Queensland

Explanatory Notes for SL 2003 No. 99

Water Act 2000

WATER AMENDMENT REGULATION (No. 3) 2003

GENERAL OUTLINE [1]

Short title

Water Amendment Regulation (No. 3) 2003.

Authorising law

Section 1014 of the *Water Act 2000*.

Objectives of the subordinate legislation

The objective of the regulation is to amend the Water Regulation 2002 (Water Regulation) to:

- provide for the further implementation of the *Water Act 2000* (Water Act);
- provide consequential amendments arising from the *Water and Other Legislation Amendment Act 2003* (WOLAA);
- give effect to the outcome of several review processes and associated policy decisions; and

1 While there is no statutory requirement for this explanatory note, it has been prepared to provide information about the regulation. An explanatory note is only mandated under the *Legislative Standards Act 1992* (section 22(2)) for significant subordinate legislation.

- make several minor amendments to provide for the effective operation of the Water Act.

Reasons for the subordinate legislation

The regulation will achieve the objectives by:

- amending the prohibition on taking water under section 3A of the Water Regulation to take account of changed circumstances in the volume of water in Borumba Dam;
- setting the timeframe for section 73 of the Water Act to trigger the requirement for a land and water management plan for water obtained under seasonal water assignments;
- amending sections of the Water Regulation to improve the workability of the interim water allocation transfer process;
- amending the licensing requirements for a Class 1 water bore driller's licence;
- granting an exemption from the requirement for a riverine protection permit for certain works performed under guidelines approved by the chief executive;
- declaring certain specified water to be water in a watercourse;
- amending the notice requirements under section 57 of the Water Regulation where a water management area is amended by a resource operations plan;
- approving a self-assessable code for works for taking subartesian water under a water resource plan;
- prescribing fees for dealings in water allocations and the water allocations register;
- amending the regulatory arrangements for taking subartesian water in certain areas;
- amending the water charges under schedule 14 of the Water Regulation to apply the annual CPI adjustment; and
- adjusting the prices for water for the Fitzroy River Barrage water management area to give effect to negotiations between the Rockhampton City Council and irrigators.

Consistency with the authorising law

The proposed regulation is consistent with the authorising law.

Estimated cost of Government implementation

Implementation of the regulation will be met from Departmental resources.

Fundamental legislative principles

The regulation is consistent with fundamental legislative principles.

CONSULTATION

The Queensland Drillers Licensing Review Committee and the Australian Drilling Industry Association have been consulted in relation to the amendments to the Class 1 water bore drilling licensing arrangements.

The Great Artesian Basin Advisory Committee has been consulted regarding the amendments to the regulatory arrangements for the Great Artesian Basin subartesian area.

Consultation on the proposed amendments was also undertaken with the Water Reform Implementation Group, which includes representatives of a range of Government and non-government agencies. Government agencies represented include Queensland Treasury, the Departments of the Premier and Cabinet, State Development, Primary Industries and the Environmental Protection Agency. Also represented are the Queensland Treasury Corporation, Queensland Investment Corporation and SunWater. Agencies external to the State Government include Brisbane City Council, Local Government Association of Queensland, AgForce, Cotton Australia, Australian Water Association, Queensland Fruit and Vegetable Growers, Queensland Dairy Farmers, World Wide Fund for Nature, Australian Conservation Foundation and the Queensland Conservation Council.

Consultation has also been undertaken with various business units within the Department of Natural Resources and Mines, including regional offices.

Consultation with the Business Regulation Reform Unit (BRRU) of the Department of State Development was undertaken regarding the need to undertake a regulatory impact statement in accordance with Part 5 of the *Statutory Instruments Act 1992*. On the basis of the information supplied,

BRRU considered a regulatory impact statement was not required as it agreed the regulation was unlikely to impose appreciable costs on the community or part of the community.

RESULTS OF CONSULTATION

There is agreement regarding the provisions of the regulation.

NOTES ON PROVISIONS

Clause 1 provides the short title for the regulation.

Clause 2 states that the regulation amends the Water Regulation.

Clause 3 amends section 3A of the Water Regulation to vary the conditions under which specified water users are prohibited from taking water in the Mary River water supply scheme.

In February 2003, action was taken under section 23 (Regulation prohibiting taking or interfering with water) of the Water Act to prohibit the taking of certain water in the Mary River water supply scheme due to the critically low storage volume held in Borumba Dam caused by drought conditions. The regulation, which was made on 20 February 2003, prohibits certain users from taking water for irrigation from parts of the Mary River Basin. The regulation will expire on 21 February 2004.

At the time the regulation was made, it was indicated that it could be repealed before February 2004 if no longer needed, or alternatively, amended to take account of changed circumstances.

Recent rains in the Mary River Basin have resulted in the water level in Borumba Dam rising to 18,000 megalitres. As a consequence, a reassessment of the supply capacity of the Borumba Dam over the period to February 2004 has been undertaken. In the current circumstances it is considered that, provided a base line of 10,500 megalitres remains in the Borumba Dam, SunWater should be entitled to supply interim water allocation holders in accordance with their announced allocations.

Accordingly, section 3A is being amended to allow SunWater to supply interim water allocation holders in these circumstances. An amendment in this regard will allow access to water by irrigators under their interim water allocations while continuing to ensure that water is available for supply under high priority entitlements for the essential urban requirements of Gympie and Noosa while the current drought impacts continue.

Clauses 4 and 5 deal with requirements for land and water management plans in relation to water obtained under seasonal water assignments.

Section 73 (Requirement for land and water management plans) of the Water Act specifies the persons who must have a land and water management plan approved before using water for irrigation. The requirement for a plan is essentially triggered where the person has obtained a water allocation or interim water allocation via permanent trading of allocations.

However, the provisions of section 73 did not capture a person who obtains new water by entering into rolling annual agreements for the temporary transfer of water, for example via seasonal water assignments. To close this loophole, the WOLAA amended section 73 to extend the requirement for a land and water management plan, to water obtained through seasonal water assignments on a rolling basis, and where the water is used on the same land. The WOLAA inserted a regulation-making power to set the timeframe to trigger the requirement for a plan.

Clause 5 provides that a plan is required where a person effects a seasonal water assignment for two consecutive years or two years out of three.

Clauses 6 to 8 amend the process under the Water Regulation for transferring interim water allocations. Under the Water Act, it is possible for trade of interim water allocations to occur ahead of being converted to tradable "water allocations" if a regulation is made which provides the authority for this. Section 195 (Transferring interim water allocations to other land) provides a head of power to make a regulation to allow a water entitlement attached to land to be transferred so that it attaches to other land. A regulation made under the provisions of section 195 must provide a process to enable the holder of an interim water allocation to apply to the chief executive to transfer all or part of the water entitlement.

To-date, three areas incorporating three water supply schemes in Queensland have been prescribed under the Water Regulation and trading of interim water allocations has occurred in these areas. The areas are the Mareeba Dimbulah, the Mary River and the Nogoa Mackenzie water supply schemes.

The process for transferring interim water allocations under the Water Regulation is provided under part 2, division 2 (Interim allocation and management arrangements) sections 8 to 13. These provisions were drafted prior to trade of interim water allocations occurring. Now with trading occurring over the last few years, a number of problems have been

identified, both in terms of the structure of the provisions and the way the process operates on a practical level.

To improve the workability of the provisions, a number of changes are being made. These changes essentially relate to the application process and the steps needed to close a transfer. However, clauses 6 to 8 will not change the transfer process in any fundamental way or impose additional costs on any party. Consultation has occurred with SunWater regarding the proposed changes to the transfer process.

Clause 9 amends section 14 of the Water Regulation to update references to authorising provisions of the Water Act as a result of amendments to the Act included in the WOLAA.

Clauses 10 and 11 make amendments to the licensing requirements for a Class 1 water bore driller's licence.

The Water Act provides a regime for licensing water bore drillers in Queensland. Currently, the Water Regulation prescribes three classes of licence, which generally conform to licensing arrangements in other States. However, some differences exist.

A Class 1 water bore driller's licence enables the licence holder to carry out drilling activities in a single subartesian aquifer system but the holder is restricted to drilling bores of not more than 150 mm in diameter. In other States a Class 1 licence does not include this restriction.

As part of its role in reviewing licence applications, the Queensland Drillers Licensing Review Committee has identified circumstances where it would be more appropriate to grant an unrestricted Class 1 licence rather than a higher class of licence (ie, a Class 2 licence). The Committee has recommended that Class 1 licence holders should be restricted to drilling bores up to 150 mm only until they have successfully completed 10 bores as a Class 1 licensed driller.

Clauses 10 and 11 remove the bore diameter restriction from the Class 1 licence but require the chief executive to impose the restriction as a condition of granting a Class 1 licence. Under the amendments it will be possible for both existing Class 1 licence holders and new applicants to apply to the chief executive to have the condition removed from their licence once they have successfully drilled 10 bores. A transitional provision (clause 17) specifically deals with existing licence holders by deeming existing Class 1 licences to not have the bore diameter restriction on the licence and to have the restriction included as a condition on the licence.

Clause 12 amends the exemptions granted under section 50 of the Water Regulation to add an exemption for Brisbane City Council for specified works carried out under guidelines approved by the chief executive of the Department.

Section 814(2) of the Water Act provides a regulation-making power to permit excavation in a watercourse, lake or spring without a riverine protection permit.

The riverine protection provisions of the Water Act were carried forward from the *Water Resources Act 1989* (repealed) (Water Resources Act) substantially without amendment. The intention has been that they would be reviewed following commencement of the Water Act and amended in accordance with the results of the review process. A review of chapter 2, part 8 has commenced but the review is not expected to be finalised until late in 2004.

An alternative framework for the regulation of riverine works may involve such works being made assessable development under the *Integrated Planning Act 1997* (Integrated Planning Act). Under the Integrated Planning Act, there is flexibility to denote works as assessable, or, self-assessable where works are of a minor nature.

A number of exemptions have been granted under the provisions of section 814(2). The current exemptions are for works that are authorised under another Act or under a permit issued under another Act. However, where works are of a minor or routine nature, the requirement to obtain a permit before carrying out such works is an administrative burden on both the permittee and the Department. For example, it is estimated that 50 to 60 percent of the riverine protection permits issued to Brisbane City Council are for minor and routine works, such as removal of weeds and rubbish or excavating accumulated sediment for flood mitigation purposes.

The Department has been working closely with the Brisbane City Council to develop guidelines under which such minor and routine works can be carried out without the requirement for a riverine protection permit. Such guidelines have now been finalised.

Clause 12 provides an exemption to Brisbane City Council from the requirement to obtain a riverine protection permit, for excavation works to remove accumulated sediment (up to 500 m^3) or remove weeds and rubbish necessary to expose accumulated sediment in a watercourse, lake or spring, where the works are carried out under guidelines approved by the chief executive officer of the Department.

Clause 13 amends section 55 of the Water Regulation to declare three new areas for the purposes of section 1006(2) of the Water Act.

Under the Water Act a person has a statutory right to take or interfere with overland flow and subartesian water for any purpose unless a moratorium notice or a water resource plan limits or alters such rights.

One practice of extracting subartesian water is to extract the water from shallow aquifers, including the bed sands associated with a watercourse. While the water is extracted from under the ground and is technically "underground" water ie, subartesian water under the Water Act, the effect of this practice is to essentially take water out of the watercourse.

Where this practice continues unregulated, it can impact on the water resource available in a watercourse. In watercourses were water is managed under an interim resource operations licence (IROL), the practice can impact on the operations of the IROL holder and on the security of supply to the customers of the IROL holder.

A number of areas have been identified where extraction of water from the aquifer beneath a watercourse is occurring. Section 1006(2) of the Water Act provides a regulation-making power to declare water in an aquifer under a watercourse or under land adjacent to a watercourse to be water in a watercourse. Water so declared is deemed not to be subartesian water.

Clause 13 replaces existing section 55 of the Water Regulation to include three new areas (subparagraphs (b) to (d)). The amendment declares water in the aquifers identified to be part of a watercourse and thus continued extraction will require a relevant entitlement under the Water Act.

The effect of this amendment will protect existing water entitlements in the relevant areas.

Clause 14 makes a minor amendment to section 57 (Changing boundaries of water management areas) of the Water Regulation to provide that subsection (2) does not apply if a water management area is changed under a resource operations plan. Subsection (2) provides that notice to affected persons must be given following a change to a water management area. However, this is not needed if an area is changed under a resource operations plan because a draft of the plan itself provides notice of such changes and affected persons have an opportunity to make submissions to the chief executive regarding any matter provided in the draft resource operations plan.

Clause 15 amends section 62 of the Water Regulation to approve a self-assessable code. Under the Water Act, a water resource plan can declare types of development works to be self-assessable development for the purposes of the Integrated Planning Act. The Integrated Planning Act provides that a person must comply with applicable codes when carrying out self-assessable development.

On 19 December 2002, the *Water Resource (Barron) Plan 2002* (Barron WRP) was made. The plan identifies that works for taking subartesian water for stock and domestic purposes in the Atherton subartesian area or the Cairns Northern Beaches subartesian area are self-assessable development.

A code has been developed which calls up the Australian and Resource Management Council of Australia and New Zealand "minimum construction requirements for water bores in Australia" as a basis for the code. Clause 15 amends section 62 of the Water Regulation to identify this code for works for taking subartesian water for stock and domestic purposes under the Barron WRP.

Clause 16, in conjunction with clause 23, amends the Water Regulation to prescribe fees for dealings in water allocations and the water allocations register.

The WOLAA inserted a regulation-making power to prescribe fees in relation to dealings in water allocations and the water allocations register. Specifically, section 148 (Water allocations register) of the Water Act enables a regulation to prescribe how documents may be lodged in the registry and prescribe fees to be paid in relation to the lodgment and registration of documents in the registry and for the provision of other services.

These amendments are required to enable trading of water allocations to occur following approval of the Burnett Basin resource operations plan (ROP). Upon approval of the Burnett Basin ROP, entitlements to take water granted within the ROP are separated from land and become tradable "water allocations" which can be bought, sold, leased etc, in the market in the same way that land can be traded. The water allocations register established under the Water Act will become operationalised at this time.

These changes implement a key reform element of the COAG Water Resource Policy.

There are no fees or charges applicable at the time water allocations are created through the ROP conversion process. Similarly, stamp duty does not apply to the creation of a water allocation under the ROP conversion

process. Only when subsequently a sale, lease or other dealing in a water allocation occurs, will any fees apply.

The Queensland Resource Registry will manage the water allocations register, which will operate in an identical fashion to the land registry under the *Land Title Act 1994*. The Registrar of Titles has been appointed as the Registrar for Water Allocations.

Fees for dealings in water allocations have been prescribed at the same level as the fees applicable to dealings in land in the land registry.

Clause 17 inserts a transitional provision which deems existing Class 1 water bore driller's licences not to include the bore diameter restriction on the licence and to have the restriction included as a condition on the licence. This amendment will enable existing Class 1 licence holders to apply to the chief executive to have the condition removed, once they have successfully completed ten bores.

Clause 18 provides a transitional provision to enable applications to transfer interim water allocations that have been made on the commencement of the regulation to be dealt with under the existing provisions.

Clause 19 prescribes Revaw Pty Ltd, Laroboe Pty Ltd and Hampton Irrigators Pty Ltd as entities for section 190 of the Water Act. Section 190 (Contents of interim water allocation) of the Act specifies that an interim water allocation attaches to land unless, among other things, the holder is an entity prescribed under a regulation.

The three entities were small group schemes that were set up, and held licences, under the Water Resources Act. The licences transitioned to become interim water allocations under the Water Act that currently attach to land within the group schemes and are listed in the Department's Water Entitlements and Rights Database.

Under section 198 (Effect of disposal of part of land to which interim water allocation attaches) of the Water Act, if any land to which an interim water allocation attaches is sold, the interim water allocation is surrendered to the State and remaining landowners must apply to chief executive to have the allocation reinstated.

The amendment will enable the respective companies to hold the interim water allocations separate from land and subsequently to hold water allocations when the interim entitlements are converted under the resource operations plan conversion process. The change will also enable land within the group schemes to be disposed of without the interim water

allocations being deemed under section 198 of the Water Act to be surrendered to the State.

Clause 20 makes a minor amendment to schedule 7 (Drainage rates) of the Water Regulation. The drainage rates under schedule 7 were amended in February 2003 to apply a CPI adjustment for the 2003-04 water year. However, the charge for non-irrigable land in the Emerald drainage area was not adjusted at this time due to an oversight. Clause 20 amends the charge for non-irrigable land in the Emerald drainage area to apply a CPI adjustment in line with the increases made to the drainage rates in February 2003.

Clause 21 replaces schedule 11 (Subartesian areas) of the Water Regulation to amend the regulatory arrangements for taking subartesian water within certain areas.

Section 1046 (Declared subartesian areas) of the Water Act enables a regulation to declare subartesian areas and to specify where licences to take subartesian water are needed and where a development permit under the Integrated Planning Act is needed for works to take subartesian water. A declaration has effect for an area or part of an area, until a water resource plan is approved for the areas covered by the declaration. Schedule 11 provides a list of current areas declared to be subartesian areas.

A number of changes to the current regulatory arrangements for taking subartesian water in the Great Artesian Basin subartesian area are proposed following a review of the regulatory arrangements in this area and to take account of changes with respect to new licensing requirements for bore drillers.

The licensing requirements for the Fitzroy subartesian area will also be amended and a number of minor administrative changes are being made as a result of certain areas now being covered by a water resource plan.

- Great Artesian Basin subartesian area and Mt Isa subartesian area

The original intent of Great Artesian Basin subartesian area declaration was to regulate bore construction and the taking of water from those subartesian aquifers connected hydraulically to artesian aquifers, as well as high impact water users in other subartesian aquifers. This has resulted in a large part of northern and western Queensland groundwater users requiring licences and development permits to take water for stock watering purposes, which is a low impact water use in many locations.

There is also now a requirement under the Water Act for all bores in Queensland drilled deeper than six metres to be drilled by a licensed driller,

who must construct bores to a minimum standard. This means there is no longer a need for development permits for some bores in many areas, as drillers licensing is the most suitable method of ensuring good bore construction.

Three changes to the Great Artesian Basin subartesian area are being made under the regulation. The first will see the northwestern portion about Mt Isa excised and declared a separate subartesian area – the Mt Isa subartesian area. This area is underlain by rocks considerably older than the Great Artesian Basin and contains different aquifers. Consequently, the area does not require the same level of regulation as the Great Artesian Basin. Currently a licence is required for stock watering and a development permit is required for stock and domestic bores within the Great Artesian Basin subartesian area. It is proposed that within the Mt Isa subartesian area, a licence and a development permit will only be required for non-stock and non-domestic purposes.

The second change will see the extension of the Great Artesian Basin subartesian area at the eastern boundary to include all of the geological Great Artesian Basin area. This will mean that all aquifers that are hydraulically connected to the artesian aquifers of the Great Artesian Basin will be included in the declared subartesian area. The extension area affects a small area of about 100,000 hectares[2] about 20 km west of Theodore, and a larger area of about 50,000 km[2] located 150 – 300 km west of Cairns, between Gilbert River and Palmerville. The Department has identified approximately seven landowners that will be impacted by the extension who will need to obtain a licence to take subartesian water. This change will mean the Great Artesian Basin groundwater resource will be managed as a single resource with consistent licensing requirements over the Queensland part of the Basin.

The third change will amend the licensing requirements for subartesian bore owners in the Great Artesian Basin subartesian area to no longer require a licence for stock watering purposes within aquifers that are not connected to artesian aquifers. This change will repeal about 8,000 licences. The change is prompted for a number of reasons. One reason is that licences to take water are now separate from authorities to construct bores (development permits) prompting a review of licence requirements. There are also minor impacts on the groundwater resource from stock water bores in aquifers that are not connected to artesian aquifers. As such, stock watering does not require licensing in such aquifers unless the development level is very high, which is not the case in the relevant northern and western areas.

- Fitzroy subartesian area

Following consultation with the Fitzroy Shire Council, the Council has endorsed the Department's proposal that licences no longer be required for the taking of water for stock or domestic purposes in the Fitzroy subartesian area.

The Fitzroy subartesian area was declared under the Water Resources Act following representations by the Fitzroy Shire Council. At the time, the Council had concerns about the impacts on groundwater from rural residential subdivision. Declaration under the Water Resources Act meant that a licence was required for all water uses. This meant that licenses were also required for a large number of bores, predominately stock and domestic on large rural blocks, where the availability of water was not an issue.

The amendments will mean that a licence will no longer be required for taking water for stock and domestic purposes but will be required for extraction of large volumes of water, such as for irrigation ensuring that appropriate regulation of the subartesian water is maintained in the area.

- Atherton and Cairns Coast subartesian areas

Schedule 11 is amended to remove the Atherton subartesian area and part of the Cairns Coast subartesian area as the Barron WRP, which was made on 19 December 2002, now covers these areas.

- Eastern Downs subartesian area

Schedule 11 is also updated to reflect a series of new plans for the Eastern Downs subartesian area that will allow these plans to be posted on the Department's website. The large size of the previous plan, prevented it from being posted on the website.

Clause 22 amends schedule 14 (Water charges) of the Water Regulation to apply a CPI adjustment to water charges, other than the $3 interim water charge for water harvesting that was introduced in February 2003. These water charges were adjusted at this time in 2002 and are now due for the annual CPI adjustment for 2003.

Clause 22 also amends schedule 14 to adjust the price path for water in the Fitzroy River Barrage water management area.

Fitzroy Barrage is owned by the Rockhampton City Council and operated by Fitzroy River Water (FRW), a commercial business unit of the Council. The Barrage was constructed by the Council to supplement supplies from the Fitzroy River for irrigation. Because licences for

irrigation could only be granted by the State under the Water Resources Act, an administrative arrangement was established whereby the licences were granted by the State, charges were set by regulation and meter reading and billing were carried out by the Department. All monies collected, less administrative costs, were then remitted to the Council.

However, once the resource operations plan for the Fitzroy Basin is complete, a resource operations licence will be granted to Rockhampton City Council for FRW to operate the Barrage. This arrangement will enable FRW to set the price path for water from the Barrage under supply contracts with its customers. In preparation for this transition, FRW has been negotiating a price path with irrigators to meet COAG water pricing objectives. The amendment to the Part A and Part B charges for water from the Fitzroy Barrage for the 2003–04 water year is consistent with the price path agreed between FRW and the irrigators.

Clause 23 amends schedule 16 (Fees) of the Water Regulation for a number of purposes.

- Fees for dealings in water allocations and the water allocations register

Schedule 16 is amended to prescribe fees for dealings in water allocations and the water allocations register. These amendments are explained above under the notes to clause 16.

- Fee for application for allocation of quarry material

Section 280(2)(c) (Applying for allocation of quarry material) and section 289(2)(b) (Renewing allocations of quarry material) enable a fee to be prescribed for an application for an allocation of quarry material and an application to renew an allocation.

An amendment to the existing fee under the Water Regulation is needed because an allocation can now be granted for a period of up to five years. Previously, under the Water Resources Act, a permit could only be issued for a period of up to three years. Similarly, under the Water Resources Act there was no provision to renew an authority to take quarry material. No fee increase is made under the amendments. The fee that currently applies for a six-month allocation will apply to each six-month period of an allocation. For example, if the allocation were for a period of four years, the fee would be eight times the six-month fee. The same fee structure will apply for applications to renew an allocation notice.

- Fee for application to replace an interim water allocation on disposal of land

Section 198(4) (Effect of disposal of part of land to which interim water allocation attaches) of the Water Act provides for a fee to be prescribed for an application to replace an interim water allocation where the allocation lapses on disposal of land.

Until April 2002, when chapter 2, part 6 of the Water Act commenced, an application to replace an interim water allocation following disposal of land was dealt with under preserved provisions of the Water Resources Act, as if the interim water allocation was a water licence. However, the Water Act provisions include separate provisions dealing with replacement of interim water allocations and as such a separate fee relating to interim water allocations is needed. The fee prescribed is the same as the current fee for an application to replace a water licence under the Water Regulation.

Clause 24 amends schedule 17 (Dictionary) of the Water Regulation to omit definitions no longer needed as a result of redrafting the provisions providing the interim water allocation transfer process. Clause 24 also inserts new definitions for "settlement notice" and "standard terms document". These definitions are needed to provide for the effective operation of the water allocations register and dealings in water allocations.

ENDNOTES

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