way stated in the notice mentioned in subsection (3)(a)—
    - (a) the plan as amended is taken to be the approved plan; and
    - (b) the regulator must give the recycled water provider notice that the plan as amended is taken to be the approved plan.
  - (6) The amended recycled water management plan takes effect from the day the notice mentioned in subsection (5)(b) is given to the recycled water provider.
  - (7) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should not be made, the regulator must give the recycled water provider notice that the plan need not be amended.

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**211 Amendment of recycled water management plan for multiple-entity recycled water scheme—requirement of regulator**

- (1) The regulator may, under this section, require a scheme manager or a declared entity for a multiple-entity recycled water scheme to amend the manager's scheme manager plan or the entity's scheme provider plan for the scheme if the regulator is satisfied the amendment is required—
  - (a) to protect public health; or
  - (b) if the scheme is a critical recycled water scheme—to ensure the continuity of operation of the scheme.
- (2) Before requiring the scheme manager or declared entity to amend the scheme manager plan or scheme provider plan, the regulator must—
  - (a) give the manager or entity a show cause notice about the proposed amendment; and
  - (b) give a copy of the show cause notice to—
    - (i) for an amendment to a scheme manager plan—each declared entity for the scheme; and
    - (ii) for an amendment to a scheme provider plan—the scheme manager for the scheme and any other declared entity for the scheme.
- (3) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should be made, the regulator must—
  - (a) give the scheme manager or declared entity a notice requiring the manager or entity to amend the manager's or entity's scheme manager plan or scheme provider plan in the way stated in the notice; and
  - (b) give the scheme manager or declared entity, and any other entity that gave the regulator a properly made submission about the amendment, an information notice for the decision.

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- (4) The scheme manager or declared entity must comply with the notice mentioned in subsection (3)(a).

Maximum penalty—1665 penalty units.

- (5) If a scheme manager plan or scheme provider plan for a multiple-entity recycled water scheme is amended as required under this section, the scheme manager for the scheme must as soon as practicable give the regulator a copy of the amended recycled water management plan for the scheme.

Maximum penalty—200 penalty units.

*Note—*

A recycled water management plan for a multiple-entity recycled water scheme consists of the scheme manager plan, and each scheme provider plan, for the scheme.

- (6) If the regulator is satisfied the recycled water management plan has been amended in the way stated in the notice mentioned in subsection (3)(a)—

(a) the plan as amended is taken to be the approved plan; and

(b) the regulator must give the scheme manager for the recycled water scheme to which the plan relates notice that the plan as amended is taken to be the approved plan.

- (7) The amended recycled water management plan takes effect from the day the notice mentioned in subsection (6)(b) is given to the scheme manager.

- (8) If, after considering all properly made submissions about the proposed amendment, the regulator decides the proposed amendment should not be made, the regulator must give the scheme manager and each declared entity for the scheme notice that the plan need not be amended.

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**212 Amendment of recycled water management plan—application**

- (1) This section applies if a recycled water management plan for a recycled water scheme is proposed to be amended other than under section 209, 210 or 211.
- (2) The relevant entity for the recycled water scheme must apply to the regulator for approval of the proposed amended recycled water management plan.
- (3) Sections 202(2), (3) and (4), and 203 to 208 apply to the application—
  - (a) as if a reference in the sections to the recycled water management plan were a reference to the amended recycled water management plan; and
  - (b) as if a reference in the sections to the plan were a reference to the amended plan.

**213 Suspending or cancelling recycled water management plan if regulator is satisfied about particular matters**

- (1) The regulator may suspend or cancel a recycled water management plan (the *proposed action*) if the regulator is satisfied or reasonably believes the relevant entity or a declared entity (each the *responsible entity*) for the recycled water scheme to which the plan relates has not complied with—
  - (a) the plan; or
  - (b) a condition of the plan; or
  - (c) a compliance notice.
- (2) Before acting under subsection (1), the regulator must—
  - (a) give the responsible entity a show cause notice about the proposed action; and
  - (b) for a multiple-entity recycled water scheme, give a copy of the show cause notice to—

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- (i) the scheme manager for the scheme, if the scheme manager is not the responsible entity; and
    - (ii) each declared entity for the scheme that is not the responsible entity.
  - (3) If, after considering any properly made submissions about the proposed action, the regulator decides the proposed action should be taken, the regulator may—
    - (a) if the proposed action was to suspend the recycled water management plan—suspend the plan; or
    - (b) if the proposed action was to cancel the plan—either cancel the plan or suspend it.
  - (4) If a recycled water management plan is suspended under this section, the suspension ends when the resumption of supply of recycled water under the recycled water scheme to which the plan relates is taken to be approved under section 215.
  - (5) Within 10 business days after making a decision under subsection (3), the regulator must give an information notice for the decision to—
    - (a) if the recycled water management plan is for a single-entity recycled water scheme—the recycled water provider for the scheme; or
    - (b) if the recycled water management plan is for a multiple-entity recycled water scheme—the scheme manager for the scheme.
  - (6) If, after considering any properly made submissions about the proposed action, the regulator decides the proposed action should not be taken, the regulator must give notice of the decision to—
    - (a) if the recycled water management plan is for a single-entity recycled water scheme—the recycled water provider for the scheme; or
    - (b) if the recycled water management plan is for a multiple-entity recycled water scheme—the scheme manager for the scheme.

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- (7) The notice under subsection (6) must be given within 10 business days after the decision is made.
- (8) A decision under subsection (3) takes effect on the day the information notice for the decision is given.

#### **214 Suspending recycled water management plan if production or supply of recycled water stops**

- (1) The regulator may, by notice given to the relevant entity for a recycled water scheme, suspend the recycled water management plan for the scheme if the regulator—
  - (a) has received notice under section 208 that the production or supply of recycled water under the scheme has stopped or is to stop; and
  - (b) is satisfied the production or supply of recycled water under the scheme has stopped.
- (2) If a recycled water management plan is suspended under this section, the suspension ends when the resumption of supply of recycled water under the recycled water scheme to which the plan relates is taken to be approved under section 215.
- (3) The suspension takes effect on the day the notice is given.

#### **215 Application to resume supply**

- (1) If a recycled water management plan has been suspended under this part, the relevant entity for the recycled water scheme to which the plan relates may apply to the regulator for an approval to resume supply of recycled water under the scheme.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be supported by enough information to enable the regulator to decide the application; and



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- (c) be accompanied by the fee prescribed under a regulation.
- (3) Sections 203 and 204 apply to the application—
- (a) as if a reference in the sections to the recycled water management plan were a reference to the suspended recycled water management plan; and
  - (b) as if a reference in the sections to the plan were a reference to the suspended plan.
- (4) After considering the application, and any matter the regulator considers relevant to the application, the regulator must as soon as practicable decide—
- (a) to approve the application without conditions; or
  - (b) to approve the application on the condition that—
    - (i) the validation program for the scheme is undertaken; and
    - (ii) the testing of plant and equipment under the program shows the quality of the scheme's recycled water consistently meets the water quality criteria for recycled water relevant to the scheme; and
    - (iii) the relevant entity for the scheme gives the regulator evidence, satisfactory to the regulator, of the matter mentioned in subparagraph (ii); or
  - (c) for a recycled water scheme that is a single-entity recycled water scheme—to refuse to approve the application, and direct the recycled water provider for the scheme—
    - (i) to amend the recycled water management plan for the scheme in the way the regulator considers appropriate; and
    - (ii) apply to the regulator, under this part, for approval of the amended plan; or

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- (d) for a recycled water scheme that is a multiple-entity recycled water scheme—to refuse to approve the application, and direct—
  - (i) the scheme manager or a declared entity for the scheme to amend the scheme manager’s scheme manager plan or the entity’s scheme provider plan for the scheme in the way the regulator considers appropriate; and
  - (ii) the scheme manager to apply to the regulator, under this part, for approval of the amended recycled water management plan for the scheme; or
- (e) to refuse to approve the application.
- (5) Within 10 business days after deciding the application, the regulator must give the relevant entity—
  - (a) if the decision is to approve the application under subsection (4)(a)—notice of the decision; and
  - (b) if the decision is to approve the application under subsection (4)(b), or refuse to approve the application under subsection (4)(c), (d) or (e)—an information notice for the decision.
- (6) The resumption of supply of recycled water under the recycled water scheme is taken to be approved under this section—
  - (a) if the decision is to approve the application under subsection (4)(a)—when the notice of the decision is given to the relevant entity; or
  - (b) if the decision is to approve the application under subsection (4)(b)—when the regulator gives the relevant entity a notice stating the regulator is satisfied the testing of plant and equipment under the validation program for the scheme shows the quality of the scheme’s recycled water consistently meets the water quality criteria for recycled water relevant to the scheme; or

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- (c) if the decision is to refuse to approve the application under subsection (4)(c) or (d)—when the amended recycled water management plan for the scheme has been approved under this part.
- (7) Sections 202(2), (3) and (4), and 203 to 208 apply to an application for approval of the amended plan—
- (a) as if a reference in the sections to the recycled water management plan were a reference to the amended recycled water management plan; and
  - (b) as if a reference in the sections to the plan were a reference to the amended plan.

**216 Sections 216–229 not used**

See editor’s note for section 1.

**Part 3 Notice about permanently stopping supply of recycled water**

**230 Notice about permanently stopping supply of recycled water**

- (1) Subsection (2) applies if a recycled water provider for a recycled water scheme that is not a critical recycled water scheme proposes to permanently stop the supply of recycled water under the scheme.
- (2) The recycled water provider must give the regulator notice of the proposed stoppage at least 30 days before supply of the recycled water is stopped, unless the provider has a reasonable excuse for not giving the notice.

Maximum penalty—200 penalty units.

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- (3) Subsection (4) applies if—
  - (a) a recycled water provider or other declared entity for a critical recycled water scheme proposes to permanently stop the supply of recycled water by the provider or entity under the scheme; and
  - (b) there is no other entity willing to take over the operation of all or part of the scheme to ensure the continued production and supply of recycled water under the scheme.
- (4) The relevant entity for the critical recycled water scheme must give the regulator notice of the proposed stoppage at least 60 days before supply of the recycled water is stopped, unless the relevant entity has a reasonable excuse for not giving the notice.

Maximum penalty—1665 penalty units.
- (5) A notice under subsection (2) or (4) must—
  - (a) be in the approved form; and
  - (b) state the day by which the supply of recycled water is proposed to stop.
- (6) The regulator may require—
  - (a) the relevant entity for the recycled water scheme to give the regulator additional information about the notice; or
  - (b) any information included in the notice, or any additional information required under paragraph (a), to be verified by statutory declaration.
- (7) If the relevant entity fails, without reasonable excuse, to comply with a requirement under subsection (6) within the reasonable period stated in the notice, the notice given by the entity under subsection (2) or (4) is of no effect.
- (8) If the supply of recycled water under the recycled water scheme continues after the day stated in the notice, the notice ceases to have effect as a notice given under subsection (2) or (4).

- (9) If the supply of the recycled water under the recycled water scheme stops, the relevant entity for the recycled water scheme must give the regulator notice of the stoppage within 5 days after the supply stops.
- (10) The notice must—
  - (a) be in the approved form; and
  - (b) state the day on which the supply of recycled water stopped.
- (11) In this section—

*relevant entity*, in relation to a multiple-entity recycled water scheme, includes any recycled water provider or other declared entity for the scheme.

**231 Cancelling recycled water management plan on receipt of notice under s 230**

If the regulator receives a notice under section 230(5), the regulator may—

- (a) cancel the recycled water management plan for the recycled water scheme to which the notice relates; and
- (b) give the relevant entity for the scheme notice of the cancellation.

**232 Sections 232–234 not used**

See editor's note for section 1.



- (i) a copy of the validation program; and
- (ii) the fee prescribed under a regulation.

### **238 Additional information may be required**

- (1) The regulator may, by notice given to the relevant entity, require—
  - (a) the entity to give additional information about the validation program; or
  - (b) any information included in the program, or any additional information required under paragraph (a), to be verified by statutory declaration.
- (2) If the relevant entity fails, without reasonable excuse, to comply with the requirement within the reasonable period stated in the notice, the application is taken to have been withdrawn.
- (3) A requirement under this section is an *information requirement*.
- (4) In this section—

*relevant entity*, in relation to a multiple-entity recycled water scheme, includes any recycled water provider or other declared entity for the scheme.

### **239 Regulator may obtain advice about application**

The regulator may obtain advice from an advisory council or any other entity the regulator considers appropriate before deciding the application.

### **240 Consideration of application**

- (1) The regulator must consider the application and decide to approve, with or without conditions, or refuse to approve, the validation program—

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- (a) if an information requirement is not made in relation to the program—30 business days after receiving the program; or
  - (b) if an information requirement is made in relation to the program—30 business days after the requirement has been complied with.
- (2) In considering whether to approve the validation program, the regulator must have regard to—
- (a) the program and any additional information about the program given to the regulator under section 238; and
  - (b) the guidelines, if any, made by the regulator about validating recycled water schemes; and
  - (c) any advice received by the regulator under section 239; and
  - (d) the water quality criteria for recycled water.

#### **241 Notice of decision**

Within 10 business days after deciding the application, the regulator must give the relevant entity—

- (a) if the decision is to approve the validation program without conditions—notice of the decision; or
- (b) if the decision is to approve the validation program with conditions, or to refuse to approve the validation program—an information notice for the decision.

#### **242 Amendment of validation program**

- (1) This section applies if the relevant entity for a recycled water scheme proposes to amend the approved validation program for the scheme.
- (2) The relevant entity must apply to the regulator for approval of the proposed amended validation program.
- (3) Sections 237(2) and 238 to 241 apply to the application—



- (a) as if a reference in the sections to the validation program were a reference to the amended validation program; and
- (b) as if a reference in the sections to the program were a reference to the amended program.

**243 Sections 243–249 not used**

See editor's note for section 1.

## **Part 5 Exemptions**

**250 Application for exemption**

- (1) The recycled water provider for a recycled water scheme that is not a critical recycled water scheme may apply to the regulator for an exemption from having an approved recycled water management plan for the scheme.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by the information or documents required to be given under the guidelines, if any, made by the regulator about applying for an exemption; and
  - (c) be supported by enough information to enable the regulator to decide the application; and
  - (d) be accompanied by the fee prescribed under a regulation.

**251 Additional information may be required**

- (1) The regulator may, by notice given to the recycled water provider, require—

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- (a) the recycled water provider to give the regulator additional information about the application, including, for example, information about arrangements relating to the supply of recycled water under the scheme; 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 recycled water provider fails, without reasonable excuse, to comply with the requirement, within the reasonable period of at least 30 business days stated in the notice, the application is taken to have been withdrawn.
- (3) A requirement under this section is an *information requirement*.

## **252 Regulator may obtain advice about application**

The regulator may obtain advice from an advisory council or any other entity the regulator considers appropriate before deciding the application.

## **253 Consideration of application**

- (1) The regulator must consider the application and decide to grant, with or without conditions (*regulator conditions*), or refuse to grant, the exemption—
  - (a) if an information requirement is not made in relation to the application—within 60 business days after receiving the application; or
  - (b) if an information requirement is made in relation to the application—within 60 business days after the requirement has been complied with.
- (2) In considering whether to grant the application, the regulator must have regard to—
  - (a) the application and any additional information received under section 251; and

- (b) the guidelines, if any, made by the regulator about granting exemptions under this part and validating recycled water schemes; and
- (c) any advice obtained by the regulator under section 252; and
- (d) the water quality criteria for recycled water.

#### **254 Notice of decision**

- (1) Within 10 business days after deciding the application, the regulator must give the recycled water provider —
  - (a) if the decision is to grant the exemption without regulator conditions—notice of the decision; and
  - (b) if the decision is to grant the exemption with regulator conditions, or to refuse to grant the exemption—an information notice for the decision.
- (2) If the regulator grants the exemption, the notice of the decision or information notice for the decision must state the conditions of the exemption.

#### **255 Duration of exemption**

An exemption applies for the period, of not more than 5 years, for which it is granted.

#### **256 Provision about conditions of exemption**

- (1) It is a condition of each exemption that, if the recycled water provider for the recycled water scheme to which the exemption relates becomes aware that an entity to whom the provider supplies recycled water is using the water other than in a way or for the purpose provided for under the exemption, the provider must stop supply of the water to the entity.
- (2) A regulator condition for an exemption may be about the water quality criteria required to be met by the recycled water provider in supplying recycled water.



- (2) The scheme manager for a multiple-entity recycled water scheme must arrange for a review of the approved recycled water management plan for the scheme at the intervals for conducting regular reviews stated in the notice about the plan given under section 206(2).

Maximum penalty—500 penalty units.

- (3) The purpose of a review mentioned in subsection (1) or (2) is to ensure the recycled water management plan remains relevant having regard to—
- (a) the operation of the recycled water scheme to which it relates; and
  - (b) the water quality criteria for recycled water relevant to the scheme; and
  - (c) best practice industry standards for the production and supply of recycled water.

## **259 Changing plan after review**

- (1) This section applies if a review of a recycled water management plan indicates the plan should be changed to reflect—
- (a) the operation of the recycled water scheme to which it relates; or
  - (b) the water quality criteria for recycled water relevant to the scheme; or
  - (c) best practice industry standards for the production and supply of recycled water.
- (2) If the recycled water scheme is a single-entity recycled water scheme, the recycled water provider for the scheme must, within 60 business days after the review ends—
- (a) amend the recycled water management plan for the scheme to reflect the matters mentioned in subsection (1); and
  - (b) apply to the regulator for approval of the amended plan.

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Maximum penalty—200 penalty units.

- (3) If the recycled water scheme is a multiple-entity recycled water scheme—
- (a) the scheme manager for the scheme must, within 60 business days after the review ends, amend the manager's scheme manager plan for the scheme to the extent necessary to reflect the matters mentioned in subsection (1); and
  - (b) each declared entity for the scheme must, within 60 business days after the review ends, amend the entity's scheme provider plan for the scheme to the extent necessary to reflect the matters mentioned in subsection (1).

Maximum penalty—200 penalty units.

- (4) If a scheme manager plan or scheme provider plan for a multiple-entity recycled water scheme is amended under subsection (3), the scheme manager for the scheme must as soon as practicable apply to the regulator for approval of the amended recycled water management plan for the scheme.

Maximum penalty—200 penalty units.

- (5) An amended recycled water management plan must indicate the way the plan has been amended to reflect the matters mentioned in subsection (1).
- (6) Sections 202(2), (3) and (4), and 203 to 208 apply to an application under this section—
- (a) as if a reference in the sections to the recycled water management plan were a reference to the amended recycled water management plan; and
  - (b) as if a reference in the sections to the plan were a reference to the amended plan.

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## **260 Providing internal audit reports**

- (1) The recycled water provider for a single-entity recycled water scheme must arrange for internal audit reports about the provider's approved recycled water management plan, and compliance with the plan and its conditions, to be prepared and given to the regulator under this section.

Maximum penalty—500 penalty units.

- (2) The scheme manager for a multiple-entity recycled water scheme must arrange for internal audit reports about the approved recycled water management plan, and compliance with the plan and its conditions, to be prepared and given to the regulator under this section.

Maximum penalty—500 penalty units.

- (3) For the preparation of a report, an internal audit of the recycled water management plan, and compliance with the plan and its conditions, must be conducted at the intervals for conducting internal audits stated in the notice about the plan given under section 206(2).

- (4) The purpose of an internal audit is to assess compliance with the approved recycled water management plan and the conditions of the plan.

- (5) The internal audit report must—

- (a) be prepared by a suitably qualified person; and
- (b) be prepared in accordance with the guidelines, if any, about preparing internal audit reports under this section; and
- (c) be given to the regulator within 30 business days after the report is completed; and
- (d) if the report shows there has been noncompliance with the recycled water management plan to which it relates, or the conditions of the plan—state the actions taken or planned to be taken in relation to the noncompliance.

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## **261 Providing regular audit reports**

- (1) The recycled water provider for a single-entity recycled water scheme must arrange for regular audit reports about the plan, and compliance with the plan and its conditions, to be prepared and given to the regulator under this section.

Maximum penalty—500 penalty units.

- (2) The scheme manager for a multiple-entity recycled water scheme must arrange for regular audit reports about the plan, and compliance with the plan and its conditions, to be prepared and given to the regulator under this section.

Maximum penalty—500 penalty units.

- (3) For the preparation of a report, an audit of the recycled water management plan, and compliance with the plan and its conditions, must be conducted at the intervals for conducting regular audits stated in the notice about the plan given under section 206(2).

- (4) The purpose of a regular audit is to assess compliance with the approved recycled water management plan and the conditions of the plan.

- (5) The regular audit report must—

- (a) be prepared by a suitably qualified person who is not an employee of—

- (i) for a single-entity recycled water scheme—the recycled water provider for the scheme; or

- (ii) for a multiple-entity recycled water scheme—the scheme manager, or a declared entity, for the scheme; and

- (b) be prepared in accordance with the guidelines, if any, about preparing regular audit reports under this section; and

- (c) be given to the regulator within 30 business days after the report is completed; and



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- (d) if the report shows there has been noncompliance with the recycled water management plan to which it relates, or the conditions of the plan—state the actions taken or planned to be taken in relation to the noncompliance.

## **262 Spot audits**

- (1) Subsection (2) applies if the regulator is satisfied or reasonably believes—
  - (a) the scheme manager, or a recycled water provider or other declared entity, for a recycled water scheme is not complying, or has not complied, with the recycled water management plan for the scheme or the conditions of the plan; or
  - (b) the approved recycled water management plan for the scheme is no longer adequate.
- (2) The regulator may arrange for a spot audit report to be prepared about the recycled water management plan.
- (3) Before arranging for a spot audit report to be prepared because of the matter mentioned in subsection (1)(b), the regulator—
  - (a) must give a show cause notice about the proposed spot audit to—
    - (i) if the recycled water management plan is for a single-entity recycled water scheme—the recycled water provider for the scheme; or
    - (ii) if the recycled water management plan is for a multiple-entity recycled water scheme—the scheme manager and each declared entity for the scheme; and
  - (b) consider all properly made submissions about the proposed spot audit.
- (4) The spot audit report may be prepared by the regulator or a suitably qualified person appointed by the regulator.

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- (5) The spot audit report must be prepared in accordance with the guidelines, if any, about preparing spot audit reports under this section.
- (6) Within 30 business days after the spot audit report is completed, the regulator must give a copy of the report to—
  - (a) if the report relates to a single-entity recycled water scheme—the recycled water provider for the scheme; or
  - (b) if the report relates to a multiple-entity recycled water scheme—the scheme manager for the scheme.
- (7) Subsection (8) applies if the spot audit report states either or both of the following—
  - (a) the recycled water management plan for the recycled water scheme is inadequate in a material particular;
  - (b) the scheme manager, or recycled water provider or other declared entity, for the recycled water scheme (the ***responsible entity***) has not properly carried out the plan to the extent it applies to the responsible entity.
- (8) The regulator must give the responsible entity an information notice requiring the entity, within the reasonable period stated in the notice, to—
  - (a) if subsection (7)(a) applies—rectify the inadequacy; or
  - (b) if subsection (7)(b) applies—properly carry out the plan.
- (9) The responsible entity must comply with the notice, unless the responsible entity has a reasonable excuse.  
Maximum penalty—1665 penalty units.
- (10) The regulator may recover an amount equal to the cost of completing the spot audit report from—
  - (a) if the report relates to a single-entity recycled water scheme—the recycled water provider for the scheme; or
  - (b) if the report relates to a multiple-entity recycled water scheme—the scheme manager, and any recycled water providers or other declared entities, for the scheme.

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**263 Auditor's responsibility to inform regulator**

- (1) This section applies if, in conducting an audit about a recycled water management plan, an auditor forms a reasonable belief that—
  - (a) a following entity has not, or is not, complying with the plan or a condition of the plan—
    - (i) for a plan for a single-entity recycled water scheme—the recycled water provider for the scheme;
    - (ii) for a plan for a multiple-entity recycled water scheme—the scheme manager, or a recycled water provider or other declared entity, for the scheme; and
  - (b) the noncompliance is likely to have an imminent and serious adverse effect on public health.
- (2) The auditor must immediately give details of the facts and circumstances giving rise to the belief to the regulator,  
Maximum penalty—1665 penalty units.
- (3) If the auditor complies with subsection (2) by giving the regulator the details orally, the auditor must, as soon as practicable after giving the details orally, give the regulator notice of the details.  
Maximum penalty—200 penalty units.

**264 Declarations about audit reports**

- (1) An audit report given to the regulator under this part must be accompanied by a statutory declaration by the auditor.
- (2) The auditor's declaration must—
  - (a) state the auditor's qualifications and experience relevant to the audit; and

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- (b) state that the auditor has not knowingly included any false, misleading or incomplete information or document to the regulator; 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 matters relevant to the audit to which it relates, and is factually correct; and
  - (ii) the opinions expressed in it are honestly and reasonably held.

## **265 Access for conducting audits**

- (1) For conducting an audit under this part, the relevant entity and any declared entity for a recycled water scheme 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 infrastructure forming part of the scheme 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 conducting the audit, must not enter the premises of a person other than the relevant entity or a declared entity for the recycled water scheme unless the person agrees to the entry.

## **266 Sections 266–269 not used**

See editor's note for section 1.



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## **271 Annual reporting requirement**

- (1) The relevant entity for a recycled water scheme must prepare an annual report for each financial year after a recycled water management plan for the scheme has been approved or an exemption for the scheme has been granted.
- (2) The annual report must—
  - (a) be prepared in accordance with the guidelines, if any, made by the regulator about the preparation of annual reports; and
  - (b) if the annual report is for a recycled water scheme for which there is an approved recycled water management plan—
    - (i) state the outcome of any review of the recycled water management plan in the financial year to which the annual report relates, and how the matters raised in the review have been addressed; and
    - (ii) contain a summary of the findings of, and any recommendations stated in, an audit report given to the regulator in the financial year; and
    - (iii) contain a summary of the information given to the regulator under section 270 in the financial year; and
  - (c) if the annual report is for a recycled water scheme for which an exemption has been granted—contain a summary of the information given to the regulator under section 270 in the financial year.
- (3) The relevant entity must give a copy of the annual report to the regulator within 120 business days after the end of the financial year.

Maximum penalty—500 penalty units.
- (4) If the recycled water provider is a service provider, the annual report may be combined with a report given to the regulator under section 141.

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**272 Sections 272–299 not used**

See editor's note for section 1.

## **Part 8 Declaration of critical recycled water schemes**

### **300 Meaning of *scheme manager* for a recycled water scheme**

The *scheme manager* for a multiple-entity recycled water scheme is the entity—

- (a) the recycled water providers and other entities declared to be part of the scheme agree is the scheme manager for the scheme; and
- (b) either—
  - (i) stated in the declaration under this part for the scheme to be the scheme manager; or
  - (ii) stated in the notice given under section 307(2).

### **301 Making declaration**

- (1) The regulator may declare a recycled water scheme to be a critical recycled water scheme if the regulator reasonably believes the declaration is necessary—
  - (a) to maintain continuity of operation of the scheme to meet the essential water supply needs of the community or industry; or
  - (b) to ensure the appropriate management of risks to public health posed by the supply of recycled water under the scheme.
- (2) Without limiting subsection (1), the regulator must declare a recycled water scheme to be a critical recycled water scheme if—

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- (a) recycled water is supplied, or proposed to be supplied, under the scheme to augment a supply of drinking water; or
- (b) under the scheme, at least 500kL of recycled water a day is supplied, or proposed to be supplied, to premises by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in laundries; or
- (c) under the scheme, at least 5ML of recycled water a day is supplied, or proposed to be supplied, for use in electricity generation.

### **302 Regulator may request information about a recycled water scheme**

- (1) Before declaring a recycled water scheme to be a critical recycled water scheme, the regulator may ask the recycled water providers and other entities proposed to be declared to be part of the scheme to give the regulator a notice about who the providers and entities agree is the scheme manager for the scheme.
- (2) Also, the regulator may by notice require a responsible entity to give the regulator, within a stated reasonable period, information about the scheme.
- (3) When making the requirement, the regulator must warn the responsible entity it is an offence to fail to comply with the requirement unless the responsible entity has a reasonable excuse.
- (4) A responsible entity must comply with the requirement unless the responsible entity has a reasonable excuse.

Maximum penalty—200 penalty units.

- (5) If a responsible entity is an individual, it is a reasonable excuse for failing to comply with the requirement that giving the information might tend to incriminate the responsible individual.



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- (6) In this section—
- responsible entity*, in relation to a recycled water scheme, means—
- (a) a recycled water provider or other entity proposed to be declared to be part of the scheme; or
  - (b) the proposed scheme manager for the scheme.

### **303 Notice of regulator's intention to make declaration**

- (1) Before declaring a recycled water scheme to be a critical recycled water scheme, the regulator must—
  - (a) give notice of the regulator's intention to make the declaration to—
    - (i) if the scheme is a single-entity recycled water scheme—the recycled water provider for the scheme; or
    - (ii) if the scheme is a multiple-entity recycled water scheme—each recycled water provider and other entity the regulator intends to declare to be part of the scheme; and
  - (b) consider all properly made submissions given to the regulator under subsection (3).
- (2) Subsection (1) does not apply to the declaration of a recycled water scheme if, under section 301(2), the regulator must declare the scheme to be a critical recycled water scheme.
- (3) The notice must—
  - (a) describe the recycled water scheme; and
  - (b) describe the infrastructure proposed to be part of the scheme; and
  - (c) state the reasons that the regulator intends to make the declaration; and
  - (d) for a notice about a multiple-entity recycled water scheme—

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- (i) state each recycled water provider and other entity proposed to be declared to be part of the scheme; and
  - (ii) if known, state the proposed scheme manager for the scheme; and
- (e) state the entity to whom the notice is given may, within 30 days after receiving the notice, give the regulator a written submission about the proposed declaration.
- (4) If the notice is about a multiple-entity recycled water scheme and the scheme manager for the scheme is not known when the notice is given, the notice may also state the recycled water provider or other entity may give the regulator advice about who the provider or entity considers should be the scheme manager for the scheme.
- (5) An entity that is not a recycled water provider may be stated to be part of a multiple-entity recycled water scheme only if the entity owns infrastructure for the supply of recycled water.

### **304 Notice of declaration**

- (1) If the regulator decides to declare a recycled water scheme to be a critical recycled water scheme, the regulator must give notice of the declaration to—
  - (a) if the scheme is a single-entity recycled water scheme—the recycled water provider for the scheme; or
  - (b) if the scheme is a multiple-entity recycled water scheme—
    - (i) each recycled water provider and other entity declared to be part of the scheme; and
    - (ii) if known, the scheme manager for the scheme.
- (2) The notice must—
  - (a) describe the recycled water scheme; and
  - (b) state the infrastructure that is part of the scheme; and

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- (c) state the reasons that the regulator made the declaration; and
  - (d) for a declaration for a multiple-entity recycled water scheme—if known, state the entity that is the scheme manager for the scheme and each recycled water provider and other entity declared to be part of the scheme; and
  - (e) state each recycled water provider and other entity declared to be part of the scheme must have a scheme provider plan for the scheme.

### **305 When declaration has effect**

The declaration has effect on the day the regulator gives notice of the declaration under section 304.

### **306 Review of declaration on request**

- (1) The relevant entity for a critical recycled water scheme may, at any time after 1 year after the declaration of the scheme to be a critical recycled water scheme takes effect, ask the regulator to review the making of the declaration if the relevant entity considers the scheme should not be a critical recycled water scheme.
- (2) The request must—
  - (a) be in writing; and
  - (b) be given to the regulator; and
  - (c) state the reasons that the relevant entity considers the scheme should not be a critical recycled water scheme.
- (3) If the regulator is asked to review a declaration under this section, the regulator must review the declaration.
- (4) In reviewing the declaration, the regulator may have regard to—
  - (a) the reasons that the regulator made the declaration; and

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- (b) the stated reasons mentioned in subsection (2)(c); and
  - (c) the matters mentioned in section 301; and
  - (d) any other information the regulator considers relevant.
- (5) If, after reviewing the declaration, the regulator decides the recycled water scheme to which the declaration relates should continue to be a critical recycled water scheme, the regulator must give the relevant entity for the scheme an information notice for the decision.
- (6) If, after reviewing the declaration, the regulator decides the recycled water scheme to which the declaration relates should not continue to be a critical recycled water scheme, the regulator must give the relevant entity for the scheme notice of the decision.
- (7) If the regulator gives a relevant entity a notice under subsection (6), the recycled water scheme to which the notice relates stops being a critical recycled water scheme on the day the notice is given.
- (8) If a declaration for a critical recycled water scheme is reviewed under this section (the *previous review*), the relevant entity for the scheme can not ask for another review of the declaration under subsection (1) until at least 1 year after the previous review has ended.

### **307 Requirement to advise regulator about scheme manager**

- (1) This section applies if the scheme manager for a multiple-entity recycled water scheme is not known when the scheme is declared to be a critical recycled water scheme.
- (2) The recycled water providers and other entities declared to be part of the scheme must, as soon as practicable after the declaration is made, give the regulator notice of who is the scheme manager.

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**308 Sections 308–314 not used**

See editor's note for section 1.

## **Part 9 Dispute resolution process for particular critical recycled water schemes**

### **315 Definitions for pt 9**

In this part—

*dispute* means an economic dispute or a non-economic dispute.

*economic dispute* means a dispute between any or all of the parties to a multiple-entity recycled water supply scheme about expenditure relating to the operation of the scheme, including, for example, expenses incurred in preparing recycled water management plans or in installing infrastructure to treat recycled water.

*non-economic dispute* means a dispute, other than an economic dispute, between any or all of the parties to a multiple-entity recycled water supply scheme about matters relating to the operation of the scheme, including, for example, matters relating to a change in water quality criteria for recycled water relevant to the scheme.

*party*, to a multiple-entity recycled water scheme, means the scheme manager, or a recycled water provider or other declared entity, for the scheme.

### **316 Application of pt 9**

This part applies if—

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- (a) there is a dispute between any or all of the parties to a multiple-entity recycled water scheme; and
- (b) there is an approved recycled water management plan for the scheme; and
- (c) a party to the dispute reasonably believes—
  - (i) the dispute is unresolved; and
  - (ii) the dispute is likely to adversely affect public health or the continuity of operation of the scheme unless it is resolved.

### **317 Dispute resolution process**

- (1) To resolve the dispute, the parties to the dispute must follow the process for resolving the dispute prescribed under a regulation.
- (2) A regulation for subsection (1) may provide for the following matters—
  - (a) whether the dispute must be dealt with under mediation or arbitration;
  - (b) the appointment of a mediator or arbitrator to resolve the dispute;
  - (c) the mediation or arbitration process required to be followed to resolve the dispute, including, for example, requirements about—
    - (i) giving documents or other information to the mediator or arbitrator; and
    - (ii) paying the costs of the mediation or arbitration.
- (3) Subsection (2) does not limit the matters for which the regulation may provide.
- (4) If a contract between 2 or more parties to the dispute is inconsistent with a regulation under subsection (1), the regulation prevails to the extent of the inconsistency.

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**318 Sections 318–329 not used**

See editor's note for section 1.

## **Part 10 Miscellaneous**

### **330 Notice to local government**

- (1) This section applies if the regulator considers the discharge of trade waste into the sewerage infrastructure of a local government that is a sewerage service provider is likely to adversely effect the quality of recycled water supplied, or proposed to be supplied, under a recycled water scheme.
- (2) The regulator may give the local government a notice (a *trade waste compliance notice*) about the discharge of trade waste into the sewerage infrastructure.
- (3) The notice may—
  - (a) prohibit the local government from giving a trade waste approval for the discharge of trade waste into its sewerage infrastructure; or
  - (b) state the conditions the local government must impose on a trade waste approval for the discharge of trade waste into its sewerage infrastructure.
- (4) Without limiting subsection (3)(b), the conditions may be 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 trade waste;
  - (d) whether the waste must be treated before being discharged.

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- (5) The local government must comply with the notice.  
Maximum penalty—1665 penalty units.

**331 Report about compliance with notice**

- (1) The regulator may, by notice given to a local government that is a sewerage service provider, require the local government to give the regulator a report (a *trade waste report*) about the actions taken by the local government to comply with a trade waste compliance notice.
- (2) The local government must give the trade waste report to the regulator within the reasonable period stated in the notice given under subsection (1), and must include in the report the information reasonably required by the regulator.

Maximum penalty—1000 penalty units.

**332 Particular requirement about production or supply of recycled water**

A recycled water provider must ensure that there are persons engaged in the production or supply of recycled water by the provider who have the qualifications or experience prescribed under a regulation for section 586(2)(d)(ii).

Maximum penalty—1665 penalty units.

**333 Sections 333–339 not used**

See editor’s note for section 1.



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## Chapter 4      Referable dams and flood mitigation

### Part 1            Referable dams

#### Division 1        Preliminary

#### 340      Definition for pt 1

In this part—

*water* includes any other liquid or a mixture that includes water or any other liquid or suspended solid.

#### 341      What is a *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 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; and
  - (c) the chief executive has, under section 349, accepted the assessment.
- (2) The following are not referable dams—
  - (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.
- (3) In this section—

*hazardous waste* means—

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- (a) a 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; or
- (b) ash resulting from the process of power generation.

*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.

### **342 What is *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, made by the chief executive, for failure impact assessment of water dams (the *failure impact assessment guidelines*).
- (2) The certification must include the engineer's name and registration details.

## **Division 2 Failure impact assessing dams**

### **343 When 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 more than 8m in height and have—
  - (a) a storage capacity of more than 500ML; or

- (b) a storage capacity of more than 250ML and a catchment area that is more than 3 times its maximum surface area at full supply level.

Maximum penalty—1665 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) In this section—

*height*, for a 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 of the dam and the top of the barrier.

*top of the barrier*, of a dam, means the level of the top of the barrier of the dam 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 of the dam exclusive of any parapet or ancillary structure.

### **344 Process for failure impact assessment**

- (1) A person required under section 343(1) to have a dam failure impact assessed must ensure the assessment is completed, and accepted by the chief executive under section 349, before construction of the dam begins.

Maximum penalty—1665 penalty units.

- (2) A person required under section 343(2) to have a dam failure impact assessed must ensure the assessment is completed and given to the chief executive within the reasonable period stated in the notice.

Maximum penalty—1665 penalty units.

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- (3) A failure impact assessment given to the chief executive must be accompanied by the prescribed fee.

### **345 Requirement for other failure impact assessments**

- (1) This section applies if a dam has been failure impact assessed under this division, including subsection (2).
- (2) The owner must ensure another failure impact assessment of the dam is completed and given to the chief executive within 5 years after the last failure impact assessment was accepted by the chief executive.

Maximum penalty—1665 penalty units.

- (3) Subsection (2) 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 section 343(2) if—
    - (i) the last failure impact assessment for the dam, carried out under section 343(2) or subsection (2), has not given the dam a category 1 or category 2 failure impact rating; and
    - (ii) the dam does not meet the criteria stated in section 343(1)(a) or (b).

### **346 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, accepted by the chief executive under section 349, 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 this section—

*population at risk* means the number of persons, calculated under the failure impact assessment guidelines, whose safety will be at risk if the dam, or the proposed dam after its construction, fails.

### **347 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—1665 penalty units.

- (2) A person must not give another person who is 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—1665 penalty units.

- (3) It is enough for a complaint for an offence against subsection (1) or (2) to state the assessment or information given to the person certifying the assessment was false or misleading to the person's knowledge, without specifying whether it was false or whether it was misleading.

### **348 Cost of failure impact assessment**

- (1) For a failure impact assessment required under section 343(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 343(2)—

- (a) if the dam, or the proposed dam, is assessed as not having a category 1 or category 2 failure impact

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rating—the chief executive must pay the reasonable cost of preparing and certifying the assessment; and

- (b) otherwise—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 351.

### **349 Decision about failure impact assessment**

- (1) The chief executive may decide to 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.
- (3) Without limiting subsection (2), the chief executive may require the preparation of documents including a comprehensive report, by a registered professional engineer, on the design and operation of the dam.

### **350 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.

### **351 Reviewing failure impact assessment**

- (1) This section 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 failure impact assessment guidelines.
  - (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 349 by the day stated in the notice.
  - (4) The owner must comply with the notice unless the owner has a reasonable excuse.

Maximum penalty for subsection (4)—1665 penalty units.

### **352 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 failure impact assessment guidelines.
- (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.
- (3) If the assessment relates to an existing dam, the information notice must require the owner to—
  - (a) have a new assessment completed and certified; and
  - (b) give the certified assessment to the chief executive for a decision under section 349 within the reasonable period stated in the notice.

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- (4) The owner must comply with the notice unless the owner has a reasonable excuse.

Maximum penalty for subsection (4)—1665 penalty units.

## **Division 3                      Safety conditions for existing referable dams**

### **353      Applying 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 give the chief executive, within the reasonable period stated in the notice—
  - (a) 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) Without limiting subsection (2), the notice may require the preparation of documents including a comprehensive report, by a registered professional engineer, on the design and operation of the dam.

### **354      Deciding safety conditions**

- (1) When the chief executive has received the information requested in a notice under section 353(2), the chief executive must assess the information and decide the safety conditions for the dam.
- (2) In deciding the safety conditions for the dam, the chief executive must have regard to the guidelines, if any, made by



the chief executive for applying safety conditions to a referable dam.

- (3) The chief executive must decide the safety conditions for the dam—
  - (a) within 40 business days after the chief executive receives the information requested; or
  - (b) if the owner of the dam, by written agreement, extends the period—within the extended period.
- (4) The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or reasonably required for the dam.

### **355 Process after deciding safety conditions**

- (1) When the chief executive has decided the safety conditions for a dam, the chief executive must—
  - (a) give the owner of the dam an information notice about the safety conditions; and
  - (b) give the local government for the area a copy of the safety conditions.
- (2) 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.
- (3) 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.

### **356 Changing conditions**

- (1) This section applies for a referable dam if the chief executive is satisfied either or both of the following should be changed—
  - (a) safety conditions;
  - (b) development conditions.
- (2) The chief executive may change the conditions.
- (3) In deciding what the conditions should be, the chief executive may give the owner of the dam a notice requesting the owner give the chief executive, within the reasonable period stated in the notice—
  - (a) information that will help the chief executive to decide the conditions to be applied; and
  - (b) the fee prescribed under a regulation.
- (4) The owner must comply with the notice unless the owner has a reasonable excuse.

Maximum penalty—200 penalty units.
- (5) Without limiting subsection (3), the notice may require the preparation of documents including a comprehensive report, by a registered professional engineer, on the design and operation of the dam.
- (6) In changing the conditions, the chief executive must have regard to the guidelines, if any, made by the chief executive for applying safety conditions to a referable dam.
- (7) If the chief executive changes the conditions, the chief executive must—
  - (a) give the owner of the dam an information notice about the changed safety conditions; and
  - (b) give the local government for the area a copy of the changed safety conditions.
- (8) The change has effect from the day the notice is given.

- (9) The chief executive's power to change the conditions includes the power to add conditions.
- (10) The changed safety conditions are taken to be conditions attaching to the development permit mentioned in section 355(2) or (3).

### **357 Reassessing dams**

If a failure impact assessment for a referable dam, accepted by the chief executive, 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.

## **Division 4 Emergency powers**

### **358 Application of div 4**

This division applies if the chief executive is satisfied, or reasonably believes—

- (a) there is danger of the failure of—
  - (i) a referable dam; or
  - (ii) a dam for which no failure impact assessment has been carried out, if the chief executive reasonably believes the dam would have a category 1 or category 2 failure impact rating if an assessment were carried out; and
- (b) action is necessary to prevent the failure or minimise its impact.

### **359 Direction to owner of emergency part of land**

- (1) The chief executive may, by notice, direct the owner of land on which the part of the dam where the action is necessary is situated (the *emergency part*), or the operator of the dam, to

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take stated reasonable action within a stated reasonable period.

- (2) 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) if the emergency part is land other than land mentioned in paragraph (d)—attaches to the land and binds the owner of the land and the owner's successors in title; and
  - (d) if the emergency part is land leased from the State under the *Land Act 1994*—is taken to be a remedial action notice under the *Land Act 1994*, other than for the purposes of a review of, or an appeal against, the decision to give the notice.

*Note—*

See chapter 7 (Review, appeals and arbitration).

- (3) The person to whom the notice is given, and any person bound by the notice under subsection (2)(c), must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—1665 penalty units.

- (4) Subsection (3) 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 dam; and
  - (b) complies with the intention in accordance with any direction given by the chief executive.

### **360 Failure to comply with notice**

- (1) This section applies if—

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- (a) a person to whom a notice under section 359 is given does not comply, or does not fully comply, with the notice; and
  - (b) the chief executive incurs expense under section 467(1) or (3) in relation to the notice.

*Editor's note—*

section 467 (Chief executive or regulator may take action and recover costs)

- (2) The chief executive may give the owner a notice stating the action taken under section 467(1) or (3) and the amount of the expense incurred (the **relevant debt**).
- (3) A notice under subsection (2) is a **debt notice**.

### **361 Notice in relation to land other than leased State land**

- (1) If the chief executive gives a debt notice in relation to land mentioned in section 359(2)(c)—
  - (a) the relevant debt becomes a charge on the land; and
  - (b) the chief executive must lodge in the land registry—
    - (i) a request in the appropriate form to register the charge as an encumbrance over the land; and
    - (ii) a certificate signed by the chief executive stating the relevant debt is a charge over the land under this division; and
    - (iii) a copy of the debt notice; and
  - (c) the charge is in addition to any other remedy the chief executive has for recovery of the relevant debt.
- (2) The chief executive must, as soon as practicable after payment of the relevant debt, lodge in the land registry—
  - (a) a request in the appropriate form to release the charge; and
  - (b) a certificate stating that the relevant debt has been paid.

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- (3) The chief executive may at any time lodge in the land registry—
  - (a) a request to vary or release the charge; and
  - (b) for a request to vary a charge—a certificate stating the type of variation requested.

### **362 Notice in relation to leased State land**

If the chief executive gives a debt notice in relation to land mentioned in section 359(2)(d)—

- (a) the relevant debt is a condition of the lease from the day the notice is given; and
- (b) the chief executive must lodge in the land registry—
  - (i) a request in the appropriate form to register the details of the condition; and
  - (ii) a certificate signed by the chief executive stating the details of the relevant debt; and
  - (iii) a copy of the debt notice; and
- (c) the condition is in addition to any other remedy the chief executive has for recovery of the relevant debt; and
- (d) if the owner has possession of a tenure document for the lease—the owner must return the tenure document to the land registry.

### **363 Emergency powers if imminent danger of dam failure**

- (1) This section applies if the chief executive is satisfied, or reasonably believes—
  - (a) there is imminent danger of the failure of a dam; and
  - (b) immediate action is necessary to prevent or minimise the impact of the failure.
- (2) The chief executive may give a notice under section 359(1) verbally or by leaving the notice on the land.

- (3) For giving notice under subsection (2), it is sufficient to give the notice to an employee or agent of the owner or operator.

## **Division 5                      General matters**

### **364      Liability for loss or damage caused by failure of dam**

Nothing in this chapter affects the liability of a dam owner or operator for any loss or damage caused by the failure of a dam or the escape of water from the dam.

### **365      Sections 365–369 not used**

See editor's note for section 1.

## **Part 2                              Flood mitigation**

### **370      Owners of particular 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 day by which the owner must comply with section 371(1).

### **371      Approving flood mitigation manual**

- (1) The owner of a dam must give the chief executive a copy of the flood mitigation manual for the dam for the chief executive's approval.
- (2) The chief executive may, by gazette notice, approve the manual.

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- (3) The approval must 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.

### **372 Amending flood mitigation manual**

- (1) The chief executive may require the owner of a dam, by notice, to amend the flood mitigation manual for the dam.
- (2) The owner must comply with the requirement.
- (3) If the owner complies with the requirement, the chief executive must, by gazette notice, approve the manual as amended.
- (4) The approval of the manual as amended must 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.

### **373 Regular reviews of flood mitigation manual**

Before an approval for the flood mitigation manual for a dam expires, the owner of the dam must—

- (a) review, and if necessary, update the manual; and
- (b) give the chief executive a copy of it for the chief executive's approval under section 371.

### **374 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 part.



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- (2) An owner of a dam who observes the operational procedures in a flood mitigation manual, approved by the chief executive, for the dam 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*, of a dam, includes—
    - (a) the operator of the dam; or
    - (b) a director of the owner or operator of the dam; or
    - (c) an employee of the owner or operator of the dam; or
    - (d) an agent of the owner or operator of the dam.

**375 Sections 375–399 not used**

See editor’s note for section 1.

## **Chapter 5 Investigations and enforcement matters**

### **Part 1 Authorised officers**

#### **Division 1 Authorised officers’ functions and powers generally**

##### **400 Functions**

An authorised officer has the following functions—

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- (a) collecting information for this Act;
- (b) conducting investigations and inspections to monitor and enforce compliance with—
  - (i) this Act; or
  - (ii) the Planning Act so far as that Act relates to a development condition.

#### **401 Powers generally**

- (1) For performing an authorised officer's functions, an authorised officer has the powers given to the authorised officer under this or another Act.
- (2) An authorised officer is subject to the directions of the appointer in exercising the powers.

### **Division 2 Appointment of authorised officers**

#### **402 Appointment and qualifications**

- (1) The chief executive or the regulator (the *appointer*) may appoint a person as an authorised officer.
- (2) However, the appointer may appoint a person as an authorised officer only if the appointer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

#### **403 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on any conditions stated in—
  - (a) the authorised officer's instrument of appointment; or
  - (b) a signed notice given to the authorised officer; or
  - (c) a regulation.

- (2) The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the appointer.

#### **404 Issue of identity card**

- (1) The appointer must issue an identity card to each authorised officer.
- (2) The identity card must—
  - (a) contain a recent photograph of the authorised officer; and
  - (b) contain a copy of the authorised officer's signature; 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 purposes.

#### **405 Production or display of identity card**

- (1) In exercising a power under this Act in relation to a person, an authorised officer must—
  - (a) produce the authorised officer's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

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- (3) For subsection (1), an authorised officer does not exercise a power in relation to a person only because the authorised officer, as authorised under this Act, enters—
- (a) a public place when it is open to the public; or
  - (b) a place for the purpose of asking the occupier of the place for consent to enter.

#### **406 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
- (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office;
  - (c) the authorised officer’s resignation takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised officer holds office.

#### **407 Resignation**

An authorised officer may resign by signed notice given to the appointer.

#### **408 Return of identity card**

A person who ceases to be an authorised officer must return the person’s identity card to the appointer 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.

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## **Part 2 Powers of authorised officers**

### **Division 1 Entry of places**

#### **409 Definition for pt 2**

In this part—

*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.

#### **410 Power to enter land to monitor compliance**

An authorised officer may, at any reasonable time, enter land to find out if—

- (a) the Planning Act is being complied with in relation to a development condition; or
- (b) a drinking water quality management plan or a recycled water management plan, or the conditions of the plans, are being complied with in relation to the production or supply of drinking water or recycled water; or
- (c) the conditions of an exemption are being complied with in relation to the production or supply of recycled water.

#### **411 Power to enter land in relation to information collection**

- (1) 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—

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- (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.
- (2) For exercising a power mentioned in subsection (1), an authorised officer may enter and cross any land to access land mentioned in the subsection.

#### **412 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 410 or 411 if—
- (a) an occupier of the place 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 is—
    - (i) open for carrying on the business; or
    - (ii) otherwise open for entry.
- (2) For the purpose of asking an 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 section (1)(d), a place of business does not include a part of the place where a person resides.

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## Division 2                      Procedure for entry

### 413    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 412(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 part; 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) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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#### **414 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) 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 written application to be given by statutory declaration.

#### **415 Issue of warrant**

- (1) The magistrate may issue the warrant for the place 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—
    - (i) an offence against this Act; or
    - (ii) a Planning Act offence; and
  - (b) the evidence is at the place, or, within the next 7 days, will be at the place.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) 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



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- (ii) exercise the authorised officer's powers under this chapter; and
  - (c) particulars of the offence that the magistrate considers appropriate in the circumstances; and
  - (d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (e) the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the extent of re-entry permitted; and
  - (h) the date, within 14 days after the warrant's issue, the warrant ends.
- (3) A provision of this part applying to entry authorised under a warrant is taken also to apply to any re-entry authorised under the warrant.

**416 Application by electronic communication and duplicate warrant**

- (1) An application under section 414 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 414(2); but
  - (b) may be made before the written application is sworn.

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- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the authorised officer must complete a form of warrant, including by writing on it—
      - (A) the magistrate’s name; and
      - (B) the date and time the magistrate issued the warrant; and
      - (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 414(2) and (3); and

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- (b) if the authorised officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
- (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
- (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 414.
- (10) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

#### **417 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 414, 415 or 416, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 416(5).

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### **418 Warrants—procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this part 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 a copy of the authorised officer's identity card or other document evidencing the authorised officer's appointment;
  - (b) give the person a copy of the warrant;
  - (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.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 416(5).

## **Division 3 Powers after entry**

### **419 General powers after entering places**

- (1) This section applies to an authorised officer who enters a place under this part.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to

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the authorised officer only if the consent is given or the entry is otherwise authorised.

- (3) The authorised officer may do any of the following—
- (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 or take the document to another place to copy it;
  - (e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for the exercise of a power under this part;
  - (f) require a person at the place to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);
  - (g) require a person at the place to give the authorised officer information to help the authorised officer ascertain whether the Act is being or has been complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), 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.
- (5) If an authorised officer takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

#### **420 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 419(3)(f) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

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- (2) If the person is an individual, it is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

#### **421 Failure to give information**

- (1) A person of whom a requirement is made under section 419(3)(g) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) If the person is an individual, it is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

## **Part 3 Power to seize evidence**

#### **422 Seizing evidence**

- (1) This section applies if, under part 2, an authorised officer enters a place after obtaining the consent of an occupier or under a warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place if—
  - (a) the authorised officer reasonably believes the thing is evidence of—
    - (i) an offence against this Act; or
    - (ii) a Planning Act offence; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

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- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
  - (4) The authorised officer may seize anything else at the place if the authorised officer reasonably believes—
    - (a) the thing is evidence of—
      - (i) an offence against this Act; or
      - (ii) a Planning Act offence; and
    - (b) the seizure is necessary to prevent the thing being—
      - (i) hidden, lost or destroyed; or
      - (ii) used to continue, or repeat, the offence.
  - (5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing—
    - (a) an offence against this Act; or
    - (b) a Planning Act offence.

#### **423 Securing seized things**

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
  - 2 sealing the entrance to a place where the thing is situated and marking it to show access to it is restricted
- (c) if the thing is equipment—make it inoperable.

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*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

#### **424 Tampering with seized things**

- (1) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) If an authorised officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an authorised officer's approval.

Maximum penalty—100 penalty units.

#### **425 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and  
(b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

- (2) The requirement—

- (a) must be made by notice in the approved form; or  
(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by a notice in the approved form as soon as practicable.

- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.



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- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

#### **426 Receipts for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

#### **427 Forfeiture by authorised officer**

- (1) A thing that has been seized under this part is forfeited to the State if the authorised officer who seized the thing—
- (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
- (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and

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- (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

#### **428 Forfeiture on conviction**

- (1) On conviction of a person for either of the following, the court may order the forfeiture to the State of anything owned by the person and seized under this part—
  - (a) an offence against this Act;
  - (b) a Planning Act offence.
- (2) The court may make any order to enforce the forfeiture it considers appropriate.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

#### **429 Dealing with forfeited things**

- (1) On forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.

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### **430 Return of seized things**

- (1) If a seized thing is not forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for either of the following involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding—
    - (i) an offence against this Act;
    - (ii) a Planning Act offence.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return a thing seized to its owner if the authorised officer stops being satisfied—
  - (a) its continued retention as evidence is necessary; or
  - (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

### **431 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) This section does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

## **Part 4 Power to require information**

### **432 Power to require name and address**

- (1) This section applies if an authorised officer—
  - (a) finds a person committing an offence against this Act; or

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- (b) finds a person in circumstances that lead the authorised officer reasonably to suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the authorised officer reasonably to suspect a 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) Also, the authorised officer may require the person to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name or address or to otherwise be able to give the evidence.

### **433 Failure to give name or address**

- (1) A person of whom a requirement under section 432 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.

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**434 Power to require information or documents**

- (1) Subsection (2) 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 the authorised officer, either orally or in writing, information in the person's knowledge about the offence within a stated reasonable period and in a stated reasonable way.
- (3) An authorised officer may, by notice given to a person, require the person to give an authorised officer, within a stated reasonable period and in a stated reasonable way, a document in the person's possession or control relating to a service provider's registered service or a recycled water provider's production or supply of recycled water.
- (4) The authorised officer may keep a document mentioned in subsection (3)(b) to copy it.
- (5) If the authorised officer copies the document, or an entry in the document, the chief executive or officer may require the person who has possession or control of the document to certify the copy as a true copy of the document or entry.
- (6) The authorised officer must return the document to the person as soon as practicable after copying it.
- (7) A person of whom a requirement is made under subsection (2), (3) or (5) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.
- (8) If the person is an individual, it is not a reasonable excuse for the person to fail to comply with a requirement made under subsection (2) or (3) that complying with the requirement might tend to incriminate the person.

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- (9) However, if the person is an individual, evidence of, or evidence directly or indirectly derived from, the information that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.
- (10) If a court convicts a person of an offence against subsection (7), the court may also order the person to give a stated authorised officer, within a stated period and in a stated way, information or a document to which the requirement related.

*Note—*

The powers in this part are limited by part 2 (Powers of authorised officers).

## **Part 5                      Particular enforcement provisions relating to drinking water and recycled water**

### **Division 1                      Preliminary**

#### **435      Application of pt 5**

- (1) This part applies if—
- (a) the regulator is satisfied or reasonably believes that—
- (i) a noncompliance has happened or is likely to happen, in relation to a recycled water scheme or drinking water service, and the noncompliance may have an adverse effect on public health; or
- (ii) an event has happened or is likely to happen, in relation to a recycled water scheme or drinking water service, that may have an adverse effect on public health; and

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*Example for subparagraph (ii)—*

Contaminated water has leaked from an industrial site into a source of drinking water.

- (b) the regulator is satisfied or reasonably believes that—
  - (i) urgent action is necessary to prevent or minimise the adverse effect; or
  - (ii) the noncompliance or event has happened on another occasion in relation to the recycled water scheme or drinking water service and action is necessary to prevent the noncompliance or event from happening again.

(2) In this section—

***noncompliance*** means—

- (a) a drinking water service provider has not complied with—
  - (i) the drinking water quality management plan or a condition of the plan for the provider's drinking water service; or
  - (ii) a notice issued to the provider under section 630(2); or
- (b) a scheme manager, recycled water provider or other declared entity (the ***responsible entity***) for a recycled water scheme has not complied with the recycled water management plan for the scheme or a condition of the plan; or
- (c) a recycled water provider for a recycled water scheme has not complied with an exemption given under this Act for the scheme or a condition of the exemption.

## **Division 2                      Enforcement provisions**

### **436      Power about preventing or minimising adverse effects—general**

- (1) The regulator may, for the purpose of preventing or minimising the adverse effect—
  - (a) direct any person to take stated reasonable steps within a stated reasonable period; or
  - (b) take the reasonable steps; or
  - (c) authorise an authorised officer to take the reasonable steps.
- (2) A direction under subsection (1)(a) may be given orally or by written notice.
- (3) However, if the direction is given orally, the regulator must as soon as practicable confirm the direction by notice given to the person.
- (4) When giving a person a direction under subsection (1)(a), the regulator must warn the person it is an offence not to comply with the direction unless the person has a reasonable excuse.

### **437      Offence to fail to comply with direction**

A person given a direction under section 436(1)(a) must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—1665 penalty units.

### **438      Particular powers of regulator or authorised officer**

- (1) If the regulator decides to take the reasonable steps, or authorise an authorised officer to take the reasonable steps, the regulator or officer may—



- (a) without a warrant, enter any place, other than premises or a part of premises where a person resides, to take the steps; and
  - (b) in taking the steps, exercise any powers of an authorised officer under part 2, 3 or 4.
- (2) Before entering a place under subsection (1)(a), the regulator must do or make a reasonable attempt to do the following—
- (a) tell the occupier of the place the regulator is permitted under this Act to enter the place;
  - (b) give the occupier an opportunity to allow the regulator immediate entry to the place without using force.
- (3) Before entering a place under subsection (1)(a), the authorised officer must do or make a reasonable attempt to do the following—
- (a) comply with section 405(1);
  - (b) tell the occupier of the place the officer is permitted under this Act to enter the place;
  - (c) give the occupier an opportunity to allow the officer immediate entry to the place without using force.

### **439 How powers may be exercised**

- (1) The regulator or authorised officer may exercise the powers mentioned in section 438 (the *emergency powers*) at the time, with the help, and using the force, that is necessary and reasonable in the circumstances.
- (2) In exercising or attempting to exercise emergency powers in relation to a place, the regulator or authorised officer must take all reasonable steps to ensure the regulator or officer causes as little inconvenience to any person at the place, and does as little damage, as is practicable in the circumstances.

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#### **440 Regulator's powers not affected**

This division does not limit any power the regulator has apart from this division.

### **Division 3 Cost recovery**

#### **441 Definitions for div 3**

In this division—

*cost recovery notice* see section 443(2).

*costs and expenses* includes labour, equipment and administrative costs and expenses.

*event* means anything that has happened or is likely to happen, in relation to a recycled water scheme or drinking water service, that may have an adverse effect on public health.

*noncompliance* see section 435(2).

*prescribed person* see section 442(1).

*water supply incident* means—

- (a) a noncompliance; or
- (b) an event.

#### **442 Who is a *prescribed person* for a water supply incident**

- (1) Each of the following is a *prescribed person* for a water supply incident—
  - (a) for a noncompliance—the relevant provider responsible for the noncompliance;
  - (b) for an event that has happened—
    - (i) a person who caused or permitted the event to happen; and
    - (ii) a person who at the time of the event was—

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- (A) the occupier of a place at which the event happened; or
  - (B) the owner, or person in control, of a contaminant involved in the event;
- (c) for an event that is likely to happen—
- (i) a person who would be responsible for causing the event if it were to happen; and
  - (ii) a person who is—
    - (A) the occupier of a place at which the event is likely to happen; or
    - (B) the owner, or person in control, of a contaminant likely to be involved in the event.

- (2) In this section—

***contaminant*** means anything likely to affect a recycled water scheme or drinking water service in a way that would have an adverse effect on public health.

***relevant provider*** means—

- (a) a drinking water service provider; or
- (b) a recycled water provider or other declared entity for a recycled water scheme; or
- (c) a scheme manager for a multiple-entity recycled water scheme.

#### **443 Regulator may give notice for recovery of costs**

- (1) This section applies if—
- (a) the regulator decides to take reasonable steps, or authorises an authorised officer to take reasonable steps, under section 436 in relation to a water supply incident; and

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- (b) the regulator or authorised officer takes the reasonable steps.
- (2) The regulator may decide to give a notice (a *cost recovery notice*) to a person who the regulator is satisfied is a prescribed person for the water supply incident for payment of the costs and expenses reasonably incurred in taking the reasonable steps.
- (3) However, subsection (2) does not apply if the water supply incident was caused by a natural disaster.
- (4) The cost recovery notice must—
  - (a) state the following—
    - (i) the name of the recipient;
    - (ii) a description of the water supply incident;
    - (iii) the place at which the regulator is satisfied the water supply incident happened;
    - (iv) the amount claimed;
    - (v) a description of the costs and expenses giving rise to the amount claimed;
    - (vi) that if the recipient does not pay the amount to the regulator within 30 days after the day the notice is given, the regulator may recover the amount and any interest payable on the amount from the recipient as a debt;
    - (vii) the contact details of the regulator; and
  - (b) include or be accompanied by an information notice for the decision to give the cost recovery notice.

#### **444 Regulator may recover costs**

- (1) If the recipient of a cost recovery notice does not pay the amount claimed to the regulator within 30 days after the day the notice is given, the regulator may recover the amount and

- any interest payable on the amount under subsection (4) from the recipient as a debt.
- (2) However, the amount is not payable if the recipient is not a prescribed person.
  - (3) Also, the amount is not payable if—
    - (a) the water supply incident was caused by a terrorist act or other deliberate act of sabotage by someone other than the recipient; and
    - (b) the recipient had taken all measures it would be reasonable for the recipient to have taken to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the nature of the recipient's connection with the incident.
  - (4) An amount that is a debt under subsection (1) bears interest at the rate stated in a regulation.
  - (5) If a cost recovery notice is given to 2 or more recipients the amount claimed in the notice is payable by the recipients jointly and severally.
  - (6) To the extent that the recipient pays an amount in compliance with a cost recovery notice but did not cause or permit the water supply incident to happen, the recipient may recover the amount as a debt from another person who caused or permitted the water supply incident to happen.

**445 Sections 445–449 not used**

See editor's note for section 1.

## Part 6 Other matters

### 450 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 where the damage happened in a conspicuous position and in a reasonably secure way.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes a person in possession or control of it.

### 451 Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under part 2, division 1 or 3, or part 5, the person may claim compensation from the State.

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*Editor's note—*

part 2 (Powers of authorised officers), division 1 (Entry of places) or 3 (Powers after entry) or part 5 (Particular enforcement provisions relating to drinking water and recycled water)

- (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.

**452 Sections 452–459 not used**

See editor's note for section 1.

## **Part 7                      Obtaining criminal history reports**

**460 Purpose of pt 7**

The purpose of this part is to help an authorised officer to decide whether the authorised officer's unaccompanied entry of a place under part 2 would create an unacceptable level of risk to the authorised officer's safety.

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#### **461 Chief executive's power to obtain criminal history report**

- (1) The chief executive may ask the commissioner of the police service for a written report about the criminal history of a person if an authorised officer reasonably suspects the person may be present at a place when the authorised officer enters the place under part 2.
- (2) The commissioner of the police service must give the report to the chief executive.
- (3) However, the report is required to contain only criminal history that is in the commissioner's possession or to which the commissioner has access.
- (4) The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person.
- (5) The chief executive may give the authorised officer information in the report about the offences identified under subsection (4).

#### **462 Criminal history is confidential document**

- (1) A person must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 461.  
Maximum penalty—100 penalty units.
- (2) However, the person does not contravene subsection (1) if—
  - (a) the disclosure of the report or information is for the purpose of the other person performing a function under or in relation to this Act; or
  - (b) the disclosure is otherwise required or permitted by law.
- (3) The chief executive or an authorised officer to whom the report or written information in the report is provided must destroy the report as soon as practicable after the authorised officer considers the risk mentioned in section 460.



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## **Part 8**                      **Notices and cost recovery**

### **Division 1**                **Show cause notices**

#### **463**    **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 person given a show cause notice, or a copy of the notice, may make submissions 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.

#### **464**    **Show cause notice must be given**

- (1) The regulator must, before giving a service provider a compliance notice for a matter, give the service provider a show cause notice about the matter.
- (2) Subsection (1) does not apply to a compliance notice given to a drinking water service provider or a recycled water provider in relation to a matter involving drinking water or recycled water.

## Division 2                      Compliance notices

### 465      Who may give 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 remedy the contravention.
- (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 be given only if, after considering any properly made submission by the service provider about the show cause notice, the regulator still believes it is appropriate to give the compliance notice.

### 466      Compliance notice

- (1) A compliance notice must state the following—
  - (a) that the chief executive, regulator or authorised officer reasonably believes the person to whom the notice is to be given—
    - (i) is contravening a provision of this Act; or

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- (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
  - (b) the provision the chief executive, regulator or authorised officer believes is being, or has been, contravened;
  - (c) briefly, how it is believed the provision is being, or has been contravened;
  - (d) that the person must remedy the contravention within a stated reasonable period;
  - (e) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse;
  - (f) that, within 30 business days after the notice is given, the person may apply for an internal review of the decision to give the notice;
  - (g) how the person may apply for the review.
- (2) The compliance notice may also state the reasonable steps that the chief executive, regulator or authorised officer is satisfied are necessary to remedy the contravention, or avoid further contravention, of the provision
  - (3) 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.
  - (4) If a compliance notice requires the person to refrain from doing an act, it also must state—
    - (a) a period for which the requirement applies; or
    - (b) that the requirement applies until further notice.
  - (5) A person to whom a compliance notice is given must comply with the compliance notice unless the person has a reasonable excuse.

Maximum penalty—

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- (a) if the compliance notice relates to an offence—the number of penalty units that applies for the offence; or
  - (b) otherwise—100 penalty units.
- (6) If it is an offence to contravene a provision and a compliance notice is given, the person can not be prosecuted for that offence unless the person contravenes subsection (4) in relation to the compliance notice.

#### **467 Chief executive or regulator may take action and recover costs**

- (1) If a person to whom a compliance notice is given contravenes the notice by not doing something, the chief executive or regulator may do the thing.
- (2) Subsection (3) applies if—
- (a) under section 359(2), a notice is taken to be a compliance notice; and
- Editor's note—*  
section 359 (Direction to owner of emergency part of land)
- (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) If the chief executive or regulator incurs expense in doing a thing under subsection (1) or (3), the chief executive or regulator must give the person a notice stating the amount of the expense incurred.
- (5) 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.
- (6) A debt under subsection (5) bears interest at the rate stated in a regulation.

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## Division 3                      Cost recovery

### 468      Regulator may engage expert and recover costs

- (1) This section applies if the regulator—
  - (a) reasonably believes a person is contravening, or has contravened, a provision of this Act; and
  - (b) reasonably considers the suspected contravention—
    - (i) has had, may have had, or may have an adverse effect on public health; or
    - (ii) is a matter about which the regulator requires expert advice including, for example, a matter involving complex operational or technical issues.
- (2) The regulator may engage an expert with suitable qualifications, expertise or experience to investigate and give advice about matters relevant to the suspected contravention.
- (3) If, after receiving the expert's advice, the regulator reasonably believes the person is contravening or has contravened a provision of this Act, the regulator may give the person a notice claiming a stated amount (the ***claimed amount***) for the reasonable expenses incurred by the regulator in engaging the expert.
- (4) The notice must—
  - (a) state the claimed amount; and
  - (b) include a description of the reasonable expenses giving rise to the claimed amount; and
  - (c) state that if the person does not pay the claimed amount to the regulator within 30 days after the day the notice is given, the regulator may recover the amount, and any interest payable on the amount under subsection (6), from the person as a debt; and
  - (d) if a compliance notice has not been given for the suspected contravention—include or be accompanied by

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an information notice for the regulator's decision about whether the person is contravening, or has contravened, a provision of this Act.

- (5) If the person does not pay the claimed amount to the regulator within 30 days after the day the notice is given, the amount, and any interest payable on the amount under subsection (6), may be recovered by the regulator as a debt.
- (6) A claimed amount that is a debt under subsection (5) bears interest at the rate stated in a regulation.

#### **469 Sections 469–474 not used**

See editor's note for section 1.

## **Part 9 Enforcement proceedings**

### **475 Starting proceeding for enforcement order**

- (1) Subject to subsection (2), a person may start a proceeding in a District Court—
  - (a) for an enforcement order to remedy or restrain the commission of an offence against this Act; or
  - (b) if the person has started a proceeding under paragraph (a) for an enforcement order and the court has not decided the proceeding—for an order under section 478; or
  - (c) for 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.

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- (2) A proceeding for an enforcement order in relation to an offence against a following provision of this Act may be started only by the person stated for the provision—
    - (a) a provision of chapter 2, part 4, division 3, chapter 3 or section 26, 73, 106(4), 107(7), 108, 110, 112, 141, 190, 531 or 630(4)—the regulator;
    - (b) section 43, 47, 144, 145, 193, 194 or 195—the service provider;
    - (c) section 168, 191 or 192—the regulator or the service provider.
  - (3) Subsection (2)(a) applies for an offence against section 531 only if the appointment of the administrator was made for section 530(1)(a).
  - (4) A proceeding for an enforcement order may be started whether or not anyone's right has been, or may be, infringed by, or because of, the commission of the offence.
  - (5) If a person other than the chief executive starts a proceeding under this section, the person must, within 5 business days of starting the proceeding, give the chief executive notice of the proceeding.

#### **476 Proceeding started in a representative capacity**

- (1) A proceeding for an enforcement order may be started by a person on behalf of an entity with the entity's consent.
- (2) If the entity on whose behalf the proceeding is started is an unincorporated body, the body's committee or other controlling or governing body must give the consent.
- (3) The entity on whose behalf the proceeding is started may contribute to, or pay, the legal costs incurred by the person starting the proceeding.

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#### **477 Starting proceeding for enforcement order without notice**

- (1) A person may start a proceeding for an enforcement order without notice to the other party.
- (2) Without limiting the discretion of a District Court in the exercise of its equitable jurisdiction, it 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 period 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, including, 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.

#### **478 Making interim enforcement order**

- (1) A District Court may make an order pending a decision of a proceeding for an enforcement order 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 damages.

#### **479 Making enforcement order**

- (1) A District Court may make an enforcement order if the court is satisfied the offence—
  - (a) is being, or has been, committed; or
  - (b) will be committed unless the enforcement order is made.



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- (2) If the court is satisfied the offence is being or has been committed, it 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 adverse impact on public health resulting, or likely to result, because of the commission of the offence; and
    - (b) 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.

#### **480 Effect of enforcement order**

- (1) An 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 District Court's powers, it may make an enforcement order requiring the repairing, demolition or removal or modification of a referable dam.

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- (3) An enforcement order must state the time by which it must be complied with.
- (4) An enforcement order—
  - (a) may be in terms the court considers appropriate to secure compliance with this Act; and
  - (b) must state the day by which the order must be complied with.

#### **481 Powers about enforcement orders**

- (1) A District Court's power to make an enforcement order to stop, or not to start, an activity may be exercised—
  - (a) whether or not it appears to the court the person against whom the order is made (the *relevant person*) intends to engage, or to continue to engage, in the activity; or
  - (b) whether or not the relevant person has previously engaged in an activity of the kind; or
  - (c) whether or not there is danger of substantial damage to property or injury to another person if the relevant person engages, or continues to engage, in the activity; or
  - (d) whether or not there is risk of failure of a referable dam.
- (2) The court's power to make an enforcement order to do anything may be exercised—
  - (a) whether or not 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) whether or not the person has previously failed to do a thing of the kind; or
  - (c) whether or not there is danger of substantial damage to property or injury to another person if the relevant person fails, or continues to fail, to do the thing; or
  - (d) whether or not there is risk of failure of a referable dam.

- (3) The court may cancel or change an enforcement order on the application of the person who started the proceeding or the person against whom the order is made.
- (4) The court's powers under this section are in addition to, and do not limit, its other powers.

#### **482 Parties to pay own costs for proceedings**

- (1) Each party to a proceeding for an enforcement order must bear the party's own costs for the proceeding.
- (2) However, the court may order a party to a proceeding to pay costs to another party if the court considers—
  - (a) the proceeding was frivolous or vexatious; or
  - (b) the party has incurred costs because the other party defaulted in the procedural requirements.

## **Chapter 6 Offences, evidentiary matters and legal proceedings**

### **Part 1 General offences**

#### **483 False or misleading statements**

- (1) A person must not state anything to the chief executive, regulator or an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—500 penalty units.

- (2) A complaint against a person for an offence against subsection (1) is sufficient if it states that the document was

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false or misleading to the person's knowledge, without specifying whether it was false or whether it was misleading.

#### **484 False or misleading documents**

- (1) A person must not give the chief executive, regulator or 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) A complaint against a person for an offence against subsection (1) is sufficient if it states that the document was false or misleading to the person's knowledge, without specifying whether it was false or whether it was misleading.

#### **485 Obstructing an authorised officer**

- (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) In this section—

*obstruct* includes assault, hinder and threaten, and attempt to obstruct.

#### **486 Impersonation of an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—200 penalty units.

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**487 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 its executive officers also commits an offence, namely, the offence of failing to ensure 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 its 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 that—
  - (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.

## **Part 2 Evidentiary matters**

**488 Application of pt 2**

This part applies to a proceeding under this Act.

**489 Appearance**

A party to a proceeding may appear personally or by lawyer or agent.

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#### **490 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.

#### **491 Evidentiary aids**

- (1) A certificate purporting to be signed by or for the chief executive or regulator stating any of the following matters is evidence of the matter—
  - (a) a stated decision, direction, notice or requirement is a decision, direction, notice or requirement under this Act;
  - (b) a stated thing is a thing that must or may be included in a register;
  - (c) that a stated document is a document kept under this Act;
  - (d) that a stated document is a copy of, or an extract from or part of, a thing mentioned in paragraph (a) or (b);
  - (e) that on a stated day—
    - (i) a stated person was given a stated decision, direction or notice under this Act; or
    - (ii) a stated direction or requirement under this Act was given to or made of a stated person;
  - (f) that on a stated day, or during a stated period, a person's appointment as an authorised officer was, or was not, in force.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the

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complainant on a stated day is evidence of the day it came to the complainant's knowledge.

## **Part 3 Proceedings for offences**

### **492 Indictable and summary offences**

- (1) An offence against this Act for which the maximum penalty of imprisonment is 2 or more years is an indictable offence.
- (2) An indictable offence against this Act is—
  - (a) for an offence for which the maximum penalty of imprisonment is 5 or more years—a crime; or
  - (b) otherwise—a misdemeanour.
- (3) Any other offence against this Act is a summary offence.

### **493 Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may, at the prosecution's election, be taken—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) Subsection (3) applies if—
  - (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
  - (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment.
- (3) The magistrate—

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- (a) must not decide the charge as a summary offence; and
  - (b) must proceed by way of an examination of witnesses in relation to an indictable offence.
- (4) If a magistrate acts under subsection (3)—
- (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 (3) is taken to be evidence in the proceeding for 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 under the *Justices Act 1886*, section 104(2)(b).

#### **494 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person; or
  - (b) for an examination of witnesses in relation to the charge.
- (2) However, if a proceeding for an indictable 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*.
- (3) The maximum penalty that may be imposed on a summary conviction of an indictable offence is as follows—
  - (a) to the extent the penalty imposed is a number of penalty units—500 penalty units;
  - (b) to the extent the penalty imposed is imprisonment—1 year's imprisonment.



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**495 Limitation on time for starting proceeding for summary offence**

A proceeding for a summary offence against this Act must start—

- (a) within 1 year after the offence is committed; or
- (b) within 1 year after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

**496 Notice of proceedings for offences**

If a person other than the chief executive or the regulator brings a proceeding under this part, the person must, within 5 business days of starting the proceeding, give the chief executive notice of the proceeding.

**497 Limitation on who may bring particular proceedings**

- (1) A proceeding for an offence against this Act may be started only by—
  - (a) for an offence against a provision of chapter 2, part 4, division 3 or chapter 3 or section 26, 73, 106(4), 107(7), 108, 110, 112, 141, 190, 531 or 630(4)—the Attorney-General or regulator; or
  - (b) for an offence against section 43, 47, 144, 145, 193, 194 or 195—the Attorney-General or service provider; or
  - (c) for an offence against section 168, 191 or 192—the Attorney-General, regulator or service provider.
- (2) Subsection (1) applies for an offence against section 531 only if the appointment of the administrator was made for section 530(1)(a).

**498 Proceeding brought in a representative capacity**

- (1) A proceeding mentioned in section 497(1) may be started by a person on behalf of an entity with the entity's consent.
- (2) If the entity on whose behalf the proceeding is started is an unincorporated body, the body's committee or other controlling or governing body must give the consent.
- (3) The entity on whose behalf the proceeding is started may contribute to, or pay, the legal costs incurred by the person starting the proceeding.

**499 Orders Magistrates Court may make in offence proceeding**

- (1) After hearing a complaint for an offence against this Act, the Magistrates Court may make an order against the defendant the court 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—
  - (a) to do or not to do another act in relation to failure impact assessment; or
  - (b) to 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 by which, or period within which, the order must be complied with.
- (5) The order may state that contravention of the order is a public nuisance.

**500 Offence to contravene Magistrates Court order**

A person against whom an order under section 499 has been made must comply with the order.

Maximum penalty—1000 penalty units.

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## Part 4                      Miscellaneous provisions

### 501      **Chief executive's and regulator's power to remedy stated public nuisance**

- (1) This section applies if an order under section 499 states that contravention of the order is a public nuisance.
- (2) If the order is not complied with, the chief executive or the regulator may undertake any work necessary to remove the nuisance.
- (3) If the chief executive or the regulator carries out works under subsection (2), the chief executive or the regulator may recover as a debt from the person against whom the order was made the reasonable cost of the works.

### 502      **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—



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- (2) The decision or action for which a notice was given under subsection (1) is an *original decision*.

## Part 2 Review of decisions

### 511 Appeal or external review process starts with internal review

Every appeal or application for external review of an original decision must be, in the first instance, by way of an application for internal review.

### 512 Who may apply for review

- (1) An interested person for an original decision may apply for an internal review of the decision (an *internal review application*).
- (2) An internal review application may be made only to the following person (the *reviewer*)—
- (a) for a decision mentioned in section 510(1)(a)—the chief executive;
  - (b) for a decision mentioned in section 510(1)(b)—the regulator;
  - (c) for a decision mentioned in section 510(1)(c)—the chief executive officer of the local government.

### 513 Requirements for making internal review application

- (1) An internal review application must be—
- (a) in the approved form; and
  - (b) accompanied by a statement of the grounds on which the applicant seeks the review of the decision; and

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- (c) supported by enough information to enable the reviewer to decide the application; and
  - (d) made within 30 business days after the day the applicant is given an information notice about the decision to which the application relates or a compliance notice.
- (2) However, the reviewer may, at any time, extend the time for making an internal review application.
- (3) On or before making the internal review 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 of the notice that written submissions on the internal review application may be made to the reviewer within 5 business days after the application is made to the reviewer.

#### **514 Review decision**

- (1) The reviewer must, within 20 business days after receiving an internal review application—
- (a) review the original decision the subject of the application; 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.

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- (2) The reviewer may, by notice to the applicant and before the period mentioned in subsection (1) has expired, extend the period by not more than 30 business days.
  - (3) Only 1 notice may be given under subsection (2) for each internal review.
  - (4) 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.
  - (5) Subsection (4)—
    - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and  
*Editor's note—*  
*Acts Interpretation Act 1954*, section 27A (Delegation of functions or powers)
    - (b) does not apply to an original decision made by the chief executive.
  - (6) If the review decision confirms the original decision, for the purpose of arbitration, external review or an appeal, the original decision is taken to be the review decision.
  - (7) If the review decision amends the original decision, for the purpose of arbitration, external review or an appeal, the original decision as amended is taken to be the review decision.

## 515 Notice of review decision

- (1) The reviewer must, within 10 business days after making a review decision, give each of the following notice of the review decision (a *review notice*)—
  - (a) the applicant;
  - (b) any person who was given notice of the original decision.

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- (2) The review notice must state—
  - (a) the reasons for the review decision; and
  - (b) if the review decision is not the decision sought by the applicant, that the applicant may, within 30 business days after the review notice is given—
    - (i) for a decision or action mentioned in section 351, 352, 354, 356 or 359—appeal against the decision to the Planning and Environment Court; or
    - (ii) for a decision or action mentioned in section 510(1)(b) that is a decision or action relating to a matter involving drinking water or recycled water—appeal against the decision to the Planning and Environment Court; or
    - (iii) for a decision or action mentioned in section 510(1)(b), other than a decision or action mentioned in subparagraph (ii)—apply for arbitration on the decision under part 4; and
  - (c) if the notice states under paragraph (b)(iii) that the applicant may apply for arbitration—that the applicant may apply to a court with jurisdiction to hear the proceeding for a stay of the review decision; and
  - (d) if the notice states under paragraph (b)(i) or (ii) that the applicant may appeal to the Planning and Environment Court—that the applicant may apply to the court for a stay of the review decision.
- (2A) For the following decisions, the review notice must comply with the QCAT Act, section 157(2)—
  - (a) a decision or action mentioned in section 510(1)(a) for which a compliance notice was given, other than a decision or action mentioned in subsection (2)(b)(i);
  - (b) a decision or action mentioned in section 510(1)(c).
- (3) A copy of the relevant appeal or arbitration provisions of this Act, or the provisions of the QCAT Act about external review,



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must also be given with each review notice or copy of a review notice.

- (4) If the reviewer does not give the review notice within the 10 days, the reviewer is taken to have made a decision confirming the original decision.

### **516 Stay of operation of original decision**

- (1) An internal review application does not stay the original decision the subject of the application.
- (2) However, the applicant may immediately apply for a stay of the original decision to—
- (a) if, under section 515(2)(b)(i) or (ii), the applicant would be able to appeal to the Planning and Environment Court—the Planning and Environment Court; or
  - (b) if, under section 515(2A), the applicant would be able to apply to QCAT for an external review—QCAT; or
  - (c) if, under section 515(2)(b)(iii), the applicant would be able to apply for arbitration—a court with jurisdiction to hear the proceeding.
- (2A) An application to QCAT under subsection (2)(b) must be made as provided under the QCAT Act.
- (3) The court or QCAT may stay the original decision to secure the effectiveness of the internal review and a later arbitration, appeal to the court or external review by QCAT.
- (4) The stay—
- (a) may be given on conditions the court or QCAT considers appropriate; and
  - (b) operates for the period fixed by the court or QCAT; and
  - (c) may be revoked or amended by the court or QCAT.
- (5) The period of the stay must not extend past the day when the reviewer makes a review decision about the original decision

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and any later period the court or QCAT allows the applicant to enable the applicant to—

- (a) seek arbitration on the review decision; or
  - (b) appeal against or apply for external review of the review decision.
- (6) An internal review application affects the original decision, or carrying out of the decision, only if the decision is stayed.

## **Part 3 Appeals and external reviews**

### **517 Who may appeal or apply for an external review**

- (1) If an interested person has applied for an internal review of an original decision, any interested person for the original decision may appeal against or apply for an external review of the review decision to—
- (a) if the review decision was about an original decision or action mentioned in section 351, 352, 354, 356 or 359—the Planning and Environment Court; and
  - (b) if the review decision was about a decision or action mentioned in section 510(1)(a) for which a compliance notice was given or a decision or action mentioned in section 510(1)(c)—QCAT; and
  - (c) if the review decision was about a decision or action mentioned in section 510(1)(b) that is a decision or action relating to a matter involving drinking water or recycled water—the Planning and Environment Court.
- (2) An application to QCAT under subsection (1)(b) must be made as provided under the QCAT Act.

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## **518 Starting an appeal to Planning and Environment Court**

- (1) An appeal is started by—
  - (a) filing a notice of appeal with the court; and
  - (b) if the review decision being appealed against was about an original decision of the chief executive—serving a copy of the notice on the chief executive; and
  - (c) if the review decision being appealed against was about an original decision of the regulator—serving a copy of the notice on the regulator; and
  - (d) complying with the rules of court applicable to the appeal.
- (2) The notice of appeal must be filed within 30 business days after the appellant receives notice of the review decision appealed against.
- (3) However, the court may, at any time, extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

## **519 Stay of operation of review decision**

- (1) The court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A 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.
- (3) The period of the stay stated by the court must not extend past the time when the court decides the appeal.

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- (4) An appeal against a review decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

## **520 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 or magistrate.
- (2) An appeal is by way of rehearing, unaffected by the review decision.

## **521 Assessors**

If the judge or magistrate hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge or magistrate may appoint 1 or more assessors to help in deciding the appeal.

## **522 Powers of court on appeal**

- (1) In deciding an appeal, the court may—
  - (a) confirm the review decision appealed against; or
  - (b) set aside the review decision and substitute another decision; or
  - (c) send the matter back to the reviewer and give the directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for the purposes of this Act, other than this part, taken to be the review decision.

## **523 Appeal costs**

- (1) Each party to an appeal must bear the party's own costs for the appeal.

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- (2) However, the court may order a party to an appeal to pay costs to another party if the court considers—
- (a) the appeal was frivolous or vexatious; or
  - (b) the party has incurred costs because the other party defaulted in the procedural requirements.

## Part 4 Arbitration

### 524 Who may apply for arbitration

- (1) This section applies to a review decision about an original decision the subject of an information notice or a compliance notice mentioned in section 510(1)(b), other than an original decision that is a decision relating to a matter involving drinking water or recycled water.
- (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 interested person receives notice of the decision; 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.

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### **524A Stay of operation of review decision**

- (1) An application for arbitration does not stay the review decision.
- (2) However, an applicant may immediately apply for a stay of the review decision to a court with jurisdiction to hear the proceeding.
- (3) The court may stay the review decision to secure the effectiveness of the arbitration.
- (4) A 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.
- (5) The period of the stay stated by the court must not extend past the time when the arbitration is decided.

### **525 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.

### **526 Withdrawing dispute notice**

The interested person may withdraw the dispute notice at any time before the authority makes its decision on the dispute.

### **527 Parties to arbitration**

The parties to the arbitration are the interested person and the regulator.

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**528 Decision by authority**

- (1) The authority must give a written decision in an arbitration on the dispute.
- (2) When making the decision, the authority must give the parties its reasons for making the decision.
- (3) However, the authority is not required to make a decision 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.

**529 Conduct of arbitration**

The *Queensland Competition Authority Act 1997*, part 7, applies to the arbitration.

## **Chapter 8 Miscellaneous**

### **Part 1 Appointment of administrator and emergency powers for particular infrastructure**

#### **Division 1 Appointment of administrator**

**530 Governor in Council may appoint administrator to operate infrastructure**

- (1) Subsection (2) applies if the Minister is satisfied, or reasonably believes—

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- (a) a service provider has not complied with a compliance notice given by the regulator under section 465; or
  - (b) 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.
- (2) The Governor in Council may, by gazette notice, authorise any of the following persons (an *administrator*) to operate the infrastructure and use the service provider's water entitlement to supply the registered service—
  - (a) the regulator;
  - (b) any other person who has the necessary experience or qualifications to operate the infrastructure.
- (3) Subsection (4) applies if the Minister is satisfied, or reasonably believes, a scheme manager, or recycled water provider or other declared entity, (the *responsible entity*) for a critical recycled water scheme—
  - (a) has not complied with a compliance notice; or
  - (b) has stopped, or is likely to stop, supplying recycled water under the scheme.
- (4) The Governor in Council may, by gazette notice, authorise any of the following persons (also an *administrator*) to operate the responsible entity's infrastructure for producing or supplying recycled water under the scheme—
  - (a) the regulator;
  - (b) any other person who has the necessary experience or qualifications to operate the infrastructure.
- (5) An authorisation under subsection (2) or (4) has effect from the day the notice is published until—
  - (a) the day stated in the notice; or
  - (b) if no day is stated in the notice—the day a further notice withdrawing the authorisation is published in the gazette.



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- (6) The authorisation may deal with any matter necessary or convenient to help the administrator operate the infrastructure and supply the registered service or recycled water.

### **531 Effect of administrator operating infrastructure**

- (1) If an administrator is authorised under section 530 to operate infrastructure, the infrastructure may be operated by—
- (a) the administrator; or
  - (b) 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 act, or refuse to act, if the acting or refusal has the effect of preventing or hindering the administrator or operator from operating the infrastructure.

Maximum penalty—1665 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 responsible entity 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 the service provider or responsible entity any income received by the administrator

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from operating the infrastructure less all costs mentioned in subsection (6).

### **532 Effect of appointment of administrator**

- (1) Subsections (2) and (3) apply if an administrator is authorised under section 530(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 530(2) until the day stated in the notice or a further notice under section 530(5)(b) is published.
- (3) The administrator is taken to be the service provider for the period the administrator's authorisation under section 530(2) is effective.
- (4) Subsection (5) applies if an administrator is authorised under section 530(4) to operate a responsible entity's infrastructure.
- (5) The administrator is taken to be the responsible entity for the period the administrator's authorisation under section 530(4) is effective.

### **533 Withdrawing appointment of administrator**

- (1) The Governor in Council may, by gazette notice, withdraw an authorisation given under section 530(2) or (4).
- (2) If the authorisation is about the operation of a service provider's infrastructure, the suspension of the service provider's registration is removed from the day the notice is published.

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## **Division 2                      Emergency powers for operating particular infrastructure**

### **534      Regulator or other person may operate infrastructure for drinking water—regulator’s notice**

- (1) This section applies if the regulator is satisfied, or reasonably believes—
  - (a) a drinking water service provider for a drinking water service—
    - (i) has not complied with a compliance notice; or
    - (ii) has stopped, or is likely to stop, the drinking water service; and
  - (b) that because of exceptional circumstances, it is necessary for the regulator, or another person appointed by the regulator, to operate the provider’s infrastructure for the service to protect public health.
- (2) The regulator may, on giving notice under this section to the drinking water service provider—
  - (a) operate the provider’s infrastructure for the drinking water service; or
  - (b) appoint another person, who has the necessary experience or qualifications, to operate the infrastructure.
- (3) The notice must—
  - (a) describe the infrastructure; and
  - (b) state the reasons that the regulator has given the notice; and
  - (c) state the period for which the regulator or other person may operate the infrastructure.
- (4) If the regulator operates the infrastructure under subsection (2)(a), the regulator may operate the infrastructure for the period—

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- (a) starting on the day the notice is given to the drinking water service provider; and
  - (b) ending on the first of the following days to happen—
    - (i) the day that is 30 business days after the day the notice is given;
    - (ii) the day an administrator is authorised under section 530 to operate the infrastructure for the drinking water service provider's drinking water service.
- (5) If, under subsection (2)(b), the regulator appoints another person to operate the infrastructure—
- (a) the regulator must give the drinking water service provider notice of the appointment; and
  - (b) the person may operate the infrastructure for the period starting on the day the person is appointed and ending on the first of the following days to happen—
    - (i) the day that is 30 business days after the day the notice mentioned in subsection (2) is given to the drinking water service provider;
    - (ii) the day an administrator is authorised under section 530 to operate the infrastructure for the provider's drinking water service.

**535 Regulator or other person may operate infrastructure for recycled water—regulator's notice**

- (1) This section applies if the regulator is satisfied, or reasonably believes—
- (a) a scheme manager, or recycled water provider or other declared entity, (the *responsible entity*) for a critical recycled water scheme—
    - (i) has not complied with a compliance notice; or
    - (ii) has stopped, or is likely to stop, supplying recycled water under the scheme; and

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- (b) that because of exceptional circumstances, it is necessary for the regulator, or another person appointed by the regulator, to operate the responsible entity's infrastructure for supplying recycled water under the scheme—
- (i) to protect public health; or
  - (ii) to ensure the continuity of operation of the recycled water scheme.
- (2) The regulator may, on giving notice under this section to the responsible entity—
- (a) operate the responsible entity's infrastructure for producing or supplying recycled water under the scheme; or
  - (b) appoint another person, who has the necessary experience or qualifications, to operate the infrastructure.
- (3) The notice must—
- (a) describe the infrastructure; and
  - (b) state the reasons that the regulator has given the notice; and
  - (c) state the period for which the regulator or other person may operate the infrastructure.
- (4) If the regulator operates the infrastructure under subsection (2)(a), the regulator may operate the infrastructure for the period—
- (a) starting on the day the notice is given to the responsible entity; and
  - (b) ending on the first of the following days to happen—
    - (i) the day that is 30 business days after the day the notice is given;
    - (ii) the day an administrator is authorised under section 530(4) to operate the responsible entity's

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infrastructure for supplying recycled water under the critical recycled water scheme.

- (5) If, under subsection (2)(b), the regulator appoints another person to operate the infrastructure—
  - (a) the regulator must give the responsible entity notice of the appointment; and
  - (b) the person may operate the infrastructure for the period starting on the day the person is appointed and ending on the first of the following days to happen—
    - (i) the day that is 30 business days after the day the notice mentioned in subsection (2) is given to the responsible entity;
    - (ii) the day an administrator is authorised under section 530(4) to operate the responsible entity's infrastructure for supplying recycled water under the critical recycled water scheme.

### **536 Effect of operating infrastructure**

- (1) This section applies if, under section 534 or 535, the regulator or another person operates an entity's infrastructure.
- (2) Section 531(2) to (7) applies in relation to the operation of the infrastructure—
  - (a) as if a reference in the section to the administrator or operator were a reference to the regulator or other person; and
  - (b) as if the reference in section 531(6) to the administrator's reasonable costs were a reference to the regulator's or other person's reasonable costs; and
  - (c) as if the reference in section 531(7) to the administrator were a reference to the regulator or other person.
- (3) The regulator or other person is taken to be the drinking water service provider or responsible entity for the period for which the regulator or person may operate the infrastructure.

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## **Division 3                      Other matter**

### **537      Corporations legislation displacement provision**

This part is declared to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G, in relation to the provisions of chapter 5 of that Act.

*Notes—*

- 1 Chapter 5 of the Corporations Act provides for the external administration of corporations.
- 2 Section 5G of that Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

### **538      Sections 538–559 not used**

See editor’s note for section 1.

## **Part 2                              Relationship with Planning Act**

### **560      Codes for Planning Act**

A regulation may state a code against which development applications under the Planning Act may be assessed by the chief executive as an assessment manager or concurrence agency under that Act.

### **561      Development applications for referable dams**

- (1) This section applies if a person makes a development application under the Planning Act for operational work—

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- (a) that is the construction of a referable dam; or
  - (b) that will increase the storage capacity of a referable dam by more than 10%.
- (2) The development application must be supported by—
- (a) evidence that the chief executive has accepted a failure impact assessment of the dam; and
  - (b) if a water entitlement is required to operate the dam—the chief executive’s written consent to the application being made.
- (3) If the chief executive is the assessment manager or a referral agency for the development application, the chief executive must assess the development application against the purposes of this Act to the extent the purposes relate to a referable dam.
- (4) Subsection (3) does not limit the following provisions of the Planning Act—
- (a) section 282;
  - (b) chapter 6, part 5, division 2.

## **562 When applicant may appeal to Land Court**

- (1) This section applies if—
- (a) an applicant makes a development application for operational work—
    - (i) that is the construction of a referable dam; or
    - (ii) that will increase the storage capacity of a referable dam by more than 10%; 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.



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- (2) Despite the Planning Act, chapter 7, if the applicant appeals against a decision about the development application, the appeal may be to the Land Court.

**563 Sections 563–569 not used**

See editor's note for section 1.

## **Part 3 Other miscellaneous provisions**

**570 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.

**571 Regulator may make guidelines**

- (1) The regulator may make guidelines to provide guidance to persons about any of the following—
- (a) preparing a strategic asset management plan;

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- (b) preparing a system leakage management plan;
  - (c) granting an exemption from preparing a system leakage management plan;
  - (d) preparing customer service standards;
  - (e) preparing a drought management plan;
  - (f) preparing an outdoor water use conservation plan;
  - (g) the quality of drinking water or recycled water;
  - (h) preparing a drinking water quality management plan or recycled water management plan;
  - (i) validating recycled water schemes;
  - (j) applying for, and granting, an exemption from preparing a recycled water management plan;
  - (k) preparing audit reports under chapter 2 or 3;
  - (l) preparing annual reports under sections 142 or 271;
  - (m) issuing a rate notice or account for the supply of water to residential premises;
  - (n) granting exemptions for small service providers under section 147;
  - (o) another matter relating to the administration of this Act.
- (2) A guideline about the quality of drinking water or recycled water must not be inconsistent with any standard about the quality of drinking water or recycled water prescribed in a regulation under the Public Health Act.

## **572 Chief executive may make guidelines**

The chief executive may make guidelines to provide guidance to persons about any of the following—

- (a) preparing a water efficiency management plan;
- (b) failure impact assessment of water dams;

- (c) applying safety conditions to a referable dam;
- (d) another matter relating to the administration of this Act.

**573 Water service provider may make guidelines**

A water service provider may make guidelines to provide guidance to persons about preparing a water efficiency management plan.

**574 Documents regulator and chief executive must keep available for inspection and purchase**

- (1) The regulator and the chief executive 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 guideline made under section 571 or 572;
  - (b) each annual report prepared by the regulator under section 14.
- (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 person may, on payment of a fee decided by the chief executive or regulator, obtain a copy of a document available for inspection under this section.
- (4) The fee decided by the chief executive or regulator must not be more than the reasonable cost of providing the copy.

**575 Documents service provider must keep available for inspection and purchase**

- (1) 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—

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- (a) any guideline made for preparing a water efficiency management plan;
  - (b) each audit report prepared under section 108;
  - (c) each drought management plan prepared under section 123;
  - (d) each annual report prepared under section 141;
  - (e) each map of a service area prepared under section 163.
- (2) The service provider may also keep a copy of a document mentioned in subsection (1) available for inspection by the public at other places the service provider considers appropriate.
  - (3) A person may, on payment of a fee decided by the service provider, obtain a copy of a document available for inspection under this section.
  - (4) The fee decided by the service provider must not be more than the reasonable cost of providing the copy.

**576 Documents recycled water provider must keep available for inspection and purchase**

- (1) A recycled water 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 provider—
  - (a) each regular audit report prepared under section 261;
  - (b) each annual report prepared under section 271.
- (2) The recycled water provider may also keep a copy of a document mentioned in subsection (1) available for inspection by the public at other places the provider considers appropriate.
- (3) A person may, on payment of a fee decided by the recycled water provider, obtain a copy of a document available for inspection under this section.

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- (4) The fee decided by the recycled water provider must not be more than the reasonable cost of providing the copy.

### **577 Records to be kept in registries**

- (1) If the chief executive gives an owner or operator of a dam a notice under section 359(1), the chief executive must give the registrar of titles a copy of the notice.
- (2) 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 mentioned in section 359(1) will show that—
- (a) a notice has been given under section 359(1) for the land; and
  - (b) particulars of the notice may be obtained from the chief executive.
- (3) If the chief executive is satisfied the notice has been complied with or is no longer required, the chief executive must ask the registrar of titles to remove the notice from the register.
- (4) If the registrar of titles receives a request under section 361, the registrar must register, release or vary the charge according to the request.

### **578 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—
- official* means—
- (a) the Minister; or
  - (b) the chief executive; or

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- (c) the regulator; or
- (d) an authorised officer; or
- (e) a member of an advisory council; or
- (f) a person acting under the direction of a person mentioned in paragraph (a), (b), (c) or (d).

### **579 Regulator may share particular information**

- (1) The regulator may give the following information to any person or entity to prevent or minimise a risk or potential risk to public health—
  - (a) information about a responsible entity, including information identifying an individual;
  - (b) information about a drinking water service or recycled water scheme.
- (2) In this section—

*responsible entity* means—

  - (a) a drinking water service provider; or
  - (b) a recycled water provider or other declared entity for a recycled water scheme; or
  - (c) the scheme manager for a multiple-entity recycled water scheme; or
  - (d) the SEQ Water Grid Manager.

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

- (1) This section applies if—
  - (a) information about a person (a *client*) is received by the Minister, the chief executive or the regulator (the *entity*)

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- under section 13 or chapter 2, part 4, division 3 or chapter 3; and
- (b) the client who provides the information advises the entity that the information is commercially sensitive; and
  - (c) the entity believes disclosure of the information—
    - (i) would be likely to damage the client’s commercial activities; and
    - (ii) would not be in the public interest.
- (2) The entity must take all reasonable steps to ensure the information is not, without the client’s consent, disclosed to another person other than—
- (a) an employee of the department who receives the information in the course of the employee’s duties; or
  - (b) the chief executive of the department in which the Public Health Act is administered, if the disclosure is for the purpose of preventing or minimising a risk, or potential risk, to public health.
- (3) An employee mentioned in subsection (2)(a) must not disclose to any person information the employee obtains under subsection (2).
- (4) In this section—

*commercially sensitive* means reasonably expected to affect adversely the client’s commercial activities, if made publicly available.

## **581 Delegation by Minister**

The Minister may delegate the Minister’s powers under this Act to an appropriately qualified public service officer or employee.

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## **582 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.

## **583 Fees and charges payable to chief executive and regulator**

- (1) This section applies to a fee or charge payable under a regulation made under this Act to the chief executive or regulator.
- (2) If an amount of a fee or charge remains unpaid after the day stated in the regulation for payment of the fee or charge—
  - (a) the amount is a debt payable to the State; and
  - (b) the late fee prescribed in the regulation applies to the amount.
- (3) The Minister may waive all or part of a fee or charge payable by a person if the Minister is satisfied payment of the fee would cause financial hardship to the person because of the effects of—
  - (a) drought, flood, fire or other natural disaster; or
  - (b) economic recession.

## **584 Non-payment of fees or charges**

- (1) This section applies if all or part of a fee or charge payable to the chief executive or regulator remains unpaid for 20 business days after the day stated in the regulation for payment of the fee or charge.
- (2) The chief executive or regulator may give the person who is liable to pay the fee or charge a written notice—
  - (a) stating the period to which the fee or charge relates; and
  - (b) stating the amount, including any late fee, owing at the date of the notice; and



- (c) requiring the person—
  - (i) to pay the amount owing; or
  - (ii) to make arrangements, satisfactory to the chief executive or regulator, for payment of the amount owing.

**585 Approved forms**

The chief executive and the regulator may each approve forms for use under this Act.

**586 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) prescribe fees and charges payable under this Act; or
  - (b) state the standards for the design and construction of water supply and sewerage infrastructure; or
  - (c) prescribe the experience or qualifications necessary for a person to conduct an audit under chapter 3; or
  - (d) prescribe the qualifications or experience necessary for particular persons engaged in—
    - (i) the operation of a drinking water service; or
    - (ii) the production or supply of recycled water by a recycled water provider; or
  - (e) impose a penalty of no more than 20 penalty units for contravention of a regulation.

## **Chapter 9            Transitional and savings provisions for Act No. 34 of 2008**

### **Part 1                    Purposes, definitions and general approach**

#### **587    Main purposes of ch 9**

The main purposes of this chapter are as follows—

- (a) to provide for provisions of this Act that are substantially the same as provisions of the Water Act to be dealt with as replacements of the provisions of that Act;
- (b) without limiting paragraph (a), if a matter was dealt with in the Water Act, chapter 3, by providing for something to be dealt with under that Act, to provide for the matter to be dealt with under this Act;
- (c) to provide for matters that were not dealt with in the Water Act that are dealt with under this Act.

#### **588    Definitions for ch 9**

In this chapter—

*authorised action* means an action done under a previous provision.

*authorised document* means a document made or kept under a previous provision.

*commencement* means the day this section commences.

*corresponding provision*, for a previous provision, means a provision of this Act that is substantially the same as the previous provision.

*made* includes given and issued.

*obligation* includes duty.

*previous*, in relation to a stated provision that includes a number, means the provision of the Water Act with that number immediately before the commencement.

*previous provision* means a provision of the Water Act, as in force immediately before the commencement.

*protection* includes a statement that—

- (a) there is no liability; and
- (b) there is no invalidity; and
- (c) a person has an entitlement.

## **589 Authorised actions and documents etc. under previous provision**

- (1) This section applies to the following—
  - (a) an authorised action or document done, made or kept under a previous provision if the authorised action or document continued to have effect or was in force immediately before the commencement;
  - (b) an entity's obligation under a previous provision if the obligation applied to the entity immediately before the commencement;
  - (c) a protection under a previous provision that applied to an entity immediately before the commencement.
- (2) Subject to a specific provision of this Act in relation to an authorised action or document, or obligation or protection under a previous provision, if there is a corresponding provision for the previous provision, the authorised action or document, or the obligation or protection—
  - (a) continues in force or to have effect according to its terms; and

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- (b) may be taken to have been done, made, kept or applied under the corresponding provision.
- (3) Subsection (2) does not apply to a statutory instrument that is, immediately before the commencement, subordinate legislation.
- (4) However subsection (2)(b) applies whether or not the previous provision refers to the action or document, or obligation or protection by reference to a provision of the Water Act.
- (5) Other provisions of this part include examples for this section.

*Note—*

The examples are examples under the *Acts Interpretation Act 1954*, section 14D.

## **590 Things continued in force under Water Act**

- (1) This section applies to a thing (*the thing*) that happened under an Act other than the Water Act but that, under the Water Act and in particular under the Water Act, chapter 3, continued to have effect.
- (2) If the thing has not ended before the commencement of this section, the thing continues to have effect under this Act.
- (3) Matters in relation to the thing are to be done under this Act unless a provision of the Water Act, chapter 3, provides otherwise and for the purpose the provision continues to have effect.
- (4) This section does not limit section 589 or another provision of this chapter about the thing.

## **591 Terminology in things mentioned in s 589(1)**

- (1) This section applies to a document that is—
  - (a) any of the things mentioned in section 589(1), including, for example, an authorised action or document; or
  - (b) evidence of any of the things.

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- (2) A reference in the document to the thing is to be read, if the context permits and with the necessary changes to terminology, as if the thing were done, made or kept under this Act.

*Example for subsection (2)—*

A notice given under the Water Act by the appointer to an authorised person limiting the powers of the authorised officer is to be read as if the notice limited the powers of the authorised officer under this Act.

## **592 Period stated in previous provision**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing continues to have started from when the period started under the previous provision.

## **593 Period or date stated in document given under previous provision**

- (1) This section applies if—
- (a) there was a previous provision that provided for a document to be made under it; and
  - (b) there is a corresponding provision to the previous provision; and
  - (c) under the previous provision and before the commencement—
    - (i) a document was given to a person, whether or not the person had received the document before the commencement; or

*Example for subparagraph (i)—*

A notice under previous section 381 that states a period within which a person who is making an unauthorised

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connection to a service provider's infrastructure must state why the service provider should not disconnect the connection.

- (ii) a document was published.

*Example for subparagraph (ii)—*

a gazette notice under previous section 955(2) authorising an administrator to operate a service provider's infrastructure for a registered service

- (2) If the document stated a period for doing something—
- (a) the stated period continues to apply for doing the thing; and
  - (b) the period continues to have started from when the period started under the previous provision.
- (3) If the document stated a day before which, or by which, a thing is to be done (however expressed), the thing must be done by the stated day.

**594 Act or omission happening before commencement may be relevant to proceeding for particular acts or omissions**

- (1) An act or omission that happened before the commencement of this section may be relevant to a proceeding relating to a contravention of a provision of this Act involving an act or omission that happened after the commencement.
- (2) This section does not limit the *Acts Interpretation Act 1954*, section 20C.

*Editor's note—*

*Acts Interpretation Act 1954*, section 20C (Creation of offences and changes in penalties)

- (3) In this section—  
***contravention*** includes an alleged contravention.

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**595 Acts Interpretation Act 1954, s 20 not limited**

This chapter does not limit the *Acts Interpretation Act 1954*, section 20.

**Part 2 Transitional provisions relating to particular provisions of the Water Act**

**Division 1 Transitional provisions relating to the Water Act, chapter 3**

**Subdivision 1 Examples for chapter 2**

**596 Examples for ch 2 of things under s 589**

For the operation of chapter 2, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 3—

- (a) an application to the regulator under a previous provision, including, for example, the following—
  - (i) an application under previous section 371 for registration as a service provider;
  - (ii) an application under previous section 373 to amend a service provider's details of registration in the service provider register;
  - (iii) an application under previous section 376B to have a service provider's registration cancelled;
- (b) the registration by the regulator under previous section 372 of a service provider;

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- (c) a notice under a previous provision, including, for example, the following—
  - (i) a notice under previous section 374 of a proposed transfer of ownership of a service provider's infrastructure;
  - (ii) a notice under previous section 376 of a possible stoppage of the supply of a service provider's registered service;
  - (iii) a notice under previous section 378 of a change of a service provider's registration details;
  - (iv) a notice given under previous section 381 asking a person to state why the service provider should not disconnect an unauthorised connection to the service provider's infrastructure;
  - (v) a notice under previous section 382 to do particular work in relation to a service provider's infrastructure;
- (d) the installation of a meter under previous section 383;
- (e) the imposition of a service provider water restriction under previous section 388;
- (f) an extension of time under previous section 402(5) or 491(5);
- (g) a report under previous section 404;
- (h) a show cause notice under a previous provision, including, for example, a show cause notice under previous section 419(2) or 471(2);
- (i) a submission made in relation to a show cause notice;
- (j) an information notice under a previous provision;

*Examples—*

previous sections 412(2), 414F(3), 414H(3), 414J(3), 414K(2), 419(6), 427(6), 429F(5), 429G(3), 436(1) or (5), 437(3) and 471(4) or (8)



- (k) a register of service providers under previous section 516.

### **597 Examples for ch 2 of obligations under s 589**

For the operation of chapter 2, the following are examples of obligations for section 589 in relation to matters dealt with under the Water Act, chapter 3—

- (a) an obligation under previous section 384(2) to give notice of entry to premises;
- (b) an obligation under previous section 385 to give notice of the particulars of damage to anything;
- (c) an obligation to comply with a direction given under previous section 388A(3);
- (d) an obligation to comply with an approved response under previous section 388A(6);
- (e) a requirement of a service provider under previous section 400(3);
- (f) a requirement for a service provider to arrange regular audit reports, and give the reports to the regulator, under previous section 417(1).

### **598 Examples for ch 2 of protections under s 589**

For the operation of chapter 2, the following are examples of protections for section 589 in relation to matters dealt with under the Water Act, chapter 3—

- (a) a right for a service provider to recover a loss or costs, as a debt due to the service provider, under a previous provision;

*Example—*

See previous sections 381 and 387.

- (b) a right for a person to claim compensation under previous section 386;

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- (c) the statement in previous section 395(1) that no liability was incurred as mentioned in that provision.

## **Subdivision 2      Service providers and service provider obligations**

### **599      Existing service providers**

- (1) This section applies to a person registered under previous section 372 as a service provider, or taken to be a service provider under the Water Act, section 1060(2), for supplying a water or sewerage service immediately before the commencement.
- (2) On the commencement, the person is taken to be registered under chapter 2, part 3, as a service provider for supplying the service.

### **600      Water efficiency management plans**

- (1) A water efficiency management plan approved under the Water Act, chapter 3, part 2, division 7 and in force immediately before the commencement is, from the commencement, taken to be a water efficiency management plan approved under chapter 2, part 3, division 6.
- (2) The Water Act, section 1155 continues to apply except that a reference to the Water Act, chapter 3, part 2, division 7 is taken to be a reference to chapter 2, part 3, division 6.

### **601      Approved strategic asset management plans**

A strategic asset management plan approved under previous section 411 and in force immediately before the commencement is, from the commencement, taken to be a strategic asset management plan approved under section 74.

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**602 Approved system leakage management plans**

- (1) A system leakage management plan approved under previous section 414I and in force immediately before the commencement is, from the commencement, taken to be a system leakage management plan approved under section 87.
- (2) An exemption given under previous section 414F and in force immediately before the commencement—
  - (a) is, on the commencement, taken to be an exemption given under section 84; and
  - (b) applies for the balance of the period for which it was granted under the Water Act.
- (3) The Water Act, section 1136F continues to apply except that a reference to section 414D is taken to be a reference to section 82.

**603 Audit reports**

An audit report given under previous section 417 to the regulator is, from the commencement, taken to be an audit report given under section 108.

**604 Customer service standard**

A customer service standard prepared under previous section 424 is, from the commencement, taken to be a customer service standard prepared under section 115.

**605 Drought management plan**

- (1) A drought management plan registered under previous section 429H and in force immediately before the commencement is, from the commencement, taken to be a drought management plan registered under section 128.
- (2) An exemption given under previous section 429F and not cancelled before the commencement is, from the

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commencement, taken to be an exemption given under section 126.

**606 Application of provision about guidelines for rate notice or account for water supply**

The Water Act, section 1153 continues to apply except that a reference to section 429R is taken to be a reference to section 138.

**607 Application of provision about water advices**

The Water Act, section 1154 continues to apply except that a reference to section 429S is taken to be a reference to section 139.

**608 Service areas**

- (1) This section applies to a local government area, or part of a local government area, that was, immediately before the commencement, a service area under previous section 449 or the Water Act, section 1063 for a retail water service or sewerage service (the *existing service area*).
- (2) On the commencement—
  - (a) the existing service area is taken to be a service area declared under section 161 (the *new service area*) by the local government for the local government area; and
  - (b) the service provider for the existing service area is the service provider for the new service area.
- (3) The Water Act, section 1064 continues to apply except that a reference to chapter 3, part 4, divisions 3 and 4 is taken to be a reference to chapter 2, part 5, divisions 3 and 4.

*Editor's note—*

Water Act, section 1064 (Local governments to be service providers for service areas)

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## **609 Existing trade waste approvals**

- (1) This section applies to each of the following approvals (a *Water Act approval*), in force immediately before the commencement of this section—
  - (a) a trade waste approval given under previous section 469;
  - (b) an approval taken to be a trade waste approval under the Water Act, section 1048B.
- (2) On the commencement—
  - (a) the approval is taken to be a trade waste approval granted under section 180; and
  - (b) any conditions applying to the Water Act approval continue to apply.

## **Subdivision 3 Referable dams and flood mitigation**

### **610 Examples for ch 4 of things under s 589**

- (1) For the operation of chapter 4, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 3—
  - (a) a requirement under previous section 486 for an owner of a dam to pay the cost of preparing and certifying a failure impact assessment for the dam;
  - (b) an information notice, including an information notice under previous section 489(2), 490(2), 491(7) or 492(7);
  - (c) a decision made by the chief executive, including a decision about safety conditions for a dam;
  - (d) a notice given under previous section 494.
- (2) For the operation of chapter 4, the following are examples of obligations for section 589 in relation to matters dealt with under the Water Act, chapter 3—

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- (a) an obligation under previous section 483 in relation to having a dam failure impact assessed;
  - (b) an obligation to comply with a notice given under previous section 494;
  - (c) an obligation under previous section 499 for the owner of a dam to review the flood mitigation manual for the dam.
- (3) For the operation of chapter 4, the following are examples of protections for section 589 in relation to matters dealt with under the Water Act, chapter 3—
- (a) the statement in previous section 500(1) that no liability was incurred as mentioned in that provision;
  - (b) the statement in previous section 500(2) that no liability was incurred as mentioned in that provision.

## **611 Referable dams and failure impact assessment**

- (1) This section applies to a dam if, immediately before the commencement, the dam was a referable dam (a *Water Act referable dam*) under previous section 481 or the Water Act, section 1067(5)(a), 1068(2)(a) or 1069(2)(a).
- (2) On the commencement, a Water Act referable dam is taken to be a referable dam under section 341.
- (3) If a Water Act referable dam has been failure impact assessed, within the meaning of the Water Act, the assessment is taken to be a failure impact assessment completed under chapter 4, part 1, division 2.

## **612 Hazardous dams**

- (1) This section applies to a dam that, immediately before the commencement of the Water Act, section 1065 contained hazardous waste.
- (2) The Water Act, section 1065(3)(c) continues to apply except that—

- (a) a reference to section 43 of the repealed Act is taken to be a reference to the repealed *Water Resources Act 1989*, section 43; and
  - (b) a reference to the commencement is taken to be a reference to the commencement of the Water Act, section 1065.
- (3) The Water Act, section 1065AA continues to apply.

### **613 Approved flood mitigation manuals**

- (1) A flood mitigation manual approved under the previous section 497 and in force immediately before the commencement is, from the commencement, taken to be a flood mitigation manual approved under section 371.
- (2) The approval of the flood mitigation manual is for the balance of the period of approval for which the manual was approved under the Water Act.

## **Division 2 Transitional provisions relating to the Water Act, chapter 5**

### **614 Examples for ch 5 of things under s 589**

- (1) For the operation of chapter 5, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 5—
  - (a) the appointment of a person as an authorised officer under previous section 739;
  - (b) an order of a court, including, for example, the following—
    - (i) an order for a person to forfeit a thing to the State under previous section 757G;

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- (ii) an order for a person to comply with a document production requirement under previous section 762;
    - (iii) an enforcement order under previous section 788;
  - (c) a request to the commissioner of police for a written report under previous section 767.
- (2) For the operation of chapter 5, the following are examples of obligations for section 589 in relation to matters dealt with under the Water Act, chapter 5—
- (a) a requirement under previous section 757D by an authorised officer;
  - (b) a requirement under previous section 763 that a person give information to an authorised officer.
- (3) For the operation of chapter 5, the following are examples of protections for section 589 in relation to matters dealt with under the Water Act, chapter 5—
- (a) the statement in previous section 759(2) that a person does not commit an offence in the circumstances mentioned in that provision;
  - (b) the statement in previous section 762(3) that evidence that may tend to incriminate an individual, derived from a document the individual is compelled to give, is not admissible in proceedings as mentioned in that provision;
  - (c) the statement in previous section 763(5) that evidence that may tend to incriminate an individual, derived from a document the individual is compelled to give, is not admissible in proceedings as mentioned in that provision;
  - (d) a right to claim compensation from the State under previous section 765.
- (4) For the operation of chapter 6, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 5—



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- (a) a show cause notice under previous section 778(2), and any submission made in relation to the show cause notice;
  - (b) a starting of proceedings under previous section 931.
- (5) For the operation of chapter 6, the statement in previous section 828(4) that an executive officer of a corporation has the defence mentioned in that provision in relation to the executive officer committing an offence under the section is an example of a protection for section 589 in relation to matters dealt with under the Water Act, chapter 5.

### **Division 3                      Transitional provisions relating to the Water Act, chapter 6**

#### **615      Examples for ch 7 of things under s 589**

- (1) For the operation of chapter 7, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 6—
  - (a) an application under previous section 862 for an internal review;
  - (b) an extension of time under previous section 863(2);
  - (c) an application for arbitration under a previous provision;
  - (d) an appeal under a previous provision;
  - (e) an application for the stay of an original decision under a previous provision;
  - (f) an extension of time under previous section 878(3);
  - (g) a withdrawal of a dispute notice under previous section 893.
- (2) For the operation of chapter 7, the following are examples of obligations for section 589 in relation to matters dealt with under the Water Act, chapter 6—

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- (a) an obligation under previous section 864(2) to review an original decision;
  - (b) an obligation under previous section 895(1) for the authority to make a written determination in an arbitration on a dispute.
- (3) For the operation of chapter 7, the statement in previous section 895(3) that the authority is not required to make a determination in the circumstances mentioned in the provision is an example of a protection for section 589 in relation to matters dealt with under the Water Act, chapter 6.

## **Division 4                      Transitional provisions relating to the Water Act, chapter 7**

### **616      Examples for ch 6 of things under s 589**

For the operation of chapter 6, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 7—

- (a) a certificate, under previous section 921, purportedly signed by the chief executive or regulator about a matter;
- (b) an order of a Magistrates Court under previous section 934 in relation to a complaint.

## **Division 5                      Transitional provisions relating to the Water Act, chapter 8**

### **617      Examples for ch 8 of things under s 589**

- (1) For the operation of chapter 8, the following are examples of authorised actions or documents for section 589 in relation to matters dealt with under the Water Act, chapter 8—

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- (a) the appointment of a person as an administrator under previous section 955;
  - (b) the suspension of the registration of a service provider under previous section 957(2);
  - (c) a withdrawal under previous section 958;
  - (d) the establishment of an advisory council under previous section 1005;
  - (e) a written notice under previous section 1013B.
- (2) For the operation of chapter 8, the following are examples of obligations for section 589 in relation to matters dealt with under the Water Act, chapter 8—
- (a) an obligation under previous section 956(3) to give the administrator and operator access to premises;
  - (b) an obligation under previous section 956(7) for the administrator to make payment as mentioned in that provision.
- (3) For the operation of chapter 8, the statement in previous section 1010(2) that no liability was incurred as mentioned in that provision is an example of a protection for section 589 in relation to matters dealt with under the Water Act, chapter 8.

## **Division 6                      Transitional provisions relating to the Water Act—general matters**

### **618      Existing applications**

An application made under a previous provision and not decided on the commencement must be decided under the corresponding provision for the previous provision.

### **619      Existing exemptions**

If, immediately before the commencement, a person was exempted from a previous provision, the person is taken to be

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exempted from the corresponding provision for the previous provision.

## **620 Existing authorised officers**

A person who held an appointment as an authorised officer under a previous provision immediately before the commencement is taken to be appointed as an authorised officer under the corresponding provision for the previous provision.

## **621 Guidelines**

Any guidelines issued under the Water Act by the regulator under the Water Act, the chief executive or a service provider under the Water Act in relation to a previous provision and in force immediately before the commencement are, from the commencement, taken to be guidelines made by the regulator under this Act, the chief executive or a service provider under this Act for the corresponding provision for the previous provision.

## **622 Internal review**

- (1) If a person had, under previous section 863, applied for an internal review of an original decision made under the Water Act, chapter 3, and the review decision had not been made before the commencement, the review decision may be made under previous section 864.
- (2) If a person could have applied under previous section 863 for an internal review of an original decision made under the Water Act, chapter 3, and the person had not applied before the commencement, the person may apply for an internal review of the original decision under previous section 863.

## **623 Appeals**

- (1) Subsection (2) applies if—

- (a) a person had appealed to a court under a previous provision before the commencement against a review decision in relation to a matter arising under the Water Act, chapter 3; and
  - (b) the appeal had not been decided before the commencement.
- (2) The court may hear, or continue to hear, and decide the appeal under the previous provision.
- (3) Subsection (4) applies if—
- (a) a person could have appealed to a court under a previous provision before the commencement against a review decision in relation to a matter arising under Water Act, chapter 3; and
  - (b) the person had not appealed before the commencement.
- (4) The person may appeal under the previous provision.

## **624 Arbitration**

- (1) If a person had applied for arbitration of a review decision in relation to a matter arising under the Water Act, chapter 3, and the arbitration had started, but not finished, under a previous provision before the commencement, the arbitration may be finished under the previous provision.
- (2) If a person could, under a previous provision, have applied for arbitration of a review decision in relation to a matter arising under the Water Act, chapter 3, and the person had not applied before the commencement, the person may apply under the previous provision for arbitration of the review decision.

## **625 Legal proceedings**

- (1) A legal proceeding that could, immediately before the commencement, have been started or continued under a previous provision by or against the Attorney-General or a service provider under the Water Act may, from the

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commencement, be started or continued under the previous provision by or against the Attorney-General or the service provider.

- (2) A legal proceeding that could, immediately before the commencement, have been started or continued under a previous provision by or against the regulator under the Water Act may, from the commencement, be started or continued under the previous provision by or against the regulator under this Act.

## **626 References in Acts and documents**

- (1) A reference in an Act or document to a previous provision may, if the context permits, be taken as a reference to the corresponding provision of the previous provision.
- (2) A reference in an Act or document to 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.

## **Part 3 Transitional provisions about outdoor water use conservation plans**

### **627 Application of provision about outdoor water use conservation plan**

- (1) Section 133 does not apply to a person, registered as a water service provider immediately before the commencement of this section, until 2 years after the commencement.
- (2) Section 133 does not apply to a person, registered as a water service provider after the commencement of this section, until 2 years after the provider's registration.

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## Part 4 Transitional provisions about drinking water

### 628 Application of particular provision

- (1) Section 92 does not apply to a large drinking water service provider in relation to the carrying out of an existing drinking water service by the provider until—
  - (a) if the provider is given a notice under section 629—the day the period mentioned in section 629(3) ends; or
  - (b) otherwise—1 July 2011.
- (2) Section 92 does not apply to a medium drinking water service provider in relation to the carrying out of an existing drinking water service by the provider until—
  - (a) if the provider is given a notice under section 629—the day the period mentioned in section 629(3) ends; or
  - (b) otherwise—1 July 2012.
- (3) Section 92 does not apply to a small drinking water service provider in relation to the carrying out of an existing drinking water service by the provider until—
  - (a) if the provider is given a notice under section 629—the day the period mentioned in section 629(3) ends; or
  - (b) otherwise—1 July 2013.
- (4) Section 92 does not apply to an entity that becomes a drinking water service provider after 1 July 2008 until 1 year after the day the entity becomes a drinking water service provider.
- (5) Subsections (1) to (4) do not apply to a drinking water service provider if the drinking water service carried out by the provider is—
  - (a) water collection in a water storage, if the water in the storage—
    - (i) includes recycled water; and

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- (ii) is used to augment a drinking water supply; or
- (b) the treatment of water intended for drinking that is sourced from a water storage, or water released from a water storage, mentioned in paragraph (a).

(6) In this section—

*existing drinking water service* means a drinking water service the drinking water service provider was carrying out immediately before 1 July 2008.

*large drinking water service provider* means a drinking water service provider that is a large service provider.

*medium drinking water service provider* means a drinking water service provider that is a medium service provider.

*small drinking water service provider* means a drinking water service provider that is a small service provider.

## **629 Notice requiring entity to have approved drinking water quality management plan**

- (1) This section applies in relation to a drinking water service provider to which section 92 does not apply because of the operation of section 628 if the regulator is satisfied, or reasonably believes, the continued operation of the provider's drinking water service may have an adverse effect on public health.
- (2) The regulator may, by notice given to the drinking water service provider, require the provider to prepare a drinking water quality management plan for the provider's drinking water service for approval by the regulator.
- (3) The notice must state the reasonable period within which there must be an approved drinking water quality management plan for the provider's drinking water service.



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**630 Provision about water quality monitoring and reporting**

- (1) This section applies to a drinking water service provider if, under section 628, section 92 does not apply to the provider.
- (2) The regulator may, by notice given to the drinking water service provider, require the provider to do any of the following—
  - (a) to carry out monitoring, described in the notice, of the quality of water supplied to or from the provider's drinking water service;
  - (b) to give the regulator reports, at the intervals stated in the notice, about the results of the monitoring mentioned in paragraph (a);
  - (c) to give the regulator other reports about the operation of the drinking water service, including, for example, reports about whether the quality of water supplied to or from the provider's drinking water service is consistent with the water quality criteria for drinking water.
- (3) The notice may require the drinking water service provider to do a thing mentioned in subsection (2) only—
  - (a) after 1 January 2009; and
  - (b) until the provider has an approved drinking water quality management plan for the provider's drinking water service.
- (4) The drinking water service provider must comply with the notice, unless the provider has a reasonable excuse.

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

## Part 5 Transitional provisions about recycled water

### 631 Application of particular provisions—existing schemes

- (1) Subsection (2) applies to an existing recycled water scheme if recycled water was supplied under the scheme—
  - (a) to premises by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in laundries; or
  - (b) for use in irrigating minimally processed food crops.
- (2) Sections 196, 201 and 270 do not apply in relation to the scheme until—
  - (a) if the relevant entity or a declared entity for the scheme is given a notice under section 634—the day the period mentioned in section 634(4) and stated in the notice ends; or
  - (b) otherwise—1 July 2009.
- (3) In this section—

*existing recycled water scheme* means a recycled water scheme under which recycled water was supplied before 1 July 2008.

*minimally processed food crops* means crops stated to be minimally processed food crops, in relation to using recycled water to irrigate the crops, in a regulation under the Public Health Act about standards for the quality of recycled water.

### 632 Application of particular provisions—schemes supplying recycled water for particular purposes

- (1) Subsection (2) applies to a recycled water scheme if recycled water is supplied under the scheme—
  - (a) for the first time on or after 1 July 2008 and before 31 December 2008; and

- (b) either—
  - (i) to premises by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in laundries; or
  - (ii) for use in irrigating minimally processed food crops.
- (2) Sections 196, 201 and 270 do not apply in relation to the scheme until—
  - (a) if the relevant entity or a declared entity for the scheme is given a notice under section 634—the day the period mentioned in section 634(4) and stated in the notice ends; or
  - (b) otherwise—the day that is 6 months after the day recycled water is first supplied under the scheme.
- (3) Subsection (4) applies to a recycled water scheme if recycled water is supplied under the scheme—
  - (a) for the first time on or after 31 December 2008 and before 1 July 2009; and
  - (b) either—
    - (i) to premises by way of a reticulation system used only to provide recycled water for outdoor use or for use in flushing toilets or in laundries; or
    - (ii) for use in irrigating minimally processed food crops.
- (4) Sections 196, 201 and 270 do not apply in relation to the scheme until—
  - (a) if the relevant entity or a declared entity for the scheme is given a notice under section 634—the day the period mentioned in section 634(4) and stated in the notice ends; or
  - (b) otherwise—1 July 2009.
- (5) In this section—

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*minimally processed food crops* means crops stated to be minimally processed food crops, in relation to using recycled water to irrigate the crops, in a regulation under the Public Health Act about standards for the quality of recycled water.

### **633 Application of particular provisions—other schemes**

- (1) Subsections (2) and (3) apply to any recycled water scheme, other than a recycled water scheme—
  - (a) mentioned in section 631 or 632; or
  - (b) under which recycled water is supplied to augment a supply of drinking water; or
  - (c) under which greywater is supplied.
- (1A) However, subsections (2) and (3) cease to apply to a recycled water scheme if—
  - (a) a recycled water management plan is approved for the scheme; or
  - (b) the recycled water provider for the scheme is granted an exemption from having an approved recycled water management plan under section 253.
- (2) If recycled water was supplied under the scheme before 1 July 2008, sections 196, 201 and 270 do not apply in relation to the scheme until—
  - (a) if the relevant entity or a declared entity for the scheme is given a notice under section 634—the day the period mentioned in section 634(4) and stated in the notice ends; or
  - (b) otherwise—1 July 2013.
- (3) If recycled water is supplied under the scheme for the first time after 1 July 2008, sections 196, 201 and 270 do not apply in relation to the scheme until—
  - (a) if the relevant entity or a declared entity for the scheme is given a notice under section 634—the day the period

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mentioned in section 634(4) and stated in the notice ends; or

- (b) otherwise—the day that is 1 year after the day recycled water is first supplied under the scheme.

### **634 Notice requiring entity to have approved plan**

- (1) This section applies in relation to a recycled water scheme to which sections 196, 201 and 270 do not apply because of the operation of section 631, 632 or 633 if—
  - (a) the scheme becomes a critical recycled water scheme; or
  - (b) the regulator is satisfied, or reasonably believes the continued operation of the scheme is likely to pose a risk to public health.
- (2) If the scheme is a single-entity recycled water scheme, the regulator may, by notice given to the recycled water provider for the scheme, require the provider to prepare a recycled water management plan for the scheme for approval by the regulator.
- (3) If the scheme is a multiple-entity recycled water scheme, the regulator may—
  - (a) by notice given to each recycled water provider or other declared entity for the scheme, require the provider or other entity to prepare a scheme provider plan for the scheme; and
  - (b) by notice given to the scheme manager for the scheme, require the scheme manager to prepare a scheme manager plan for the scheme.
- (4) The notice must state the reasonable period within which there must be an approved recycled water management plan for the recycled water scheme.

## **Chapter 10 Transitional provision for Sustainable Planning Act 2009**

### **636 Application of s 562**

- (1) This section applies to a development application mentioned in section 562(1)(a) as in force before the commencement of the section that is made before the commencement and dealt with under the repealed *Integrated Planning Act 1997* after the commencement.
- (2) Despite the *Sustainable Planning Act 2009*, if the applicant for the development application appeals against a decision about the application, the appeal may be to the Land Court.

## **Chapter 10A Transitional provision for South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

### **637 Provision for recovery of costs for particular investigations**

- (1) This section applies if the regulator has, after 13 May 2009 but before the commencement, engaged an expert to give the regulator advice about a suspected contravention of a provision of this Act by an entity before the commencement.
- (2) Section 468(3) to (6), other than section 468(4)(d), applies for the engagement of the expert as if that section had commenced on 13 May 2009.

- (3) To remove any doubt, it is declared that if the regulator claims an amount under section 468(3) because of the operation of subsection (2), the amount, and any interest payable on the amount under section 468(6)—
  - (a) is a debt owing to the regulator; and
  - (b) may be recovered by the regulator as a debt.
- (4) If a notice is given under section 468 because of the operation of subsection (2), chapter 7 does not apply in relation to the notice.
- (5) In this section—

***commencement*** means the day this section commences.

## Schedule 1 Prohibited substances

schedule 3, 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, roof water, seepage water, stormwater, 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.

*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 3 Dictionary

### section 4

***administrator*** see section 530.

***advisory council*** means an advisory council established under section 570.

***anniversary day***, for an approved water efficiency management plan, means each anniversary of the day the plan was approved.

***annual report*** means—

- (a) a report prepared by a service provider under section 141(1); or
- (b) a report prepared by a recycled water provider under section 271.

***appointer*** see section 402.

***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 drinking water quality management plan*** means a drinking water quality management plan approved by the regulator under chapter 2, part 4, division 3.

***approved form*** means a form approved under section 585.

***approved recycled water management plan*** means a recycled water management plan approved by the regulator, and not suspended or cancelled, under chapter 3.

***approved system leakage management plan*** means a system leakage management plan approved by the regulator under section 87.

***approved validation program*** means a validation program approved by the regulator under chapter 3.

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***approved water efficiency management plan*** means a water efficiency management plan approved under chapter 2, part 3, division 6.

***approved water supply emergency response*** see the Water Act, schedule 4.

***assessment manager*** see the Planning Act, section 246(1).

*Note—*

Under the Planning Act, the assessment manager for a development application 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.

***auditor*** means—

- (a) for an audit under chapter 2, part 4, division 4—the person who, under the division, has prepared, or is to prepare, an audit report for the audit; or
- (b) for an audit under chapter 3—the person who, under the chapter, has prepared, or is to prepare, an audit report for the audit.

***authorised officer*** means a person appointed as an authorised officer under section 402.

***authorised person***, of a service provider, means a person authorised by the service provider under chapter 2, part 3, division 4.

***available for inspection and purchase***, in relation to a document, means the document is available for inspection and purchase under section 574, 575 or 576.

***billing period***, for premises of a customer of a water service provider, means a period during which the water service provider measures the volume of water supplied to the premises for the purpose of charging for the water.

***bulk water service*** means the supply of large quantities of water other than as an irrigation service.

***category 1 failure impact rating***, for a dam, means a category 1 failure impact rating for the dam under section 346.

**category 2 failure impact rating**, for a dam, means a category 2 failure impact rating for the dam under section 346.

**commission** means the Queensland Water Commission.

**commission water restriction** see the Water Act, section 360ZD(1).

**compliance notice** means a notice given under section 465.

**concurrency agency** see the Planning Act, section 251.

*Note—*

Under the Planning Act, the concurrency agency for a development application is the entity prescribed under a regulation under that Act as a concurrency 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.

**condition—**

(a) of an approved recycled water management plan, means—

- (i) any regulator conditions for the plan; or
- (ii) a condition mentioned in section 208(2), (3), (5) or (6) that applies to the plan; and

(b) of an exemption, means—

- (i) any regulator conditions for the exemption; or
- (ii) the condition mentioned in section 246(1).

**connection** means a property service that supplies either water supply services or sewerage services, or both, to 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.

**cost-benefit analysis**, for a distribution system, means an analysis of—

- (a) the cost of measures to reduce leakage; and
- (b) the economic benefit of saving water from leakage; and

- (c) the reduced operational costs and deferred infrastructure costs that would result from reducing leakage.

***criminal history***, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than for a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

***critical recycled water scheme*** means a recycled water scheme declared to be a critical recycled water scheme under chapter 3.

***customer***—

1 Generally, *customer*—

- (a) 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; or
- (b) 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.

2 In chapter 2, part 3, division 6 and in the definition of non-residential customer, *customer*—

- (a) of a service provider that is a local government, means—
- (i) a ratepayer of the local government who enjoys registered services supplied by the local government; or
- (ii) a person who occupies non-residential premises that enjoy registered services supplied by the local government; or

(b) of a service provider other than a local government, means—

- (i) a person who purchases registered services supplied by the service provider; or
- (ii) a person who occupies non-residential premises that enjoy registered services supplied by the service provider.

***customer service standard***—

- 1 *Customer service standard* means a standard prepared under section 115.
- 2 The term includes the standard as revised under section 119.

***dam***—

- 1 *Dam* means—
  - (a) works that include a barrier, whether permanent or temporary, that does or could 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 the following—
  - (a) a rainwater tank;
  - (b) a water tank constructed of steel or concrete or a combination of steel and concrete;
  - (c) a water tank constructed of fibreglass, plastic or similar material.

***debt notice*** see section 360(3).

***declared entity***, for a multiple-entity recycled water scheme, means each recycled water provider and other entity, other than the scheme manager for the scheme, declared to be part of the scheme under chapter 3, part 8.

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***demand management***, for water—

- 1 *Demand management* for water includes—
  - (a) reducing demand for water; and
  - (b) increasing the efficiency of water supply works; and
  - (c) increasing the efficiency of the use of water by end-users; and
  - (d) substituting a process that does not use a water resource for one that does use a water resource;
  - (e) substituting one water resource for another.
- 2 For item 1(b), water supply works are water infrastructure or other works for the supply of water or the storage, distribution or treatment of water.

***designated region*** means a region designated under the Water Act, section 360D.

***desired levels of service objectives***, for water, includes the maximum duration, frequency, and severity of water restrictions that may be expected by end-users of the water.

***development*** see the Planning Act, section 7.

***development application*** means an application for a development approval.

***development approval*** means a development approval as defined under the Planning Act.

*Note—*

Under the Planning Act, 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.

***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 either of the following—

- (a) a safety condition;
- (b) a condition mentioned in the Water Act, section 1068 or 1069.

*dispute*, for chapter 3, part 9, see section 315.

*dispute notice* see section 524(2).

*distribution system* means the infrastructure for—

- (a) the transmission of water; or
- (b) the reticulation of water; or
- (c) water treatment or recycling.

*domestic purposes* includes irrigating a garden that has an area of not more than 0.25ha and is cultivated for domestic use and not for the sale, barter or exchange of goods produced in the garden.

*drinking water*—

1 *Drinking water* means water, for human consumption, intended primarily as water for drinking, whether or not the water is used for other purposes.

2 *Drinking water* does not include—

- (a) water that is food as defined under the *Food Act 2006*; or
- (b) water taken or supplied for domestic purposes under the Water Act.

*drinking water quality management plan* means a plan about the storage, treatment, transmission or reticulation of water for drinking by a drinking water service provider.

*Drinking Water-Quality Management System Auditor Certification Scheme* means the scheme—

- (a) relating to the conduct of audits of drinking water service providers; and



- (b) developed by RABQSA International Inc ARBN 112 238 169 and other entities.

***drinking water service*** means a water service that is—

- (a) the treatment, transmission or reticulation of water for supply as drinking water; or
- (b) water collection in a water storage, if the water in the storage—
- (i) includes recycled water; and
- (ii) is used to augment a drinking water supply.

***drinking water service provider*** means a water service provider for a drinking water service.

***drought management plan*** means a drought management plan prepared under section 123.

***economic dispute***, for chapter 3, part 9, see section 315.

***emergency powers*** see section 439(1).

***enforcement order*** means an order made under chapter 5, part 9.

***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.

***external review***, for a decision, means a review of the decision by QCAT under the QCAT Act.

***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 the dam's contents.

***failure impact assessment*** see section 342(1).

***failure impact assessment guidelines*** see section 342(1)(b).

***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 370.

***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.

***full supply level***, for a dam, means the level of the water surface of the dam when the water storage is at maximum operating level and the dam is not affected by flood.

***greywater*** means wastewater from a bath, basin, laundry or shower, whether or not the wastewater is contaminated with human waste.

***indictable offence*** means an indictable offence under section 492(1).

***information notice***, for a decision of the regulator, chief executive, a local government or an authorised officer, means a notice—

- (a) stating the following—
  - (i) the decision;
  - (ii) the reasons for the decision;
  - (iii) the name and address of any other person who was given the notice;
  - (iv) that the person to whom the notice is given may apply for an internal review of the decision, within 30 business days after the notice is given;
  - (v) how to apply for the internal review; and
- (b) including a copy of the relevant internal review provisions of this Act.

***information requirement***—

- (a) for chapter 2, part 4, division 3—see section 96(3); and
- (b) for chapter 3, part 2—see section 203(3); and

- (c) for chapter 3, part 4—see section 238(3); and
- (d) for chapter 3, part 5—see section 251(3).

***interested person*** see section 510(1).

***interim resource operations licence*** means a licence granted under the Water Act, section 175.

***internal review application*** see section 512(1).

***irrigation service*** means the supply of water or drainage services for irrigation of crops or pastures for commercial gain.

***land***, for chapter 5, part 2, see section 409.

***large service provider*** means—

- (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 25000 connections to a registered service; or
- (c) for a drinking water service that is the reticulation of water and is not a retail water service—a service provider with more than 25000 connections to a registered service; or
- (d) 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 10000ML.

***Local Government Act*** means the *Local Government Act 1993*.

***medium service provider*** means—

- (a) for a retail water service or sewerage service—a service provider with more than 1000 but not more than 25000 connections to a registered service; or
- (b) for a drinking water service that is the reticulation of water and is not a retail water service—a service

provider with more than 1000 but not more than 25000 connections to a registered service; or

- (c) 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 10000ML.

**meter** includes equipment, related to the meter, for measuring and recording—

- (a) the taking of, or interfering with, water; or
- (b) the quality of water.

**multiple-entity recycled water scheme** means a scheme involving the production and supply of recycled water by more than 1 recycled water provider, or at least 1 recycled water provider and another entity, and includes—

- (a) each recycled water provider and other entity declared to be part of the scheme under a declaration for the scheme made under chapter 3, part 8; and
- (b) the infrastructure for the production and supply of the water stated to be part of the scheme under the declaration.

**non-economic dispute**, for chapter 3, part 9, see section 315.

**non-residential customer** means a customer who uses water on non-residential premises.

**non-residential premises** means premises that are not used for ordinary residential purposes, including, for example, tourist accommodation, nursing homes, hostels, hospitals, caravan parks, convents, nurseries, market gardens, turf farms, farms, conference centres and the common property of a community title scheme under the *Body Corporate and Community Management Act 1997* or the *Building Units and Group Titles Act 1980*.

**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.

**original decision** see section 510(2).

**outdoor water use conservation plan** see section 133(1).

**owner**—

- 1 An *owner* of land is any of the following, and includes the occupier of the land—
  - (a) the registered proprietor of the land under the *Land Title Act 1994*;
  - (b) the lessee or licensee under the *Land Act 1994* of the land;
  - (c) the holder of a mineral development licence or mining lease over the land 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.
- 2 An *owner* of a referable dam is the owner of land on which the referable dam is constructed or is to be constructed.

**party**, for chapter 3, part 9, see section 315.

**place**, for chapter 2, part 3, division 2, see section 31.

**place of seizure** see section 423(a).

**plan area**, for any plan under this Act, means the part of the State to which the plan applies.

**Planning Act** means *Sustainable Planning Act 2009*.

**Planning Act offence** means an offence against the Planning Act, section 574(1), 578(1), 579, 580(1), 581, 582 or 594 to the extent the section relates to the taking of, or interfering with, water.

***premises*** means—

- (a) a lot as defined under the Planning Act, section 10(1); 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.

***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 under that Act 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.

***prohibited substance***, means a substance stated in schedule 1.

***properly made submission*** means a submission that—

- (a) is in writing and is signed by each person who made the submission; and
- (b) is received on or before the last day for the making of the submission; and
- (c) states the name and address of each person who made the submission; and
- (d) states the grounds of the submission and the facts and circumstances relied on in support of the grounds; and
- (e) is received by the person stated in the notice inviting the submission.

***property service***—

- 1 *Property service*—

- 
- (a) for a water service—is the pipes and fittings installed for connecting premises to a service provider’s infrastructure; or
  - (b) for a sewerage service—is a junction, bend, pipe, jump up or graded jump up required to connect a sanitary drain or property sewer to a service provider’s infrastructure.
- 2 For item 1(b)—
- (a) a graded jump up is an inclined section of pipe joining 2 drains, or a sewer and a sanitary drain or property sewer, at different levels; and
  - (b) a jump up is a vertical section of pipe joining 2 drains, or a sewer and a sanitary drain or property sewer, at different levels.

**property sewer** means a sewer for a premises or a premises group.

**Public Health Act** means the *Public Health Act 2005*.

**publish**, a notice, means to publish the notice—

- (a) if the provision states the way the notice must be published—in the way stated in the provision; or
- (b) if the provision does not state the way the notice must be published—in a newspaper circulating generally throughout the area for which the notice is published.

**rate notice** means a rate notice issued under the Local Government Act.

**reasonably believes** means believes on grounds that are reasonable in the circumstances.

**recycled water** means any of the following that are intended to be reused—

- (a) sewage or effluent sourced from a service provider’s sewerage;
- (b) greywater sourced from a large greywater treatment plant within the meaning of the *Plumbing and Drainage Act 2002*;

- (c) wastewater, other than water mentioned in paragraph (a) or (b).

***recycled water management plan*** means—

- (a) for a single-entity recycled water scheme—a plan about the production and supply of recycled water under the scheme by the recycled water provider for the scheme; or
- (b) for a multiple-entity recycled water scheme—a plan about the production and supply of recycled water under the scheme consisting of a scheme manager plan and a scheme provider plan for each declared entity for the scheme.

***recycled water provider*** means an entity that—

- (a) owns infrastructure for the production and supply of recycled water; or
- (b) another entity, prescribed under a regulation, that owns infrastructure for the supply of recycled water.

***recycled water scheme*** means a single-entity or a multiple-entity recycled water scheme.

***referable dam*** see section 341.

***referral agency***, for a development application, see the Planning Act, section 252.

***registered professional engineer*** see the *Professional Engineers Act 2002*, schedule 2.

***registered service***, for a service provider, means a water or sewerage service for which the service provider is registered.

***regular audit*** means an audit conducted under section 108 or 261.

***regulator*** see section 10.

***regulator conditions***—

- (a) for an approved recycled water management plan—see section 205(1); and
- (b) for an exemption—see section 253(1).



***related local government*** means a local government who charges for the supply of water for a retail water service if the retail water service is provided by a water service provider who is not the local government.

***relevant debt*** see section 360(2).

***relevant entity***, for a recycled water scheme, means—

- (a) for a single-entity recycled water scheme—the recycled water provider for the scheme; or
- (b) for a multiple-entity recycled water scheme—the scheme manager for the scheme.

***residential premises*** means premises used ordinarily for a residential purpose.

***resource operations licence*** means a resource operations licence granted under the Water Act, chapter 2, part 4, division 3.

***responsible entity***—

- (a) for chapter 8, part 1, division 1—see section 530(3); and
- (b) for chapter 8, part 1, division 2—see section 535(1)(a).

***retail water service***—

- 1 A *retail water service* is a water service that is the reticulation of water in a service area for a water service.
- 2 The term does not include—
  - (a) an irrigation service or a bulk water service in any area; or
  - (b) the supply of recycled water in any area.

***reused***, in relation to recycled water, includes being treated to improve the water's quality, but does not include merely being discharged into, or disposed of in, the environment.

***review decision*** see section 514(1)(c).

***reviewer*** see section 512(2).

***review notice*** see section 515(1).

***safety condition***, for a dam, means a safety condition for a referable dam decided by the chief executive under section 354 and includes a safety condition as changed under section 353.

***sanitary drain*** means a sanitary drain under the *Plumbing and Drainage Act 2002*.

***scheme manager***, for a multiple-entity recycled water scheme, see section 300.

***scheme manager plan***, for a multiple-entity recycled water scheme, means a plan about how the scheme manager for the scheme is to coordinate management of the scheme to ensure the continued operation of the scheme.

***scheme provider plan***, for a multiple-entity recycled water scheme, means a plan about the production or supply of recycled water under the scheme by a recycled water provider or other declared entity for the scheme.

***SEQ region*** see the Water Act, section 341.

***SEQ Water Grid Manager*** means the SEQ Water Grid Manager established under the *South East Queensland Water (Restructuring) Act 2007*, section 6.

***service area*** means an area declared under section 161 for either or both of the following—

- (a) a retail water service to customers;
- (b) a sewerage service to customers.

***service contract*** see section 113.

***service provider*** means a water service provider or a sewerage service provider.

***service provider register*** means the register kept under section 12.

***service provider water restriction*** see section 41(2).

***sewage*** means household and commercial wastewater that contains, or may contain, faecal, urinary or other human waste.

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**sewerage** means a sewer, access chamber, vent, engine, pump, structure, machinery, outfall or other work used to receive, store, transport or treat sewage.

**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 2, 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 service is used only by—
    - (i) the owner of the infrastructure or the owner's guests or employees including, for example, guests at a resort; or
    - (ii) if the owner of the infrastructure is a body corporate for a community titles scheme under the *Body Corporate and Community Management Act 1997*—the occupants of lots in the scheme.

**sewerage service provider** means a person registered under chapter 2, part 3 as a service provider for a sewerage service.

**show cause notice** means a notice that complies with section 463.

**single-entity recycled water scheme** means a scheme involving the production and supply of recycled water by only 1 recycled water provider, and includes, if the provider owns infrastructure for the supply, or the production and supply, of the water—the infrastructure.

**small service provider** means—

- (a) for a retail water service or sewerage service—a service provider with 1000 or less connections to a registered service; or
- (b) for a drinking water service that is the reticulation of water and is not a retail water service—a service provider with 1000 or less connections to a registered service; or
- (c) 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 10000ML or less; or
- (d) for a water service other than a water service mentioned in paragraph (a), (b) or (c), a service provider—
  - (i) with not more than 500 customers; and
  - (ii) that mainly provides drainage services or water for domestic purposes or for watering stock.

**spot audit** means an audit conducted under section 110 or 262.

**stock purposes**, in relation to taking water, means—

- (a) watering stock of a number that would normally be depastured on the land on which the water is, or is to be, used; or
- (b) watering travelling stock on a stock route under the *Land Protection (Pest and Stock Route Management) Act 2002*, schedule 3.

**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 2, part 4, division 1.

**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 notice** see section 513(3)(a).

**suitably qualified**, in relation to a person who prepares a report about an audit under chapter 3, means a person who—

- (a) has the experience or qualifications appropriate to conduct the audit to which the report relates; or
- (b) if a regulation prescribes the experience or qualifications necessary for a person to conduct the audit to which the report relates—has the experience or qualifications prescribed under the regulation.

**supply**, in relation to recycled water, means—

- (a) for greywater, sewage or effluent that is recycled water—
  - (i) reuse of the recycled water by the entity that produces it; or
  - (ii) supply of the recycled water, by the entity that produces it, to another entity for reuse; or
- (b) for other recycled water—supply of the recycled water, by the entity that produces it (the **producer**), to another entity for reuse, other than another entity prescribed under a regulation as a related entity of the producer.

**supply contract** means a contract for the storage and supply of water under a water entitlement, a water supply emergency declaration or a water supply emergency regulation.

**system leakage management plan** means a plan certified by a registered professional engineer under chapter 2, part 4, division 2.

**system operating plan** means a system operating plan under the Water Act, chapter 2A, part 5, division 2.

**taking**, for water, includes diverting water.

**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.

**trade waste approval** see section 180(1).

**trade waste compliance notice** see section 330(2).

**transferee** see section 24(1).

**transferor** see section 24(1).

**underground water** means water that is—

(a) artesian water; or

(b) subartesian water.

**validate**, in relation to a recycled water scheme, means to carry out testing of the plant or equipment used for the treatment of recycled water under the scheme to show the quality of the recycled water consistently meets the water quality criteria for recycled water relevant to the scheme.

**validation program**, for a recycled water scheme, means a documented program about how the plant or equipment used for the treatment of recycled water under the scheme are to be tested to show the quality of the recycled water consistently meets the water quality criteria for recycled water relevant to the scheme.

**vegetation**—

(a) means native plants including trees, shrubs, bushes, seedlings, saplings and reshoots; and

(b) for a wild river area under the *Wild Rivers Act 2005*, includes dead vegetation.

**wastewater** means the spent or used water generated on premises from industrial, commercial or manufacturing activities, or animal husbandry activities prescribed under a regulation, other than spent or used water generated from—

(a) an agricultural activity; or

(b) a mining activity or chapter 5A activity as defined under the *Environmental Protection Act 1994*, schedule 4.

**Water Act** means the *Water Act 2000*.

**water advice** see section 139(2).

**water allocation** means an authority granted under the Water Act, section 121 or 122 to take water.

**water authority** means a water authority established under the Water Act.

**watercourse** see the Water Act, schedule 4.

**water efficiency management plan** see section 52.

**water entitlement** means—

- (a) a water allocation; or
- (b) an interim water allocation as defined in the Water Act, schedule 4; or
- (c) a 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 the Water Act, chapter 2, part 6, division 2.

**water quality criteria**—

- (a) for drinking water, means all of the following—
  - (i) the standards for the quality of drinking water prescribed in a regulation under the Public Health Act;
  - (ii) the criteria stated in a guideline, if any, made by the regulator about the quality of drinking water; and
- (b) for recycled water, means all of the following—
  - (i) the standards for the quality of recycled water, relating to the sources and uses of the water, prescribed in a regulation under the Public Health Act;
  - (ii) the criteria for the quality of recycled water, relating to the sources and uses of the water—

- (A) stated in a guideline, if any, made by the regulator about the quality of recycled water; or
- (B) in relation to the quality of recycled water to which a recycled water management plan or an exemption relates—stated in a regulator condition for the plan or exemption.

***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 2, 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 service is used only by—
    - (i) the owner of the infrastructure or the owner's guests or employees including, for example, guests at a resort; or
    - (ii) if the owner of the infrastructure is a body corporate for a community titles scheme under the *Body Corporate and Community Management Act 1997*—the occupants of lots in the scheme.

***water service provider*** means a person registered under chapter 2, part 3, as a service provider for a water service.

***water supply emergency*** see the Water Act, section 25A.



***water supply emergency declaration*** means a declaration made under the Water Act, section 25B.

***water supply emergency regulation*** see the Water Act, section 25F.

***water supply emergency response*** see the Water Act, section 25C.

***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 18 December 2009. Future amendments of the Water Supply (Safety and Reliability) Act 2008 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)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	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 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
0A	none	21 May 2008	certain provs commenced
1	none	1 July 2008	certain provs commenced
1A	none	1 August 2008	ss 677–679 commenced
1B	2009 Act No. 3	23 February 2009	
1C	—	22 May 2009	ch 2 pt 4 div 7, ch 9 pt 3 commenced
1D	2009 Act No. 9	1 July 2009	
1E	—	2 July 2009	prov exp 1 July 2009
1F	2009 Act No. 46	3 November 2009	
1G	2009 Act No. 24	1 December 2009	
1H	2009 Act No. 36	18 December 2009	

## 5 List of legislation

### **Water Supply (Safety and Reliability) Act 2008 No. 34**

date of assent 21 May 2008

ss 1–2 commenced on date of assent

ss 677–679 commenced 1 August 2008 (see s 2(1))

ch 10 pt 3 (other than s 663), ss 666, 674–676, 680–682, 684–692, 695–696, 715–721, 735(1)–(3), 736, 738 (to the extent it ins pt 3A), 739, 743–744, 745 (to the extent it ins div 11 hdg and ss 1166–1167), 747(3), ch 11, sch 2 amdt of the Water Resource (Fitzroy Basin) Plan 1999 commenced on date of assent (see s 2(2))

ch 2 pt 4 div 7, ch 9 pt 3 commenced 22 May 2009 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 July 2008 (2008 SL No. 202)

amending legislation—

### **Greenhouse Gas Storage Act 2009 No. 3 s 1, ch 9 pt 27**

date of assent 23 February 2009

commenced on date of assent

### **Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1**

date of assent 28 May 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2009 (2009 SL No. 80)

### **Local Government Act 2009 No. 17 ss 1, 2(4), 331 sch 1**

date of assent 12 June 2009

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(4))

### **Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 6 pt 12**

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

### **Sustainable Planning Act 2009 No. 36 ss 1–2, 872 ch 2**

date of assent 22 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

### **South-East Queensland Water (Distribution and Retail Restructuring) and Natural Resources Provisions Act 2009 No. 46 s 1, ch 7 pt 8**

date of assent 3 November 2009

commenced on date of assent

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## 6 List of annotations

### **Requirement for responsible entity to give information**

**prov hdg** amd 2009 No. 46 s 134(1)  
**s 13** amd 2009 No. 46 s 134(2)–(3)

### **Reports and other publications by regulator**

**s 14** sub 2009 No. 46 s 135

### **Who must apply for registration as a service provider**

**s 20** amd 2009 No. 46 s 136

### **Service provider to report annually**

**s 141** amd 2009 No. 9 s 136 sch 1

### **Owner may ask for connection to service provider’s infrastructure**

**s 167** amd 2009 No. 36 s 872 sch 2

### **Preparing particular plans**

**s 201** amd 2009 No. 46 s 137

### **Auditor’s responsibility to inform regulator**

**s 263** amd 2009 No. 46 s 138

### **Regulator may request information about a recycled water scheme**

**prov hdg** amd 2009 No. 46 s 139(1)  
**s 302** amd 2009 No. 46 s 139(2)

### **General powers after entering places**

**s 419** amd 2009 No. 46 s 140

### **Division 1—Preliminary**

**div hdg** ins 2009 No. 46 s 141

### **Application of pt 5**

**s 435** sub 2009 No. 46 s 141

### **Division 2—Enforcement provisions**

**div hdg** ins 2009 No. 46 s 141

### **Power about preventing or minimising adverse effects—general**

**prov hdg** amd 2009 No. 46 s 142(1)  
**s 436** amd 2009 No. 46 s 142(2)

### **Division 3—Cost recovery**

**div hdg** ins 2009 No. 46 s 143

### **Definitions for div 3**

**s 441** sub 2009 No. 46 s 143

### **Who is a “prescribed person” for a water supply incident**

**s 442** ins 2009 No. 46 s 143

### **Regulator may give notice for recovery of costs**

**s 443** ins 2009 No. 46 s 143

**Regulator may recover costs**

s 444 ins 2009 No. 46 s 143

**Sections 445–449 not used**

s 445 ins 2009 No. 46 s 143

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pt hdg sub 2009 No. 46 s 144

**Compliance notice**

s 466 amd 2009 No. 24 s 969

**Division 3—Cost recovery**

div hdg ins 2009 No. 46 s 145

**Regulator may engage expert and recover costs**

s 468 sub 2009 No. 46 s 145

**Sections 469–474 not used**

s 469 ins 2009 No. 46 s 145

**CHAPTER 7—REVIEWS, APPEALS AND ARBITRATION**

**Appeal or external review process starts with internal review**

s 511 sub 2009 No. 24 s 970

**Who may apply for review**

s 512 amd 2009 No. 24 s 971

**Requirements for making internal review application**

prov hdg amd 2009 No. 24 s 972(1)

s 513 amd 2009 No. 24 s 972(2)–(4)

**Review decision**

s 514 amd 2009 No. 24 s 973

**Notice of review decision**

s 515 amd 2009 No. 24 s 974

**Stay of operation of original decision**

s 516 amd 2009 No. 24 s 975

**PART 3—APPEALS AND EXTERNAL REVIEWS**

pt hdg sub 2009 No. 24 s 976

**Who may appeal or apply for an external review**

prov hdg amd 2009 No. 24 s 977(1)

s 517 amd 2009 No. 24 s 977(2)–(6)

**Starting an appeal to Planning and Environment Court**

prov hdg amd 2009 No. 24 s 978(1)

s 518 amd 2009 No. 24 s 978(2)

**Stay of operation of review decision**

s 519 amd 2009 No. 24 s 979

**Who may apply for arbitration**

s 524 amd 2009 No. 24 s 980

**Stay of operation of review decision**

s 524A ins 2009 No. 24 s 981

**Development applications for referable dams**

s 561 amd 2009 No. 36 s 872 sch 2

**When applicant may appeal to Land Court**

s 562 amd 2009 No. 36 s 872 sch 2

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s 571 amd 2009 No. 46 s 146

**Chief executive may make guidelines**

s 572 amd 2009 No. 46 s 147

**Documents regulator and chief executive must keep available for inspection and purchase**

s 574 amd 2009 No. 46 s 148

**Regulator may share particular information**

s 579 amd 2009 No. 46 s 149

**CHAPTER 9—TRANSITIONAL AND SAVINGS PROVISIONS FOR ACT No. 34 OF 2008**

ch hdg amd 2009 No. 36 s 872 sch 2

**Notice requiring entity to have approved drinking water quality management plan**

s 629 amd 2009 No. 46 s 150

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s 633 amd 2009 No. 46 s 151

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pt hdg om 2009 No. 46 s 152

**Transitional regulation-making power**s 635 exp 1 July 2009 (see s 635(4))  
AIA s 20A applies (see s 635(5))**CHAPTER 10—TRANSITIONAL PROVISION FOR SUSTAINABLE PLANNING ACT 2009**ch hdg prev ch 10 hdg om R1A (see RA s 7(1)(k))  
pres ch 10 hdg ins 2009 No. 36 s 872 sch 2**PART 1—AMENDMENT OF PLUMBING AND DRAINAGE ACT 2002**

pt hdg om R1 (see RA s 7(1)(k))

**Application of s 562**s 636 prev s 636 om R1 (see RA s 40)  
pres s 636 ins 2009 No. 36 s 872 sch 2

**CHAPTER 10A—TRANSITIONAL PROVISION FOR SOUTH-EAST  
QUEENSLAND WATER (DISTRIBUTION AND RETAIL  
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**ch hdg** ins 2009 No. 46 s 153

**Provision for recovery of costs for particular investigations**

**s 637** prev s 637 om R1 (see RA s 40)  
pres s 637 ins 2009 No. 46 s 153

**Amendment of s 85B (Restrictions on giving compliance permit for greywater use  
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**s 638** om R1 (see RA s 40)

**Amendment of s 86 (General process for assessing regulated work and on-site  
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**s 639** om R1 (see RA s 40)

**Amendment of s 86C (Conditions of compliance certificate)**

**s 640** om R1 (see RA s 40)

**Amendment of s 126 (Restriction on building or installing greywater use facility)**

**s 641** om R1 (see RA s 40)

**Amendment of s 128A (Offence to pollute service provider's services)**

**s 642** om R1 (see RA s 40)

**Amendment of s 128G (Owner's obligation to maintain plumbing and drainage and  
on-site sewerage facility)**

**s 643** om R1 (see RA s 40)

**Amendment of s 128PA (Offence about using greywater)**

**s 644** om R1 (see RA s 40)

**Amendment of s 143B (Local government's monitoring obligations for greywater use  
facilities in seweraged areas)**

**s 645** om R1 (see RA s 40)

**Insertion of new s 143D**

**s 646** om R1 (see RA s 40)

**Amendment of schedule (Dictionary)**

**s 647** om R1 (see RA s 40)

**PART 2—AMENDMENT OF PUBLIC HEALTH ACT 2005**

**pt 2 (ss 648–659)** om R1 (see RA ss 7(1)(k) and 40)

**PART 3—AMENDMENT OF SOUTH EAST QUEENSLAND WATER  
(RESTRUCTURING) ACT 2007**

**pt hdg** om R1 (see RA s 7(1)(k))

**Act amended in pt 3**

**s 660** om R0A (see RA s 40)

**Amendment of s 67 (Transfer notice)**

**s 661** om R0A (see RA s 40)



**Insertion of new s 79A**

s 662 om R0A (see RA s 40)

**Amendment of s 80 (Matters relating to the Integrated Planning Act 1997)**

s 663 om R1 (see RA s 40)

**Insertion of new ss 80A–80C**

s 664 om R0A (see RA s 40)

**Amendment of s 89 (Entry to, and use of, water entity’s land after transfer of asset attached to the land)**

s 665 om R0A (see RA s 40)

**PART 4—AMENDMENT OF WATER ACT 2000**

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pt 4 (ss 666–747) amd R0A (see RA s 40); R1 (see RA s 40)  
om R1A (see RA s 40)

**PART 5—AMENDMENT OF WATER AND OTHER LEGISLATION  
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pt 5 (ss 748–750) om R1 (see RA ss 7(1)(k) and 40)

**CHAPTER 11—CONSEQUENTIAL AND MINOR AMENDMENTS**

ch 11 (s 751) om R0A (see RA ss 7(1)(k) and 40)

**SCHEDULE 2—CONSEQUENTIAL AND MINOR AMENDMENTS**

amd R0A (see RA s 40)

om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 3—DICTIONARY**

def “assessment manager” sub 2009 No. 36 s 872 sch 2

def “concurrence agency” sub 2009 No. 36 s 872 sch 2

def “development” sub 2009 No. 36 s 872 sch 2

def “external review” ins 2009 No. 24 s 982(2)

def “information notice” sub 2009 No. 24 s 982

def “internal review application” ins 2009 No. 24 s 982(2)

def “mining activity” om 2009 No. 3 s 606(1)

def “petroleum activity” om 2009 No. 3 s 606(1)

def “Planning Act” sub 2009 No. 36 s 872 sch 2

def “Planning Act offence” sub 2009 No. 36 s 872 sch 2

def “premises” amd 2009 No. 36 s 872 sch 2

def “referral agency” sub 2009 No. 36 s 872 sch 2

def “review application” om 2009 No. 24 s 982(1)

def “SEQ Water Grid Manager” ins 2009 No. 46 s 154

def “wastewater” amd 2009 No. 3 s 606(2)

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form SPA01 Version 5—Service Provider Application Form**

pubd gaz 3 October 2008 p 1588

**Form SPE01 Version 3—Small Service Provider SAMP CSS and Annual Report Exemption Application Form**

pubd gaz 3 October 2008 p 1588

**Form SPE02 Version 2—Service Provider System Leakage Management Plan Exemption Application Form**

pubd gaz 3 October 2008 p 1588

**Form SPE03 Version 2—Service Provider Drought Management Plan Exemption Application Form**

pubd gaz 3 October 2008 p 1588

**Form WSR001 Version 3 November 2009—Validation Program Approval Application**

pubd gaz 18 December 2009 p 1199

**Form WSR002 Version 3 November 2009—Recycled Water Management Plan Approval Application**

pubd gaz 18 December 2009 p 1199

**Form WSR003 Version 3 November 2009—Exemption Application**

pubd gaz 18 December 2009 p 1199

**Form WSR004 Version 1—Internal review of decision application**

pubd gaz 13 November 2009 p 747

**Form WSR005 Version 3 November 2009—Non-Compliance Notice**

pubd gaz 18 December 2009 p 1199

**Form WSR006 Version 1 November 2009—Recycled Water Management Plan Amendment Application**

pubd gaz 18 December 2009 p 1199

**Form WSR007 Version 1 November 2009—Validation Program Amendment Application**

pubd gaz 18 December 2009 p 1199

**Form WSR010 Version 1 November 2009—Notice of Intent to Permanently Stop Supply**

pubd gaz 18 December 2009 p 1199

**Form WSR011 Version 1 November 2009—Notice of Unscheduled Stoppage**

pubd gaz 18 December 2009 p 1199

**Form WSR012 Version 1 November 2009—Notice of Having Permanently Stopped Supply**

pubd gaz 18 December 2009 p 1199

**Form WSR013 Version 1 November 2009—Application to Resume Supply**

pubd gaz 18 December 2009 p 1199

**Form WSR014 Version 1 November 2009—Notice of Change: Exemption Under s 257**

pubd gaz 18 December 2009 p 1199

**Form WSR015 Version 1 November 2009—Request to Amend: Recycled Water Management Plan**

pubd gaz 18 December 2009 p 1199

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