



# **South East Queensland Water (Restructuring) Act 2007**

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Queensland

# South East Queensland Water (Restructuring) Act 2007

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# South East Queensland Water (Restructuring) Act 2007

**An Act to facilitate a restructure of the water industry in south east Queensland, and for other purposes**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *South East Queensland Water (Restructuring) Act 2007*.

### 2 Commencement

The following provisions of this Act commence on a day to be fixed by proclamation—

- section 6(1)(c) and (d)
- schedule 2, amendment of the *Queensland Competition Authority Act 1997*.

### 3 Purpose

The purpose of this Act is to facilitate a restructure of the water industry in south east Queensland to deliver significant benefits to the community, including—

- (a) improved regional coordination and management of water supply; and
- (b) more efficient delivery of water services; and
- (c) enhanced customer service for water consumers; and

- (d) a clearer accountability framework for water supply security.

#### **4 Extraterritorial application of Act**

- (1) This Act applies both within and outside Queensland.
- (2) This Act applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

#### **5 Dictionary**

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

## **Chapter 2 Queensland Bulk Water Supply Authority**

### **Part 1 Establishment, powers and functions**

#### **6 Establishment of Queensland Bulk Water Supply Authority**

- (1) The Queensland Bulk Water Supply Authority (the *Authority*) continues in existence.
- (2) The Authority is not a body corporate.

*Note—*

The Authority does not have perpetual succession. See section 64.

- (3) The Authority does not represent the State.



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## **7 Powers of Authority**

- (1) The Authority has all the powers of an individual and may, for example—
  - (a) enter into contracts; and
  - (b) acquire, hold, dispose of, and deal with property; and
  - (c) employ staff; and
  - (d) appoint agents and attorneys; and
  - (e) engage consultants; and
  - (f) fix charges, and other terms, for services and other facilities it supplies; and
  - (g) do anything else necessary or convenient to be done for its functions.
- (2) Without limiting subsection (1), the Authority has the powers given to it under an Act.
- (3) However, the Authority's powers are subject to any limitations under an Act.
- (4) The Authority may sue and be sued in the name it is given under section 6(1).

## **8 Authentication of documents**

- (1) A document made by the Authority, other than a document required to be sealed, is sufficiently made if it is signed by the chief executive officer, the chairperson of the board or another person authorised by the board.

*Example of a document—*

an instrument under section 13 delegating a function of the Authority

- (2) A document made by the Authority that is required to be sealed is sufficiently made if it is sealed in the way authorised by the board and signed by the chief executive officer, the chairperson of the board or another person authorised by the board.

## 9 Functions of Authority

- (1) The Authority has the following functions to the extent they are consistent with its operational and strategic plans—
- (a) carrying out water activities and other ancillary activities;
  - (b) supplying water services and other ancillary services;  
*Example of an ancillary service—*  
delivering a community education program relating to the Authority's functions
  - (c) supplying other services relating to the water industry, including—
    - (i) engineering services; and
    - (ii) services for operating or maintaining infrastructure; and
    - (iii) business management services; and  
*Example—*  
services for managing government or business initiatives to save water
    - (iv) energy generation; and
    - (v) scientific services;
  - (d) developing water supply works;
  - (e) improving the supply, delivery and quality of water, including by way of—
    - (i) riverine area protection; and
    - (ii) soil erosion control; and
    - (iii) land degradation treatment and prevention; and
    - (iv) nutrient management; and
    - (v) vegetation management;
  - (f) using or managing its land in ways that benefit the community, including for recreational purposes;

- 
- (g) undertaking, with the State and service providers, collaborative planning activities with a view to doing each of the following and having regard to supply and demand—
- (i) supporting cost-effective operations;
  - (ii) promoting efficient use of and investment in water infrastructure and other ancillary infrastructure;
  - (iii) ensuring the safe, secure and reliable supply of water;
- (h) anything else likely to complement or enhance a function mentioned in paragraphs (a) to (g);
- (i) another function conferred under an Act.
- (2) Also, if requested by the water chief executive, the Authority has the function of advising the water chief executive about its activities to assist in the performance of the water chief executive's functions under the *Water Act 2000*, chapter 2, part 2, division 4.
- (3) In this section—
- service provider* see the *Water Act 2000*, schedule 4.
- water infrastructure* see the *Water Act 2000*, schedule 4.

## 11 Functions to be carried out commercially

- (1) The Authority must carry out its functions as a commercial enterprise.
- (2) Subsection (1) does not apply to the extent the Authority is required under this Act to perform a community service obligation other than as a commercial enterprise.

## 12 Powers and functions in or out of Queensland

The Authority may exercise its powers and perform its functions inside or outside Queensland.

## **13 Delegation**

- (1) The Authority may delegate a function to the chief executive officer or an appropriately qualified employee.
- (2) A person to whom a function is delegated under subsection (1) may subdelegate the function to an appropriately qualified employee.
- (3) In this section—  
*appropriately qualified* includes having qualifications, experience or standing appropriate for the function.  
*function* includes power.

# **Part 2 Board**

## **Division 1 Establishment, membership and related matters**

### **14 Establishment and status of board**

- (1) The Authority must have a board.
- (2) However, the Authority is not constituted by the members of the board.

### **15 Role of board**

- (1) The board is responsible for the way the Authority performs its functions and exercises its powers.
- (2) The board's role includes—
  - (a) deciding the strategies and the operational, administrative and financial policies to be followed by the Authority; and
  - (b) ensuring the Authority performs its functions and exercises its powers in a proper, effective and efficient way; and

- 
- (c) ensuring that, so far as practicable, the Authority acts under, and achieves the objects in, its strategic and operational plans; and
  - (d) accounting to the responsible Ministers, as required by an Act, for the Authority's performance; and
  - (e) reviewing annually the performance of the chief executive officer.

## **16 Appointment of members**

- (1) The board is to consist of not less than 2 members appointed by the responsible Ministers.
- (2) In deciding whether to appoint a person as a member, the responsible Ministers must have regard to the person's ability to contribute to the implementation of the Authority's strategic and operational plans.
- (3) A person may not be appointed as a member if the person—
  - (a) is a public service employee; or
  - (b) is a councillor or employee of a local government; or
  - (c) is an insolvent under administration; or
  - (d) has a conviction, other than a spent conviction, for an indictable offence.
- (4) Subject to section 19, a member holds office for the term, not more than 3 years, stated in the member's appointment.
- (5) If otherwise qualified, a member is eligible for reappointment.

## **17 Chairperson**

- (1) The responsible Ministers must appoint 1 of the members of the board as its chairperson.
- (2) Subject to section 19, the chairperson holds office for the term, ending not later than his or her term of appointment as a member, stated in his or her appointment as chairperson.

## **18 Deputy chairperson**

- (1) The responsible Ministers may appoint 1 of the members of the board as its deputy chairperson.
- (2) Subject to section 19, the deputy chairperson holds office for the term, ending not later than his or her term of appointment as a member, stated in his or her appointment as deputy chairperson.
- (3) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or is, for another reason, unable to perform the functions of the office.

## **19 Terms and ending of appointments**

- (1) This section applies to a person's appointment to the office of member of the board or chairperson or deputy chairperson of the board.
- (2) For matters not provided for under this Act, the person holds the office on the terms of appointment decided by the responsible Ministers.
- (3) Except as decided by the responsible Ministers, the person is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—
  - (a) by way of remuneration as holder of the office; or
  - (b) in connection with retirement from the office or other ending of the office.
- (4) The responsible Ministers may, at any time, end the appointment for any reason or none.
- (5) The person may resign the office by giving a signed notice of resignation to the responsible Ministers at least the required period before the notice is to take effect.
- (6) The appointment ends if the person becomes someone who, under section 16(3), may not be appointed as a member.

- (7) A person's appointment as member of the board does not end only because the person's appointment as chairperson or deputy chairperson of the board has ended.
- (8) In this section—  
*required period* means the period stated in the appointment or otherwise agreed with the responsible Ministers.

## **Division 2                      Business**

### **20            Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

### **21            Time and place of meetings**

- (1) Board meetings are to be held at the times and places the board decides.
- (2) The board must meet at least once every 3 months.
- (3) The chairperson of the board may, at any time, call a meeting of the board.
- (4) The chairperson of the board must call a meeting of the board if asked, in writing, to do so by at least 2 members of the board.

### **22            Quorum**

A quorum for the board is—

- (a) if the board has 2 members—both members; or
- (b) if the board has 3 or more members—3 members.

### **23            Presiding at meetings**

- (1) The chairperson of the board is to preside at all meetings of the board at which the chairperson is present.

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- (2) If the chairperson is absent from a board meeting and the deputy chairperson is present, the deputy chairperson is to preside.
- (3) If the chairperson and deputy chairperson are both absent from a board meeting (including because of a vacancy in the office), a member chosen by the members present is to preside at the meeting.

## **24 Conduct of meetings**

- (1) A question at a board meeting is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The board may hold meetings, or allow members to take part in its meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the board, even if it is not passed at a board meeting, if—
  - (a) notice of the resolution is given under procedures approved by the board; and
  - (b) a majority of the board members give written agreement to the resolution.

## **25 Minutes**

- (1) The board must keep minutes of its meetings.



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- (2) The board must keep a record of any resolutions made under section 24(6).

## 26 Disclosure of interests

- (1) This section applies to a member of the board (the *interested member*) if—
- (a) the interested member has a direct or indirect interest in an issue being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the interested member's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested member's knowledge, the member must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the interested member must not—
- (a) be present when the board considers the issue; or
  - (b) take part in a decision of the board about the issue.
- (4) The interested member must not be present when the board is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
- (a) be present when the board is considering whether to give a direction under subsection (3) about the interested member; or
  - (b) take part in making the decision about giving the direction.
- (6) If—
- (a) because of this section, a board member is not present at a board meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and

- (b) there would be a quorum if the member were present;  
the remaining members present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (7) If there are no members who may remain present for considering or deciding an issue, the responsible Ministers may, by each signing consent to a proposed resolution, consider and decide the issue.
- (8) A disclosure under subsection (2) must be recorded in the board's minutes.

## **Part 3                      Senior employees**

### **Division 1                Chief executive officer**

#### **27            Appointment of chief executive officer**

- (1) The Authority must have a chief executive officer.
- (2) The chief executive officer is to be appointed by the board with the prior written approval of the responsible Ministers.
- (3) The chief executive officer is an employee of the Authority.

#### **28            Term of appointment**

- (1) Subject to this section, the chief executive officer holds office for the term, not more than 5 years, stated in his or her contract of employment.
- (2) If otherwise qualified, the chief executive officer is eligible for reappointment.
- (3) The board may, at any time, end the appointment for any reason or none.

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- (4) The ending of the appointment under subsection (3) does not affect any rights to compensation to which the chief executive officer is entitled under the contract of employment.
  - (5) The chief executive officer may resign by giving a signed notice of resignation to the board at least the required period before the notice is to take effect.
  - (6) The chief executive officer's appointment ends if he or she stops being qualified to be the chief executive officer.
  - (7) In this section—  
*required period* means the period stated in the chief executive's contract of employment or otherwise agreed with the board.

## **29 Conditions of appointment**

For matters not provided for under this Act or stated in the contract of employment, the chief executive officer holds office on the terms of appointment decided by the board.

## **30 Qualifications for appointment**

A person may not be appointed, or continue in office, as the chief executive officer if the person—

- (a) is an insolvent under administration; or
- (b) has a conviction, other than a spent conviction, for an indictable offence; or
- (c) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (d) is named in the register held by ASIC under the Corporations Act, section 1274AA.

## **31 Chief executive officer's responsibilities**

The chief executive officer is, under the board, responsible for managing the Authority's affairs under—

- (a) this Act and other relevant legislation; and
- (b) the board's policies.

### **32 Things done by chief executive officer**

Anything done in the name of, or for, the Authority by the chief executive officer is taken to have been done by the Authority.

## **Division 2 Senior executives**

### **33 Appointment of senior executives**

The senior executives of the Authority are to be appointed by the board.

## **Part 4 Reporting and accountability**

### **Division 1 Application of other Acts**

#### **34 Application of financial Acts**

- (1) The Authority is—
  - (a) a statutory body under the *Financial Accountability Act 2009*; and
  - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the Authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

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### **35 Application of Crime and Corruption Act 2001**

The Authority is a unit of public administration under the *Crime and Corruption Act 2001*.

## **Division 2 Reporting generally**

### **36 Quarterly reports**

- (1) The board must give the responsible Ministers a report on the Authority's operations for each quarter in a financial year.
- (2) A quarterly report must be given to the responsible Ministers—
  - (a) within 1 month after the end of the quarter; or
  - (b) if another period after the end of the quarter is agreed between the board and the responsible Ministers—within the agreed period.
- (3) A quarterly report must contain the information required to be given in the report under the Authority's operational plan.
- (4) In this section—

*quarter*, in a financial year, means the following periods in the year—

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March;
- (d) 1 April to 30 June.

### **37 Board to keep responsible Ministers informed**

The board must—

- (a) keep the responsible Ministers reasonably informed of the Authority's operations, financial performance and financial position and its achievement of the objectives in its strategic and operational plans; and

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- (b) give to the responsible Ministers reports and information that they need to enable them to make informed assessments of matters mentioned in paragraph (a); and
- (c) immediately inform the relevant Ministers of any matters that arise that, in the board's opinion, may—
  - (i) prevent, or significantly affect, achievement of the objectives in the Authority's strategic and operational plans; or
  - (ii) significantly affect the Authority's performance in delivering the outputs under its operational plan.

### **38 Reporting to department**

- (1) The responsible Ministers may act under this section for the purpose of monitoring, assessing or reporting on the Authority's performance of its functions.
- (2) The responsible Ministers may require the Authority or the board to report to a department administered by a responsible Minister by, for example, giving stated information at stated times to the chief executive of that department.
- (3) The Authority or the board must comply with the requirement.

### **39 Other reporting requirements**

Sections 37 and 38 do not limit the matters of which the board is required to keep the responsible Ministers informed, or limit the reports or information that the board is required, or may be required, to give under another Act.

## **Division 3 Annual reports**

### **40 Definition for div 3**

In this division—

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*annual report* means the Authority's annual report under the *Financial Accountability Act 2009*.

**41 Deletion of commercially sensitive matters from annual report**

- (1) This section applies if the board asks the responsible Ministers to delete from the copies of an annual report (and accompanying documents) that are to be made public a matter that is of a commercially sensitive nature.
- (2) The responsible Ministers may delete the matter from the copies of the annual report (and accompanying documents) that are laid before the Legislative Assembly or otherwise made public.

**42 Annual report may include a summary of a matter**

An annual report may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that is a summary only; and
- (b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

**43 Matters to be included in annual report**

The annual report for a financial year must include copies of all directions given to the Authority by the responsible Ministers under this chapter during the financial year.

**Division 4 Strategic and operational plans**

**44 Interaction with the Financial Accountability Act 2009**

- (1) If something is required to be done under this division and the same thing, or something to the same effect, is required to be

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done under the *Financial Accountability Act 2009*, compliance with this division is sufficient compliance with the *Financial Accountability Act 2009*.

- (2) Otherwise, the requirements under this division are in addition to the requirements under the *Financial Accountability Act 2009*.
- (3) If there is an inconsistency between this division and the *Financial Accountability Act 2009*, this division prevails to the extent of the inconsistency.

#### **45 Draft strategic and operational plans**

- (1) Before 31 March each year, the board must prepare, and submit to the responsible Ministers for their agreement, a draft strategic plan and a draft operational plan for the next financial year.
- (2) The board and the responsible Ministers must try to reach agreement on the draft plans as soon as possible and, in any event, not later than the start of the financial year.

#### **46 Procedures**

- (1) The responsible Ministers may return the draft strategic or operational plan to the board and ask the board—
  - (a) to consider, or further consider, a stated thing and deal with the thing in the draft plan; and
  - (b) to revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as a matter of urgency.
- (3) If the draft plan has not been agreed to by the responsible Ministers by 1 month before the start of the financial year, the responsible Ministers may, by written notice, direct the board—
  - (a) to take stated steps in relation to the draft plan; or



- (b) to make stated modifications of the draft plan.
- (4) The board must immediately comply with the direction and include a copy of the direction in the plan.

#### **47 Strategic or operational plan pending agreement**

- (1) This section applies if the responsible Ministers and the board have not agreed to the draft strategic or operational plan before the start of the relevant financial year.
- (2) The draft plan submitted, or last submitted, by the board to the responsible Ministers before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the responsible Ministers, is taken to be the Authority's strategic or operational plan.
- (3) Subsection (2) applies until a draft strategic or operational plan becomes the Authority's strategic or operational plan under section 48.

#### **48 Strategic or operational plan on agreement**

When the draft strategic or operational plan has been agreed to in writing by the responsible Ministers, it becomes the Authority's strategic or operational plan for the relevant financial year.

#### **49 Compliance with strategic and operational plans**

The Authority must comply with its strategic and operational plans for a financial year.

#### **50 Modifications of strategic or operational plan**

- (1) The board may modify the Authority's strategic or operational plan only with the written agreement of the responsible Ministers.
- (2) The responsible Ministers may, by written notice, direct the board to modify the Authority's strategic or operational plan.

**50A Strategic and operational plans must not be inconsistent with statement of obligations**

- (1) This section applies if the Authority has a statement of obligations when the strategic or operational plan for a financial year is agreed to in writing by the responsible Ministers.
- (2) The strategic or operational plan must not be inconsistent with the statement of obligations.

**51 Content of operational plan**

The Authority's operational plan for a financial year must include—

- (a) the Authority's objectives; and
- (b) the Authority's capital structure; and
- (c) an outline of the following matters—
  - (i) the nature and scope of the activities proposed to be undertaken by the Authority during the financial year;
  - (ii) the Authority's main undertakings for the financial year;
  - (iii) an outline of the borrowings made or proposed to be made by the Authority;
  - (iv) an outline of the Authority's policies for minimising or managing any risk of investments and borrowings that may adversely affect its financial stability;
  - (v) if the Authority has a statement of obligations when the operational plan is agreed to in writing by the responsible Ministers—the activities proposed to be undertaken by the Authority in accordance with the statement of obligations; and
- (d) an outline of the following matters—

- (i) the major infrastructure investments proposed to be undertaken by the Authority during the financial year;
  - (ii) an outline of the Authority's policies relating to the recreational use of the Authority's premises and other infrastructure; and
- (e) the matters required under section 57.

## **Division 5                      Statement of obligations**

### **51A      Issue of statement of obligations**

- (1) The responsible Ministers may issue a statement of obligations to the Authority from time to time.
- (2) A statement of obligations issued to the Authority has effect until it expires under section 51D or it is revoked by the responsible Ministers, whichever happens first.
- (3) To the extent the Authority's statement of obligations is inconsistent with another instrument made under this or another Act, the other instrument prevails.

### **51B      Consultation with the board before issuing statement of obligations**

- (1) Before issuing a statement of obligations to the Authority, the responsible Ministers must—
  - (a) give the board a copy of the proposed statement of obligations and ask the board for its comments; and
  - (b) consider any comments given to them by the board under subsection (2).
- (2) The board may give the responsible Ministers comments on the proposed statement of obligations within 30 days after it is given to the board.

### **51C Content of statement of obligations**

- (1) A statement of obligations may contain provisions about the strategic or operational activities of the Authority in the performance of its functions.
- (2) Without limiting subsection (1), a statement of obligations may include provisions about—
  - (a) governance; or
  - (b) quality and performance standards; or
  - (c) customer and community consultation; or
  - (d) total water cycle management.

### **51D Expiry of statement of obligations**

A statement of obligations expires 3 years after the day the statement is issued to the Authority, unless it is revoked earlier by the responsible Ministers.

## **Part 5 Annual returns**

### **53 Requirement to pay annual return**

- (1) The Authority must pay to the State, for each financial year, an annual return of the amount decided under this part.
- (2) The return must be paid within 6 months after the end of the financial year for which it is payable or a longer period allowed by the responsible Ministers.

### **54 Amount of annual return**

- (1) During the period from 1 to 15 May in each financial year the Authority must give to the responsible Ministers—
  - (a) an estimate of its net profit for the financial year; and
  - (b) a recommendation about the amount of the annual return to be paid for the financial year.

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- (2) Before the end of the financial year, the responsible Ministers must either approve the recommendation or give the Authority a direction to pay an annual return of a different stated amount.
- (3) The amount of the annual return must not be more than the amount of the estimated net profit given to the responsible Ministers under subsection (1)(a).
- (4) In this section—
- net profit*, of the Authority for a financial year, means its total profit for the financial year after—
- (a) providing for income tax or its equivalent; and
  - (b) excluding any unrealised capital gains from upwards revaluation of non-current assets.

*profit* has the meaning given by the accounting standards that apply to the Authority under the *Financial Accountability Act 2009*.

## Part 6 Community service obligations

### 56 Meaning of *community service obligations*

The *community service obligations* of the Authority are the obligations to perform activities that—

- (a) the board establishes to the satisfaction of the responsible Ministers—
  - (i) are not in the Authority's commercial interests to perform; and
  - (ii) either—
    - (A) arise because of a request or direction under section 46 or a direction under section 50, 58 or 61; or
    - (B) the Authority is required to perform under another Act; or

- (b) are stated in the operational plan as community service obligations of the Authority.

## **57 Community service obligations to be stated in operational plan**

- (1) The community service obligations that the Authority is to perform are to be stated in its operational plan.
- (2) The costings of, funding for, or other arrangements to make adjustments relating to, the Authority's community service obligations are also to be stated in its operational plan.
- (3) The Authority's operational plan is conclusive, as between the government and the Authority, of—
  - (a) the nature and extent of the Authority's community service obligations; and
  - (b) the ways in which, and the extent to which, the Authority is to be compensated by the government for performing its community service obligations.

## **Part 7 Acquisition and disposal of assets and subsidiaries**

### **58 Direction not to dispose of stated asset**

- (1) The responsible Ministers may, after consultation with the board, give the board a written direction requiring the Authority or a subsidiary of the Authority not to dispose of a stated asset.
- (2) The board must ensure the direction is complied with in relation to the Authority and must, as far as practicable, ensure it is complied with in relation to any relevant subsidiary.
- (3) The responsible Ministers must publish a copy of the direction in the gazette within 21 days after it is given.

## **59 Disposal of main undertakings**

- (1) The Authority may dispose of any of its main undertakings only with the prior written approval of the responsible Ministers.
- (2) In this section—  
*main undertakings*, of the Authority, means the undertakings stated to be its main undertakings in its strategic or operational plan.

## **60 Acquiring and disposing of subsidiaries**

The Authority may not, without the prior written approval of the responsible Ministers—

- (a) form, or participate in the formation of, a company that will become a subsidiary of the Authority; or
- (b) acquire shares or participate in any other transaction that will result in a body corporate becoming or ceasing to be a subsidiary of the Authority.

# **Part 8 Other government direction**

## **61 Responsible Ministers may give directions in public interest**

- (1) The responsible Ministers may give the board a written direction in relation to the Authority and its subsidiaries if the responsible Ministers are satisfied that, because of exceptional circumstances, it is necessary to give the direction in the public interest.
- (2) The board must ensure the direction is complied with in relation to the Authority and must, as far as practicable, ensure it is complied with in relation to its subsidiaries.
- (3) Before giving the direction, the responsible Ministers must—
  - (a) consult with the board; and

- (b) ask the board to advise them whether, in its opinion, complying with the direction would not be in the commercial interests of the Authority or any of its subsidiaries.
- (4) The responsible Ministers must publish a copy of the direction in the gazette within 21 days after it is given.

## **62 Liability for Commonwealth tax equivalents**

- (1) The responsible Ministers may issue a manual (the *tax equivalents manual*) about deciding the tax equivalents to be paid by the Authority.
- (2) Without limiting subsection (1), the tax equivalents manual may provide for—
  - (a) rulings by the tax assessor appointed under subsection (3) on issues about tax equivalents, including the application of rulings under a Commonwealth Act about Commonwealth tax; and
  - (b) the lodging of returns by the Authority; and
  - (c) assessing returns; and
  - (d) the functions and powers of the tax assessor appointed under subsection (3); and
  - (e) objections and appeals against assessments and rulings.
- (3) The responsible Ministers may appoint a person to be the tax assessor under the tax equivalents manual.
- (4) The Authority must, as required under the tax equivalents manual, pay tax equivalents to the responsible Ministers for payment into the consolidated fund.
- (5) The responsible Ministers must table a copy of the tax equivalents manual, and each amendment of the manual, in the Legislative Assembly within 14 sitting days after the manual is issued or the amendment made.
- (6) In this section—



*Commonwealth tax* means tax imposed under a Commonwealth Act.

*tax equivalents* means amounts paid by the Authority to the responsible Ministers, for payment into the consolidated fund, as the value of benefits derived by the Authority because it is not liable to pay Commonwealth tax that would be payable by it if it were not a government entity.

**63 Authority and board not otherwise subject to government direction**

Except as otherwise provided by an Act, the Authority and the board are not subject to direction by or on behalf of the government.

## **Part 9 Expiry**

**64 Expiry of Authority**

- (1) The Authority expires at the end of 99 years after it is established.
- (2) The State is the successor in law of the Authority on its expiry.
- (3) Without limiting subsection (2), on the expiry of the Authority—
  - (a) an asset or liability of the Authority immediately before the expiry becomes an asset or liability of the State; and
  - (b) an employee of the Authority immediately before the expiry becomes an employee of the State; and
  - (c) an agreement in force immediately before the expiry between the Authority and another entity becomes an agreement between the State and the other entity; and
  - (d) a legal proceeding that, before the expiry, may be taken or was being taken by or against the Authority may be taken or continued by or against the State.

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- (4) A regulation may make provision about any matter necessary or convenient for giving effect to this section, including provision about—
  - (a) the transfer of an employee of the Authority to a government entity, and the employee’s rights; or
  - (b) the application of instruments relating to the Authority; or
  - (c) the Authority’s records.
- (5) This section applies subject to section 109.
- (6) In this section—

*record* includes any document.

## Chapter 5      Restructuring relevant water entities

### 104      Relevant water entities

- (1) Each of the following entities is a *relevant water entity*—
  - (a) the Authority;
  - (b) Queensland Water Infrastructure Pty Ltd ACN 119 634 427;
  - (d) an entity prescribed under a regulation for this section.
- (2) A regulation made under subsection (1)(d) may only prescribe—
  - (a) an entity established under an Act; or
  - (b) a corporation ultimately owned by a relevant water entity or the State.

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**105 Transfer of shares, assets, liabilities etc. to relevant water entity**

- (1) A regulation may make provision about any of the following for a relevant water entity—
- (a) the transfer of shares in the relevant water entity to another relevant water entity;
  - (b) the transfer of a business, asset or liability of the relevant water entity to another relevant water entity;
  - (c) the consideration for a share, business, asset or liability transferred under paragraph (a) or (b);
  - (d) the grant of a lease, easement or other right from the relevant water entity to another relevant water entity;
  - (e) the variation or extinguishment of a lease, easement or other right held by the relevant water entity;
  - (f) in relation to a lease held by the relevant water entity under the *Land Act 1994*—
    - (i) transferring the lease; or
    - (ii) changing a purpose for which the lease is issued; or
    - (iii) changing a condition imposed on the lease; or
    - (iv) granting a sublease;
  - (g) for trust land for which the relevant water entity is the trustee—
    - (i) removing the relevant water entity as trustee; or
    - (ii) appointing another relevant water entity as trustee; or
    - (iii) changing the purpose for which the trust land was reserved or granted in trust, including to a purpose other than a community purpose;
  - (h) whether and, if so, the extent to which the relevant water entity is the successor in law of another relevant water entity;

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- (i) a legal proceeding that is being, or may be, taken by or against the relevant water entity to be continued or taken by or against another relevant water entity;
- (j) the transfer or application of an instrument to the relevant water entity, including—
  - (i) whether the relevant water entity is a party to an instrument; and
  - (ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of the relevant water entity; and
  - (iii) whether a reference to an entity in an instrument is a reference to the relevant water entity; and
  - (iv) whether, under an instrument, an amount is or may become payable to or by the relevant water entity or other property is, or may be, transferred to or by the relevant water entity; and
  - (v) whether a right or entitlement under an instrument is held by the relevant water entity;
- (k) the transfer of an employee of the relevant water entity to another relevant water entity;
- (l) the employees of the relevant water entity transferred under paragraph (k), and their terms and conditions of employment, rights and entitlements;
- (m) the application of a particular industrial instrument to—
  - (i) the employees mentioned in paragraph (l); or
  - (ii) the relevant water entity to which the employees mentioned in paragraph (l) are transferred; or
  - (iii) other employees of the relevant water entity mentioned in subparagraph (ii);
- (n) the records of the relevant water entity;
- (o) anything incidental, consequential or supplemental to the restructure of the relevant water entity.

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- (2) A regulation made under subsection (1)—
- (a) may transfer an asset attached to land without transferring the land, even though the asset would otherwise be a part of the land; and
  - (b) has effect despite any other law or instrument; and
  - (c) may provide for a matter by reference to a document held by an entity.
- (3) Without limiting subsection (2), to remove any doubt it is declared that a regulation made under section 105(1)(m) applies despite—
- (a) the *Industrial Relations Act 2016*; and
  - (b) any industrial instrument.
- (4) Subsection (2)(c) does not by implication limit the *Statutory Instruments Act 1992*, section 26.
- (5) Without limiting subsection (1), a regulation providing for a matter mentioned in subsection (1)(c) may make provision about—
- (a) how the consideration is to be decided; and
  - (b) the changing of the consideration.
- (6) Without limiting subsection (1), a regulation may make provision about accounting treatment in relation to a matter mentioned in subsection (1).
- (7) Unless the context otherwise requires, a reference in this section to a relevant water entity includes the State and the Coordinator-General.
- (8) In this section—
- employee**, of a relevant water entity, does not include a director of the entity.
- industrial instrument** see the *Industrial Relations Act 2016*, schedule 5.
- record** includes any document.

## 106 Effect on legal relationships

- (1) Nothing done under this chapter—
  - (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) except as provided for under a regulation made under section 105, is taken to fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or
    - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
    - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iv) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this chapter, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this Act, giving notice to a person would be necessary to do something under this chapter, the notice is taken to have been given.
- (4) In this section—

*relevant entity* means—

- (a) the State or an employee or agent of the State; or
- (b) the Coordinator-General or an employee or agent of the Coordinator-General; or
- (c) a relevant water entity, a member of a relevant water entity's board or an employee or agent of a relevant water entity.

## 107 Ministerial direction

- (1) The Minister may give a direction (a *transfer direction*) to a relevant water entity or its board requiring the entity or board to do something the Minister considers necessary or convenient for effectively restructuring a relevant water entity under this chapter.
- (2) Without limiting subsection (1), a transfer direction may be about—
  - (a) the timing of transfers of particular businesses, assets and liabilities, instruments and employees; or
  - (b) executing an instrument; or
  - (c) disclosing information.
- (3) A transfer direction must be in writing, signed by the Minister.
- (4) A relevant water entity must comply with a transfer direction given to it.
- (5) A relevant water entity's board must—
  - (a) if a transfer direction is given to the board—comply with the direction; or
  - (b) if a transfer direction is given to the entity—take the action necessary to ensure the entity complies with the direction.
- (6) A relevant water entity's employees must help the entity or its board to comply with a transfer direction given to the entity or board.

## **108 Registering authority to register or record transfer or other dealing**

- (1) A registering authority must, on written application by a relevant water entity, register or record in the appropriate way a transfer of, or other dealing affecting, an asset, liability or instrument provided for under a regulation made under section 105.
- (2) The relevant water entity must comply with any relevant procedures required by the registering authority for the purpose of registering or recording the transfer or other dealing.

*Example—*

The registering authority may require the relevant water entity to complete and submit a particular form.

- (3) In this section—  
*registering authority* means the registrar of titles or another entity required or authorised by law to register or record transactions affecting assets, liabilities or instruments.

## **109 Regulation dissolving Authority**

- (1) This section applies if all the assets and liabilities of the Authority have become the assets and liabilities of a relevant water entity or have been otherwise disposed of by the Authority.
- (2) A regulation may dissolve the Authority and make provision about any matter for which it is necessary or convenient to make provision about the Authority's dissolution and the preparation of its final statements and report.
- (3) Without limiting subsection (2), the regulation may make provision about—
  - (a) access to information and documents for preparing the Authority's final statements and report; and
  - (b) the entity that is to prepare the Authority's final statements and report.



(4) Subsection (3)(b) applies despite the *Financial and Performance Management Standard 2009*, sections 48(1) and 53.

(5) In this section—

*final statements and report*, of a relevant water entity, means the entity's final financial statements and final report under the *Financial Accountability Act 2009*, sections 62 and 63.

## 110 Non-liability for State taxes

(1) A relevant water entity is not liable to pay a State tax in relation to—

(a) a transfer of a share, business, asset, liability or instrument, or any other thing done, under a regulation made under section 105; or

(b) another dealing affecting a share, business, asset, liability or instrument as part of a restructure of a relevant water entity under a regulation made under section 105.

(2) In this section—

*State tax* means a fee, levy or charge imposed under an Act, including—

(a) duty under the *Duties Act 2001*; and

(b) a fee or charge under the *Land Act 1994*, the *Land Title Act 1994* or the *Water Act 2000*.

## 111 Rights of transferred employees etc.

(1) This section applies if there is a transfer of an employee (a *transferred employee*) from a relevant water entity (the *transferor*) to another relevant water entity (the *transferee*) under a regulation made under section 105.

(2) The transfer does not—

(a) reduce the transferred employee's total remuneration; or

- (b) prejudice the transferred employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) interrupt continuity of service, except that the transferred employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service; or
  - (d) constitute a termination, retrenchment or redundancy of the transferred employee's employment by the transferor; or
  - (e) entitle the transferred employee to a payment or other benefit merely because he or she is no longer employed by the transferor; or
  - (f) require the transferor to make any payment in relation to the transferred employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the transferor and the transferred employee.
- (3) The transfer has effect despite any other contract, law or instrument.
- (4) If the regulation mentioned in subsection (1) provides for the application of a particular industrial instrument to an employee of the transferee other than a transferred employee, the provision does not reduce the other employee's total remuneration.

### **113 Things done under this chapter**

- (1) A thing may be done under this chapter despite any other law or instrument.
- (2) To remove any doubt, it is declared that a thing is taken to be done under this chapter if it is done by, or in compliance with, a regulation made under section 105 or direction given under section 107, even if the thing includes taking steps under another Act.

## 114 Excluded matter for Corporations Act

Anything done by the Minister under section 107 is an excluded matter for the Corporations Act, section 5F, in relation to the Corporations Act, chapter 2D.

## 115 Severability

- (1) Subsection (2) applies if a provision of—
  - (a) this chapter; or
  - (b) a regulation made under section 105;is held by a court or judge to be beyond power, invalid or unenforceable.
- (2) The provision is to be disregarded or severed and the court's or judge's decision does not affect the remaining provisions of this chapter or the regulation which continue to have effect.
- (3) This section does not affect the operation of the *Acts Interpretation Act 1954*, section 9 in any way.

# Chapter 6 Miscellaneous provisions

## 116 Delegation by Minister

- (1) The Minister may delegate the Minister's functions under this Act, except functions as a responsible Minister, to the chief executive of the department.
- (2) In this section—  
*functions* includes powers.

## 116A Entry to, and use of, water entity's land after transfer of asset attached to the land

- (1) This section applies if—

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- (a) a water entity owns land, or is the trustee of trust land, to which an asset is attached; and
  - (b) the land or asset is transferred, or the water entity is removed as trustee for the trust land and another water entity is appointed as trustee, under a transfer notice; and
  - (c) after the transfer or change in the trusteeship, a water entity (the *asset owner*) owns the asset and another water entity (the *land owner*) owns or occupies the land to which the asset is attached.
- (2) An employee or agent of the asset owner may enter the land or a structure on the land, at all reasonable times, if the entry is—
- (a) necessary to do something relating to the asset for the exercise of the asset owner's functions as a water entity; or
  - (b) necessary for the continued use of the asset in a way it was lawfully used before the transfer.

*Examples of things for which entry may be necessary—*

- carrying facilities into, through, across or under the land
  - performing work in the land
  - inspecting, operating, changing, maintaining, removing, repairing or replacing the asset
- (3) Also, the asset owner may allow other persons to enter the land or a structure on the land at the times stated, and as otherwise provided for, in the transfer notice.
- (4) Subsections (2) and (3) do not apply to the entry of a structure, or the part of a structure, used for residential purposes.
- (5) Subsections (2) and (3) do not limit the making of other agreements between the asset owner and land owner about entry to, or use of, the land.
- (6) The land owner may not, without the asset owner's written consent—
- (a) interfere with the asset; or

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- (b) take any step to change the use of the land; or
  - (c) carry out material works or make material improvements to the land; or
  - (d) transfer the land to someone else; or
  - (e) grant rights to anyone else in relation to the land that are inconsistent with the land owner's use of the land at the time of the transfer.
- (7) The asset owner may give a written request to the registrar of titles to record the following information (the ***prescribed information***)—
- (a) that this section applies to the land;
  - (b) a description of the asset;
  - (c) the name of the asset owner.
- (8) On receiving the request, the registrar of titles must make a record in a way that a search of the register kept by the registrar under any Act relating to the land will show the prescribed information.
- (9) On written request from the asset owner, the registrar of titles must cancel a record made under subsection (8).
- (10) If the land owner incurs loss or damage because of the asset owner's exercise of a power under this section, the land owner is entitled to be paid compensation by the asset owner as worked out under the transfer notice or otherwise agreed between them.
- (11) A reference in this section to land to which an asset is attached is a reference to—
- (a) the parcel of land, for which there is an instrument of title, that includes the particular area covered by the asset; and
  - (b) for subsections (2) and (3), other contiguous land owned or occupied by the land owner.
- (12) In this section—

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*repealed*, in relation to a provision of this Act, means the provision as it was in force immediately before its repeal by the *South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012*.

*transfer notice* has the meaning given under repealed section 67.

*water entity* has the meaning given under repealed section 65.

### **116B Things done by, or given to, responsible Ministers**

- (1) If, under this Act, a thing is required to be done or may be done by the responsible Ministers, the thing is to be done by the Ministers jointly.
- (2) If, under this Act, a thing is required to be given or may be given to the responsible Ministers, the thing is to be given to each of the Ministers.
- (3) However, if the responsible Ministers' offices are held, or the functions of the offices are being performed, by 1 person, the thing may be done by, or given to, that person alone.

### **117 Regulation-making power**

The Governor in Council may make regulations under this Act.

## Chapter 7      **Transitional provisions for South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012**

### **118      Application of former ss 111 and 112 to employees transferred from WaterSecure to Queensland Bulk Water Supply Authority**

- (1) This section applies to employees transferred from WaterSecure to the Authority under a regulation made under section 105.
- (2) On the commencement of this section—
  - (a) former sections 111 and 112 stop applying for the transferred employees; and
  - (b) any requirement in a document for the Authority to act in accordance with former section 112 no longer applies.
- (3) In this section—

**Authority** means the Queensland Bulk Water Supply Authority.

**former**, in relation to a provision, means as in force immediately before the replacement or repeal of the provision by the *South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012*.

**WaterSecure** means the Queensland Manufactured Water Authority previously established under former section 6.

**119 Continuation of repealed evidentiary provision relating to the project**

- (1) Repealed section 95, as it was in force immediately before the commencement of this section, continues to apply despite its repeal.
- (2) For subsection (1), a term used in repealed section 95 has the meaning given under this Act as it was in force immediately before the commencement of this section.

*Note—*

Repealed section 95 provided for—

- a certificate signed by the Minister to be evidence of particular matters relating to the project; and
- a copy of a project direction certified by the Minister to be evidence of the direction.

**120 Strategic and operational plans for 2013–14 financial year**

- (1) This section applies if all or part of the business of LinkWater or the water grid manager is transferred to the Authority under a regulation made under section 105 during the period starting on 1 December 2012 and ending on 30 June 2013.
- (2) The time within which the board must prepare and submit, under section 45, a draft of the strategic and operational plans for the 2013–14 financial year is the time agreed between the board and the responsible Ministers.
- (3) If a draft plan has not been agreed to within 1 month after its submission to the responsible Ministers, the responsible Ministers may give a direction under section 46(3).
- (4) The period for which the strategic or operational plan applies is—
  - (a) the remainder of the 2013–14 financial year; and
  - (b) if the Authority and the responsible Ministers agree the plan is also to apply for the following financial year—the following financial year.
- (5) In this section—



**2013–14 financial year** means the financial year ending on 30 June 2014.

**LinkWater** means the Queensland Bulk Water Transport Authority previously established under section 6.

**water grid manager** means the SEQ Water Grid Manager previously established under section 6.

## **121 Authority to give final quarterly report for LinkWater or water grid manager**

- (1) This section applies if all or part of the business of LinkWater or the water grid manager is transferred to the Authority under a regulation made under section 105.
- (2) The Authority must give the responsible Ministers the final quarterly report for LinkWater or the water grid manager.
- (3) This section does not limit section 109.
- (4) In this section—

**final quarterly report**, for LinkWater or the water grid manager, means the quarterly report under section 36 for the final quarter of the entity's operation.

**LinkWater** see section 120.

**water grid manager** see section 120.

## Schedule 3 Dictionary

### section 5

**agent**, of an entity, includes a person engaged by the entity.

**annual report**, for chapter 2, part 4, division 3, see section 40.

**annual return** means the annual return payable under chapter 2, part 5.

**asset** includes a right.

**Authority** see section 6(1).

**board** means the Authority's board.

**chief executive officer** means the chief executive officer of the Authority appointed under section 27.

**community service obligations** see section 56.

**Coordinator-General** means the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

**government entity** see the *Public Sector Act 2022*, section 276.

**indictable offence** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

**information** includes a document.

**insolvent under administration** see the Corporations Act, section 9.

**instrument** means any document, and includes—

- (a) an oral agreement; and
- (b) an application; and
- (c) an accreditation, allocation, approval, certificate, entitlement, exemption, licence, manual, notice, permit, plan and any other authority.

**operational plan**, of the Authority, means the Authority's operational plan in force under chapter 2, part 4, division 4.

**relevant water entity** see section 104.

**responsible Ministers** means—

- (a) the Minister administering this Act; and
- (b) the Minister administering the Authority.

**restructure**, of a relevant water entity, includes the transfer of a share, business, asset, liability, instrument or employee of the relevant water entity to another relevant water entity.

**right** includes power, privilege and immunity.

**senior executive**, of the Authority, includes the holder of an office in the Authority that reports directly to the chief executive officer and that is commensurate with an office held by a senior executive under the *Public Sector Act 2022*.

**spent conviction** means 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.

**statement of obligations**, of the Authority, means a statement of obligations issued to the Authority and in effect under chapter 2, part 4, division 5.

**strategic plan**, of the Authority, means the Authority's strategic plan in force under chapter 2, part 4, division 4.

**subsidiary**, of the Authority, means a body corporate that would be a subsidiary of the Authority under the Corporations Act, part 1.2, division 6 if the Authority were a body corporate.

**trust land** means land dedicated as a reserve, or granted in fee simple in trust, under the *Land Act 1994*, chapter 3, part 1.

**water chief executive** means the chief executive under the *Water Act 2000*.

***water service*** see the Water Supply Act, schedule 3.

***Water Supply Act*** means the *Water Supply (Safety and Reliability) Act 2008*.

***water supply works*** see the *Water Act 2000*, schedule 4.