

Queensland



Explanatory Notes for SL 2002 No. 70

Water Act 2000

WATER REGULATION 2002

GENERAL OUTLINE

Policy objectives of the legislation and how the policy objectives will be achieved

The objective of the regulation provides for a range of matters required by the *Water Act 2000* (“**the Act**”), which will allow for the proper functioning of the Act.

The regulation does this by:

- Providing administrative arrangements in respect of the Water Allocations Register;
- Stating the areas, and the conditions on which, interim water allocations may be permanently transferred to other land;
- Declaring catchment areas, where regulation will occur to protect the quality of water in the catchment;
- Declaring drainage and embankment areas, where drainage and levee works will be assessable development under the *Integrated Planning Act 1997*;
- Specifying requirements for water bore driller’s licences, as part of the implementation of a national regime for licensing of water bore drillers;
- Establishing water authorities, and providing the rules governing election procedures for authority boards; and
- Setting the fees and charges payable under the Act.

The regulation repeals and replaces six existing regulations. The substantive provisions of those regulations are preserved in this regulation.

Estimated cost for Government

The regulation maintains the status quo both in terms of regulatory requirements and in respect of fees and charges payable. Accordingly, the regulation should not alter the present cost to Government of administering the Water Act.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

Consultation

Government Departments and Agencies affected by the changes have been consulted in respect of the Bill. In addition, conservation, industry, farming and local government groups have been consulted via the Water Reform Implementation Group.

NOTES ON PROVISIONS OF THE REGULATION

Clause 1 sets out the short title to the Regulation.

Clause 2 allows for commencement of the provisions of the Regulation.

Clause 3 states that certain defined terms are included in the schedule to the regulation.

Clause 4 states the location of the offices of the Water Allocation Register. This, and the following clause, duplicate provisions of the *Land Title Regulation 1994*.

Clause 5 states the requirements that apply to documents being lodged with the Water Allocation Register.

Clause 6 states those entities that have been nominated for an interim resource operations licence ('IROL'). The entities listed by the regulation have already been nominated by a previous regulation and have been granted IROLs. This regulation does not nominate any new entities, but only carries over those entities previously nominated.

Clause 7 states those entities that may hold an interim water allocation ('IWA') without the allocation attaching to land. The Act requires that IWAs, generally, attach to land. There are certain limited circumstances listed in the Act where an IWA does not attach to land, for example for

water service providers, local governments and water authorities. The Act also allows for regulation to prescribe additional entities that may hold an allocation without it attaching to land. Those entities that have been prescribed by the regulation are:

- The holder of a mineral development licence or a mining lease; and
- Two corporations law companies, each of which are owned by a group of water users and which operate as a water supplier for those water users. The corporation is the holder of a water licence, and takes water on behalf of the water users.

Clause 8 provides for the requirements for the holder of an interim water allocation to apply to transfer the allocation to other land. The interim water allocations can only be transferred to other land in the areas specified in the schedule to the regulation, and for the purposes specified in the regulation. For example, in some areas allocations can only be traded to be used for agricultural purposes or for stock and domestic purposes. This clause, and the following five clauses, are carried over from the *Water Regulation 2000*. The regulation permits trading in three water supply schemes—the Mareeba-Dimbulah, the Nagoa Mackenzie and the Mary River. The regulation allows for trading the Mary River water supply scheme for the first time. Trading in the Mary is limited to three sections within the water supply scheme and interim water allocations may only be traded within the same section. That is, for each of the three sections, allocations may only be traded within the section.

Clause 9 provides that an applicant applying to transfer an interim water allocation to other land must apply to the chief executive. The application must be accompanied by, amongst other things, the written consent of the parties to the transaction and a statutory declaration that any party with an interest in the allocation has been notified in writing of the proposed transfer.

Clause 10 states the matters the chief executive must consider in assessing an application to transfer an interim water allocation to other land.

Clause 11 provides that the chief executive may either approve or refuse an application. The chief executive must refuse an application if the proposed transferee has not have entered a supply contract with the interim resource operations licence holder that supplies the allocation being transferred. The application must also be refused if the allocation is not to be used for one of the specified purposes in the schedule. This clause also

specifies the process to be followed by the chief executive in approving or refusing an application. The clause allows the chief executive to attach conditions to the approval. These may, for example, require that the volume of water that may be taken under the allocation must be reduced (if it is transferred) to adjust for the impact of the transfer on the watercourse.

Clause 12 provides that the chief executive may fix conditions on an interim water allocation that has been transferred to other land, including the purpose for which water taken under the allocation may be used.

Clause 13 provides that after an interim water allocation has been transferred, the parties must, as soon as possible, give the chief executive notice of the transfer. The chief executive must then grant IWAs to give effect to the transfer. The transferee is granted an IWA for the transferred allocation. If only part of an IWA has been transferred, the transferor is given an amended IWA, reflecting the reduction that has been made as a result of the transfer. Otherwise, if all of the IWA has been transferred the former IWA is cancelled.

Clause 14 states those entities that may apply for, or that may hold, a water licence without being the owner of the land to which the licence relates and without the licence attaching to land. The Act requires that water licences, generally, attach to land. There are certain limited circumstances listed in the Act where a licence does not attach to land, for example for water service providers, local governments and water authorities. The Act also allows for regulation to prescribe additional entities that may hold a licence without it attaching to land. This will allow, for example, for a mining company to hold a licence without the licence attaching to land.

Clause 15 provides that seasonal water assignments of an entitlement under a water licence can be made in the areas and for the types of entitlements specified in the schedule. The Act requires that seasonal water assignments (previously referred to as 'temporary transfers') are only permitted in the areas and on the conditions set by regulation. The rules that apply to when, and on what conditions, seasonal water assignments are available are made for different water management areas, and are available from the Department regional office for the relevant area. The seasonal water assignment rules allow a water licence holder to transfer part of an entitlement to take water that has not been used for a particular water year to another water user. These provisions formalise existing practice.

Clause 16 declares certain areas of the State to be catchment areas, which triggers regulatory powers of the Department in respect of those areas to protect water quality in the catchment. These powers, and the

declared areas, are continued from the *Water Resources (Areas and Boards) Regulation 2000*.

Clause 17 states the royalties payable for extracting quarry materials.

Clause 18 states the three classes of water bore driller's licences. The provisions in the regulation regarding water bore driller's licences have been included as part of the implementation of a national scheme for licensing of bore drillers.

Clause 19 states the types of endorsements that can be made on a water bore driller's licence.

Clause 20 states the qualifications required for a person to apply for a class 1 licence. The holder of an equivalent licence from another state is qualified to apply for a licence. Otherwise, an individual must meet the requirements of this clause in terms of work experience and courses. These provisions are part of the implementation of a national scheme for the licensing of water bore drillers.

Clause 21 states the qualifications required for a person to apply for a class 2 licence. The holder of an equivalent licence from another state is qualified to apply for a licence. Otherwise, an individual must meet the requirements of this clause in terms of work experience and courses. These provisions are part of the implementation of a national scheme for the licensing of water bore drillers.

Clause 22 states the qualifications required for a person to apply for a class 3 licence. The holder of an equivalent licence from another state is qualified to apply for a licence. Otherwise, an individual must meet the requirements of this clause in terms of work experience and courses. These provisions are part of the implementation of a national scheme for the licensing of water bore drillers.

Clause 23 states certain conditions that apply to a water bore driller's licence. These include requiring certain drilling activities to be conducted in accordance with nationally accepted standards. It also provides that licences are granted for a period of 5 years.

Clause 24 states the records that a water bore driller must keep in respect of each drilling activity undertaken by a driller, including the owner of the land on which the drilling occurs, the location, the drilling method, the details of the bore drilled and the water that will be taken by the bore.

Clause 25 not used. This regulation incorporates current drafting practice by leaving some clause number deliberately blank at the end of

each part. If the regulation is amended in the future, this will allow the amendment without the need for renumbering.

Clause 31 states the water authorities and water authority areas established by the regulation. All of the authorities and their areas are already in existence and are simply re-established by this regulation. This provision, and all of the other provisions in this part relating to water authorities, are carried over from the *Water Resources (Areas and Boards) Regulation 2000*.

Clause 32 provides for the appointment of a returning officer to conduct the elections of a water authority board.

Clause 33 requires the returning officer to maintain a roll of voters and states the details to be included in the roll.

Clause 34 states the process for the returning officer to call for nominations and the process for a candidate to be nominated. It is an offence for a person nominating to provide evidence that is false or misleading.

Clause 35 provides that a ballot must be held if there are more candidates nominated than there are positions vacant.

Clause 36 specifies the requirements of a ballot paper, including the matters that must be stated on the ballot paper.

Clause 37 states the process to be followed by the returning officer in distributing the ballot paper and other voting material to each ratepayer that is eligible to vote at an election.

Clause 38 states that a ballot must remain open for at least 10 business days.

Clause 39 states the requirements for a ratepayer completing a ballot paper. Ballots are completed by placing a cross beside the name of the candidates that the ratepayer wishes to vote for. A person may vote for up to the number of vacancies that there are on the board. That is, if there are 4 positions available on the board, then a ratepayer may place crosses beside up to 4 candidates on the ballot. It is an offence for a ratepayer to state anything that is false or misleading in completing the ballot.

Clause 40 states the process for the returning officer to keep votes in the ballot box, and the process for dealing with a vote that is received after voting has closed.

Clause 41 provides a process for candidates to provide scrutineers to scrutinize the opening and counting of votes.

Clause 42 states the process for the returning officer to open ballot envelopes and to deal with the voting material. It is an offence for the returning officer to not comply with the requirements of this section.

Clause 43 states the process for the returning officer to count the ballot papers.

Clause 44 provides that if the votes of two or more candidates are equal then the returning officer must determine the result by drawing lots.

Clause 45 provides that the returning officer must provide each candidate with a signed declaration of the result. The declaration must include details on the number of ballot papers issues, the number returned and the number counted.

Clause 46 provides that a casual vacancy on a Board must be filled by electing another director in accordance with the requirements of this part of the regulation.

Clause 47 provides that a ballot will be valid provided there has been substantial compliance with the provisions of this part governing elections.

Clause 48 provides that where a special ballot is required, it should be conducted in the same (or equivalent) manner as an election is conducted under the provisions of this part.

Clause 49 provides that a person is not required to obtain a riverine protection permit to destroy vegetation in a watercourse if the activity is permitted by an authority granted under the *Petroleum Act 1923*, the *Land Act 1994*, the *Fossicking Act 1994*, or the *Environment Protection Act 1994* or where it is the destruction of a noxious plant. These provisions are to avoid duplication of licensing where a permit under another act that is equivalent to a riverine protection permit has already been issued. These provisions carry over provisions of the *Water Resources (Watercourse Protection) Regulation 1993*.

Clause 50 provides that a person is not required to obtain a riverine protection permit to excavate in a watercourse if the activity is permitted by an authority granted under the *Petroleum Act 1923*, the *Fossicking Act 1994*, or the *Environment Protection Act 1994*. These provisions are to avoid duplication of licensing where a permit under another act that is equivalent to a riverine protection permit has already been issued. These provisions carry over provisions of the *Water Resources (Watercourse Protection) Regulation 1993*.

Clause 51 provides that a person is not required to obtain a riverine protection permit to place fill in a watercourse if the activity is permitted by

an authority granted under the *Petroleum Act 1923*, the *Fossicking Act 1994*, or the *Environment Protection Act 1994*. These provisions are to avoid duplication of licensing where a permit under another act that is equivalent to a riverine protection permit has already been issued. These provisions carry over provisions of the *Water Resources (Watercourse Protection) Regulation 1993*.

Clause 52 provide that a water bore must be decommissioned in accordance with the prescribed standards, which are the approved Australian standards for decommissioning bores.

Clause 53 states the drainage rates payable by an owner of land in a drainage area. These provisions are carried over from the *Water Resources (Rates and Charges) Regulation 1992*.

Clause 54 declares the downstream limits of certain watercourses. The Act provides that the downstream limit of a watercourse is the point to which the spring tide normally flows. The Act also allows a regulation to specify an alternate downstream limit. This defines the parts of a river to which the Act will apply, and where the jurisdiction of other Acts will commence.

Clause 55 provides that water below the Kolan River, to a depth of 10 metres, is taken to be water in the watercourse. The Act makes a distinction between different types of water (water in a watercourse, underground water etc.) and different regulatory regimes apply to those different types of water. Where there is an obvious connectivity between the two, the taking of underground water can significantly impact on the level of water in a watercourse.

To acknowledge this, the Act allows a regulation to declare water under a watercourse to be water in the watercourse. What this provision means is that a person will not be able to take (what would otherwise be) underground water that is directly below the Kolan River unless the person holds a water licence to take water from the river.

Clause 56 allows the chief executive to declare an area of the State to be a water management area. These areas may be declared for the purposes of specifying, for the area, any of the following:

- Water sharing rules;
- Seasonal water assignment rules;
- Water charges.

Where a new area is declared, the chief executive must notify all water users in the area, either by a notice direct to the water user or by publishing a notice in the newspaper.

Clause 57 provides that if the chief executive alters the boundary of a water management area, the chief executive must notify the people licensed to take water from within the area.

Clause 58 provides that the charges specified in the schedule are payable by water users for the taking of water in each of the listed water management areas. These charges are carried over from the provisions of the *Water Resources (Rates and Charges) Regulation 1992*.

Clause 59 provides that for each holder of water licence to take water in a water management area listed in the schedule, the stated minimum charge is payable for each water year. This means that in those areas, regardless of the volume of water taken, the licensee must pay the minimum charge. Where a licensee holds several licences in the one area, the licensee will only pay the one minimum charge. However, the minimum charge does not apply to a licence in the area for which there are no other charges payable. For example, if there are no charges specified for water harvesting in an area, then the minimum charge will not apply to licences for water harvesting.

Clause 60 states the requirements for a notice levied by the chief executive requiring payment of charges. The chief executive may determine the period for which a notice is levied. The notice must state the amount payable, the period within which payment must be made, and that any unpaid amount accrues interest at the Suncorp Metway Ltd business banking variable lending business rate.

Clause 61 declares certain areas to be drainage and embankment areas. This means that any drainage or levee works in those areas are assessable development under the *Integrated Planning Act 1997*. The only areas declared are in the wet tropics. Previously drainage and levee works in those areas were licensed under *Water Resource Act 1989*. Works of this kind will now require a development permit, rather than a licence. Existing works are deemed to holder development permits.

Clause 62 declares a self-assessment code, which applies to person's installing works for taking water from a watercourse, lake or spring for stock or domestic purposes. The Act provides a statutory right for people to take water from a watercourse for stock and domestic purposes. However, a person installing works to take that water must comply with this Code.

Clause 63 states that the fees payable under the Act are listed in the schedule. The fees included in the schedule mirror fees presently payable under the various regulations in place. For example the fee that was payable for an application for a licence under the *Water Resources Act 1989* are carried forward as the fees for an application for a water licence under the Act. Fees have been increased by CPI for the past 12 months.

Clause 64 states that there are water sharing rules for each of the specified water management areas. These rules specify the way the volume of water that a person is authorised to take under an entitlement is determined. The rules cover matters such as whether a water user can apply to draw on their allocation for the next year ('forward draw'), or whether some of a person's entitlement that has not been used in one water year can be credited to their entitlement for the following year ('carry-over'). This section formalises an existing practice.

Clause 65 defines the nominal entitlement. This is the volume stated on a water licence and is, nominally, what a person will be able to take under the authorisation for a water year. The actual volume that may be taken is the annual entitlement, which is calculated by reference to the nominal entitlement.

Clause 66 states the way in which the announced entitlement for a year is determined. It is calculated taking account of matters such as the anticipated water use, prevailing weather conditions, including weather forecasts, and any other matters included in the water sharing rules for the water management area.

Clause 67 states the way in which the annual entitlement for a water licence is determined. It is calculated by multiplying the announced entitlement by the nominal entitlement and then adding or subtracting any water carried over/taken from the previous year and adding any water drawn forward from the next year.

For example, a water licence states as the nominal entitlement as 100 megalitres per water year. The announced entitlement for the year, as announced by the chief executive is 80%. The person has carried over 5 megalitres from the previous year that was not used. The annual entitlement for this year will be $100 \times 80\%$ plus 5 which equals 85 megalitres. The person is therefore authorised to take 85 megalitres under the licence for that water year.

Clause 68 states the transitional requirements in respect of water bore driller licensing. These provisions state that where a driller has been employed drilling in a non-declared area (and therefore was not required to

be licensed), the driller is taken to have been employed by a licensed driller for that time. This is to recognise the experience of people who have worked as drillers, but have not previously been required to be licensed (or worked for someone that was not required to be licensed).

Clause 69 provides for a phase in of the requirement that water bore driller's licences be granted for 5 years. It provides that if a licence application is made before the commencement of the licensing section of the Act, (but is dealt with under the Act) then the licence should only be granted for 1 year, not 5. Similarly, where a licence comes up for renewal during (approximately) the first 12 months after commencement of the licensing provisions, the licence will only be renewed for a further 12 months. The fees payable are adjusted accordingly.

Clause 70 declares the areas where the taking of subartesian water is regulated. Within those areas, a person requires a licence to take underground water, unless the water is taken for one of the purposes listed in the schedule. For examples, an exemption may apply for water taken for stock or domestic purposes. Similarly, any works in those areas for taking subartesian water are assessable development under the *Integrated Planning Act 1997*. Again, exemptions apply for works for certain purposes. This section maintains the same regulatory regime provided for by the *Water Resources (Areas and Boards) Regulation 2000*.

Clause 71 prescribes the dams listed in the schedule as having the failure impact rating as listed in the schedule.

Clause 72 preserves existing authority areas that do not have a board. These are water authority areas for which the board has been dissolved and the chief executive has assumed the role of the board. The regulation continues the areas as authority areas and the chief executive will continue to fill the role of the board.

Clause 73 transitions existing ground water areas, irrigation projects and subartesian areas (under the *Water Resources Act 1989*) as water management areas.

Section 74 provides that where water charges have been increased by this regulation (which has only occurred inline with CPI), the new charges only apply from the start of the next water year.

Clause 74 repeals a number of regulations that this regulation replaces.

Schedule 1 states the persons nominated to hold interim water allocations.

Schedule 2 states the entities that may hold a water licence or interim water allocation without the licence or allocation attaching to land and without being owners of land.

Schedule 3 states the areas in which interim water allocations may be permanently transferred to other land, and the conditions on and purposes for which allocations may be transferred.

Schedule 4 states the areas where seasonal water assignments are permitted and the types of licences for which assignments may be made.

Schedule 5 states the areas that are declared to be catchment areas.

Schedule 6 states the water authorities that are established and the areas for which they are established. All the authorities are existing authorities under the *Water Resources (Areas and Boards) Regulation 2000*.

Schedule 7 states the drainage rates payable by owners of land in drainage areas.

Schedule 8 states the downstream limits for certain watercourses.

Schedule 9 declares those areas that are drainage and embankment areas, where drainage and levee works will be regulated.

Schedule 10 states the water management areas for which there are water sharing rules.

Schedule 11 declares those subartesian areas where a person requires a licence to take water, those licences that are exempt from the requirement, and those works are not assessable.

Schedule 12 states the deemed failure impact ratings for the listed dams.

Schedule 13 states the authority areas (which do not have boards) that are established. All the areas are existing areas under the *Water Resources (Areas and Boards) Regulation 2000*.

Schedule 14 states the charges for taking water in a water management area that are payable.

Schedule 15 states the royalties for quarry materials payable under the Act.

Schedule 16 states the fees payable under the Act.

Schedule 17 contains the dictionary of defined terms used in the regulation.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Natural Resources and Mines.