



Queensland

Water and Other Legislation Amendment Regulation (No. 1) 2005

Explanatory Notes for SL 2005 No. 334

made under the

Water Act 2000

State Penalties Enforcement Act 1999

General Outline

1 Short title

Water and Other Legislation Amendment Regulation (No. 1) 2005.

2 Objective of the legislation

The first objective of the regulation is to amend the *Water Regulation 2002* (Water Regulation) to—

- (a) establish a framework for the implementation of new water charges; and
- (b) provide for other minor amendments.

The second objective of the regulation is to amend the *State Penalties Enforcement Regulation 2000* (SPER) to establish a number of new penalty infringement notice offences (with corresponding infringement notice fines) in relation to a number of offences under the *Water Act 2000* (Water Act). The regulation also amends an existing infringement notice offence by introducing an incremental fines system for multiple infringement notice offences relating to an offence under s 389(3) of the Water Act.

3 Authorising law

Sections 25(4), 389(3), 433(1), 548, 822, 824B, 1014(2)(a) and 1014(2)(ga)(ii) of the Water Act.

Sections 165(2) and (3) of the *State Penalties Enforcement Act 1999*.

4 Reasons for the subordinate legislation

Water Regulation

Section 1014(2)(a) of the Water Act allows the Water Regulation to fix charges payable under the Act, including for example, for the taking and supplying of water under this Act and for drainage and resource management services.

In April 2003, interim water charges were introduced as part of the Government's review of existing charges for the purpose of developing a long-term water charging framework to ensure sustainability of Queensland's finite water resources. This approach to developing water charges is consistent with the Federal Government's National Water Initiative. Following independent reviews, the Government completed the review of existing charges and set amended water charges.

In August 2005, the Government announced the amended water charges in the Queensland Water Plan 2005–2010. The amended water charges amend the existing charges under the Water Regulation by replacing the interim charges set in April 2003 and other existing unsupplemented groundwater charges and extending the charges to supplemented water (that is, water supplied from dams and weirs).

The water charges will apply to holders of particular authorities to take or interfere with water under the Water Act according to a specified charging level based on the use for which the water is taken, interfered with or supplied.

The regulation also provides for a number of minor amendments to the Water Regulation.

State Penalties Enforcement Regulation

Section 165(2) and (3) of the *State Penalties Enforcement Act 1999* allows SPER to prescribe an offence to be infringement notice offence

and prescribe an infringement notice fine for the infringement notice offence.

A number of offences under the Water Act will be made penalty infringement notice offences with a prescribed infringement notice fine respectively. In addition, the infringement notice fine structure for an existing penalty infringement notice offence, related to a Water Act offence, will be changed to allow increased penalties to apply where there are repeat offences.

5 Consistency with authorising law

The regulation is consistent with the authorising law.

6 Achieving the objectives

The objectives of the regulation will be achieved by amending the Water Regulation, in relation to—

- (a) a water charge, to prescribe—
- who is liable to pay the water charge;
 - how to calculate the water charge based on a charging level applying to a volume of water taken, interfered with or supplied;
 - the details of the charging levels in relation to the use for which the water is taken, interfered with or supplied;
 - details of the methodologies to be applied to determine the volume of water taken or interfered with or supplied;
 - how a water charge will be determined for a number of specific situations; and
 - the circumstances when a rebate or concession may apply in relation to paying a water charge.
- (b) other matters, to provide for—
- the establishment of a new water authority together with dissolving the existing water authority areas;
 - a change to the boundary of two existing water authority areas;

- a process for granting interim water allocations in specified circumstances; and
- other minor amendments.

The objectives of the regulation will be achieved by amending SPER, to prescribe—

- certain offences, under the Water Act, to be penalty infringement notice offences with prescribed infringement notice fines accordingly; and
- an incremental penalty infringement notice fines system for repeat offences for an existing penalty infringement notice offence for an offence under the Water Act.

7 Administrative costs

Implementation of the regulation will be met from departmental resources.

8 Fundamental Legislation Principles

The regulation is consistent with fundamental legislative principles.

9 Consultation

The Department of Natural Resources and Mines (NR&M) has consulted with all State Government Agencies with regard to the proposed amendments and the possible impact on other State legislation. In addition NR&M has also consulted on the amended water charges as part of the Queensland Water Plan 2005-2010 with the Water Reform Implementation Group consisting of the Queensland Irrigator's Council, AgForce, CANEGROWERS, Local Government Association of Queensland, SunWater, Queensland Conservation Council, World Wide Fund for Nature, Environmental Defenders Office, Queensland Dairyfarmers' Organisation, Brisbane City Council, Qld Water Directorate, Cotton Australia Limited and also with SEQ Water, North Burdekin Water Board and South Burdekin Water Board.

In relation to the SPER amendments NR&M has also consulted with SEQ Water, Local Government Association of Queensland, Qld Water Directorate and 12 local governments in south east Queensland.

There has been consultation between NR&M and the Business Policy Unit of the Department of State Development Trade and Innovation regarding the need for a regulatory impact statement. The Business Policy Unit advised it considers a regulatory impact statement under the *Statutory Instruments Act 1992* is not required in relation to—

- (a) that part of the regulation dealing with the water charge in accordance with the exception under section 46(1)(j) ‘amendment of a fee, charge or tax consistent with announced government policy’; and
- (b) that part of the regulation dealing with the penalty infringement notice offences under SPER in accordance with the exception under section 46(1)(e) ‘an amendment of subordinate legislation that does not fundamentally affect the legislation’s application or operation’.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides for the short title of the subordinate legislation as the *Water and Other Legislation Amendment Regulation (No. 1) 2005*.

Clause 2 Commencement

Clause 2 states part 2 of the regulation, other than section 15, will commence on 1 January 2006.

Part 2 **Amendment of *Water Regulation 2002***

Clause 3 **Regulation amended in pt 2**

Clause 3 states the regulation in this part amends the Water Regulation.

Clause 4 **Omission of s 14A (When water licence fee is payable)**

Clause 4 omits section 14A. Section 14A provides for an annual water licence fee in relation to a water licence. The amended water charge introduced under this regulation replaces this water licence fee.

Clause 5 **Amendment of s 56 (Water management areas)**

Clause 5 makes minor amendments as a consequence of renumbered parts and sections under this regulation.

Clause 6 **Omission of s 59 (Minimum charge)**

Clause 6 omits this section about a minimum charge. As a consequence of the introduction of the amended water charge, there is no longer a need for a provision about a minimum charge relating to charges applying to a water management area in schedule 14.

Clause 7 **Amendment of s 60 (Notice for payment of charges)**

Clause 7 adds a reference to the new part 8, included under this regulation, for how a notice about payment of water charges will apply in relation to the amended water charges. The notice for payment may be levied for the period decided by the chief executive, or if the chief executive does not decide a period, annually.

Clause 8 **Amendment of s 67A (Purpose of pt 6A)**

Clause 8 makes a minor amendment as a consequence of a renumbered part under this regulation.

Clause 9 **Renumbering of pts 6A and 7**

Clause 9 makes minor amendments as a consequence of renumbered parts under this regulation.

Clause 10 **Amendment of pt 9 (Transitional provisions and repeals)**

Clause 10 replaces the heading for this part as 'Transitional provisions'.

Clause 11 **Amendment of s 78 (Water licences mentioned in s 60A)**

Clause 11 makes a minor amendment as a consequence of a renumbered part under this regulation.

Clause 12 Renumbering of ss 67A–79

Clause 12 makes minor amendments as a consequence of renumbered sections under this regulation.

Clause 13 Insertion of new pt 8

Clause 13 inserts a new part 8 after part 7, as renumbered, about the introduction and implementation of amended water charges.

Division 1 Preliminary

Section 82 Purpose of pt 8

Section 82 details the purpose of part 8 is to state the circumstances in which a water charge is payable under the Water Act, by whom it is payable and the amount that is payable.

Section 83 Who is liable to pay a water charge

Section 83 details who is liable to pay the water charge. A range of entities authorised to take, interfere or manage or supply water under the Act are liable to pay the water charges under the regulation. This section sets out the hierarchy of authorisations subject to the water charge.

Subsection (1) states the holder of a resource operations licence (ROL) or interim resource operations licence (IROL) is liable to pay the water charge. For example, SunWater is currently a ROL or IROL holder for various water supply schemes; Gladstone Area Water Board (GAWB) is also a ROL holder; Rockhampton City Council (RCC) is a ROL holder; Caloundra–Maroochy Water Supply Board (Caloundra–Maroochy WSB) and Wide Bay Water Corporation (WBWC) are currently IROL holders.

Subsection (2) makes an exception as to the extent a ROL or IROL holder is liable to pay the water charge in relation to water supplied by the holder to one of the identified boards in subsection (2). In these circumstances, the ROL or IROL holder is not liable to pay the water charge on the water supplied to any of those identified boards. Rather the boards identified in subsection (2) are liable to pay the water charge.

Subsection (3) provides that certain other entities, holding an authority under the Water Act to take or interfere with water, are liable to pay the water charge, to the extent the authority is not managed under a ROL or IROL. This includes, for example, but is not limited to, an—

- Order in council authorising a local government to take or interfere with water continued under the Water Act in section 1037.
- Authority to take or interfere with water held by SEQ Water continued under the Water Act in section 1037A.
- Authority to take or interfere with water by an entity to which a special agreement Act applies, to the extent the special agreement Act authorises the taking or interfering with water, taken to be an authority under the Water Act under section 1037A.
- authorisation of a water board to take or interfere with water continued in section 1089.

Subsection (4) states the holder of an authority to take or interfere with water under the Act, that is not an authority caught under subsection (1) or (3) and provided the water under the authority is not supplied or managed by an authority under subsection (1) or (2), is liable to pay the water charge. This subsection captures holders of authorisations in relation to unsupplemented water, that is, water taken from a natural source, like a watercourse or aquifer and not supplemented water.

Subsection (5) provides an IROL or ROL holder is not liable to pay the water charge on certain specified water supplied or released by the holder in accordance with the IROL or ROL. For example, an IROL may include an obligation, identified as ‘other supply responsibilities’ in the IROL, requiring the holder to supply a certain volume of water to certain groups of water users holding an authorisation under the

Water Act to take or interfere with water. In these circumstances, the IROL or ROL holder is not liable to pay the water charge in relation to the water supplied as ‘other water supply responsibility’. The water users taking water under their authorisation under the Water Act will be liable to pay the water charge directly to the chief executive. Also, a ROL or IROL may include an obligation requiring the holder to make certain releases for hydro-electricity generation. In these circumstances, the IROL or ROL holder is not liable to pay the water charge in relation to the water released for this purpose. The holder of the authorisation under the Water Act is liable to pay the water charge directly to the chief executive.

Subsection (6) states the water charge is not payable on the taking or interfering with water under section 20 of the Water Act. Section 20 of the Water Act authorises certain taking and interfering with water without the need to hold a water entitlement. For example, an owner of land adjoining a watercourse may take water for stock and domestic purposes under section 20(3) without the need for a water entitlement. The authorisations to take or interfere with water under section 20 are not subject to a water charge under the regulation.

Section 84 Period for which water charges are payable

Section 84 provides that the water charge is payable for each period of twelve months.

Division 2 Calculating water charges

Section 85 How particular water charges are calculated

Section 85 provides the methodology for calculating the water charge. The water charge is based on a charging level, depending on the use for which water is taken, interfered with or supplied, being applied to a determined volume of water. The volume of water is determined by applying one of the methodologies set out in clauses 87 to 92. The

water charge is then calculated by applying a category, as defined further in section 86, which applies to the use for which the volume of water is taken or supplied, and multiplying the volume by the dollar amount of the applicable category.

A specific water charge has been provided for the North Burdekin Water Board and South Burdekin Water Board. Each board is liable to pay the water charge as set out in subsection (2) instead of undertaking the calculation under subsection (1).

Section 86 Categories for water charges

Section 86 details the categories that are applied for calculating the water charge based for the determined volume of water. There are three categories as the basis for calculating the water charge. There is a differentiation between the three categories as between the use of the water and the dollar amount for each category.

Category 1 applies to water taken or supplied for

- urban use;
- generation and distribution of electricity and gas not including hydro- electricity generation; and
- all water take or interfered with by a local government, with stated exceptions.

For category 1, \$15 applies to each megalitre of the determined volume of water.

If a local government is liable to pay the water charge, the charge will, subject to the exceptions discussed below, be calculated by applying category 1, that is, \$15 per megalitre, to the volume of water taken or interfered with by the local government. The exceptions to this are set out below, where the water charge will be differentially calculated by applying category 1, 2 or 3 to determined volumes of water, whichever is applicable—

- Rockhampton City Council in relation to water managed under the Fitzroy Barrage ROL. Rockhampton City Council is the holder of the Fitzroy Barrage ROL and accordingly is liable to pay the water charge in accordance with clause 83(1). In these circumstances, the water charge will not be calculated by using

category 1(c), as that which would normally apply for water taken or interfered with by a local government. Rockhampton City Council manages and supplies water under the Fitzroy Barrage ROL to holders of water allocations for irrigation use in addition to managing its own water allocation for urban use. In this case, the charging level for the use of water taken by the water allocation holders for irrigation use, is not category 1, rather it is category 3. For other volumes of water that Rockhampton City Council manages and supplies for urban use, that volume of water will be charged as category 1. In this way, the water charge the Council is liable to pay will be calculated differentially based on one or more of the three categories, whichever is applicable.

- Caloundra–Maroochy Water Supply Board in relation to water managed under the Baroon Pocket Dam ROL. Caloundra–Maroochy Water Supply Board is the holder of the Baroon Pocket Dam ROL and accordingly is liable to pay the water charges in accordance with clause 83(1). In these circumstances, the water charge will not be calculated by using category 1(c), as that which would normally apply for water taken or interfered with by a local government. Caloundra–Maroochy Water Supply Board manages and supplies water under the Baroon Pocket Dam ROL in relation to its own interim water allocations for urban use and ensures a supply to an identified ‘other supply responsibility’ for a group of water licence holders taking water for irrigation. In this case, the charging level for water managed under the IROL for its own allocation for urban use is category 1. But the category applying to the volume of water taken by the water licence holders is not category 1 rather category 3 and will not in fact be a charge payable by Caloundra–Maroochy Water Supply Board. Rather the water charge will be payable by these water licence holders directly to the chief executive as holders of an entitlement under section 83(4). In this way, the water charge the Council is liable to pay will be calculated differentially based on one or more of the three categories, whichever is applicable but does not include the other supply responsibility for the water licence holders.

Category 2 applies to water that is taken or supplied for industry, including mining and petroleum industry and does not include a category 1 or category 3 taking or supplying of water.

Category 3 applies to water taken or supplied for agricultural primary production, including irrigation; for minor rural purposes including for domestic supply not connected to a reticulated water service, for example, water provided to a rural block for domestic purposes but not through reticulated water supply; or intensive animal production, including feedlots, aquaculture and piggeries. In addition, the category 3 level applies, only in relation to SunWater, to water taken for distribution channel loss. Distribution channel loss is further defined in schedule 17 dictionary. It does not include river distribution loss.

Subsection (3) allows the chief executive to determine the dominant category for the taking, interfering, supplying or managing of water in circumstances where more than 1 category applies. For example, water, authorised to be taken under a water licence, may be taken for irrigation and stock purposes. In this case, the chief executive may determine the dominant use for which the water is taken, and accordingly, apply the relevant category to the full determined volume of water taken under the licence. The chief executive will make this determination based on information supplied by the holder, or on historical take or on other relevant material facts.

Section 87 Volume for s 83(1) and (2)

Section 87 sets out the methodology for determining how the volume of water taken, interfered with, or supplied, by a ROL or IROL holder (for example, SunWater) and the Mount Isa Water Board, North Burdekin Water Board, South Burdekin Water Board and Townsville–Thuringowa Water Supply Joint Board is decided for the purposes of clause 85(1)(a). In this case, the volume will be either the volume as measured by a meter, if a meter is used to measure the volume of water taken or supplied, and if a meter is not used, the volume reported by the chief executive by the entity. For example, in the case of a ROL holder, like, SunWater—if SunWater requires its customers to have a meter installed on the customer’s works for taking water, supplied by SunWater, under the customer’s water entitlement—the volume will be determined by the recorded meter readings. If SunWater does not require certain customers to have a meter installed on the customer’s works—the volume will be

determined on the basis of what SunWater reports to the chief executive as water supplied to these customers.

This section currently applies to SunWater, as a ROL or IROL holder for various water supply schemes, Gladstone Area Water Board (GAWB) as a ROL holder; Rockhampton City Council (RCC) as a ROL holder; Caloundra–Maroochy Water Supply Board (Caloundra–Maroochy WSB) and Wide Bay Water Corporation (WBWC) as IROL holders.

Section 88 Volume for s 83(3) and (4)—metered

Section 88 sets out the first of the methodologies for determining the volume of water, for the purpose of calculating the water charge in accordance with section 85(1)(a), in relation to the holders of authorisations liable for the water charge under section 83(3) and section 83(4). The methodology in this case is based on using the volume as measured by a meter. However the volume as measured by a meter is only applicable under this section where—

- For an authority to take or interfere with water under section 83(3)—a meter is used to measure the volume of water taken, interfered with, or supplied under the meter ('metered'). For example, South East Queensland Water Corporation (SEQ Water) is the holder of an authority under section 83(3) and is therefore liable to pay the water charge. If SEQ Water requires its customers to have a meter installed on the customer's works for taking water supplied by SEQ Water, the volume will be determined by the recorded meter readings.
- For an authority to take or interfere with water under section 83(4)—a meter is used to measure the volume of water taken, interfered with, or supplied only if the authority to take or interfere or supply with water is in a water management area ('metered'). The Water Act defines a water management area as being an area declared a water management area under the Water Regulation or identified as a water management area under a water resource plan or resource operations plan. Therefore meter readings will only be acceptable as the basis for determining the volume for unsupplemented water entitlements (that is, water taken directly from natural streams) in areas regulated or

managed by the chief executive. A water harvesting water entitlement outside of a water management area, although water taken under the entitlement may be through works that are metered, will not be caught by this section. Rather the volume for this entitlement is determined using the methodology in the following sections 89 to 92.

The reference to ‘metered’ in the name of this section is used as a description only for the section.

Section 89 Volume for s 83(3) and (4)—not metered

Section 89, together with the following sections 90 to 92, sets out the methodologies for determining the volume of water, for the purpose of calculating the water charge in accordance with section 85(1)(a), in relation to holders of authorisations liable for the water charge under section 83(3) and section 83(4), where section 88 does not apply. Briefly, these sections will apply where a meter is not used for measuring the volume of water, or if there is a meter, the water entitlement is not within a water management area and therefore not taken as metered within the meaning of section 88 (‘non-metered’). Subject to division 3, in relation to non-metered authorisations, the volume is determined, by the applicable methodology as set out in one of the sections 90 to 92. For example, if the non-metered authority is an area based water licence (that is, a water licence that authorises water to be taken in a quantity to irrigate a certain hectare area), then the methodology detailed in section 92 is the applicable methodology out of clauses 90 to 92 that apply to the taking of water under that type of water licence.

Subdivision 3 applies to the specified water entitlements as referred to in the subdivision instead of sections 90 to 92.

The reference to ‘not metered’ in the name of this section is used as a description only for the section.

Section 90 **Volume for s 83(3) and (4)—reported volume**

Section 90 details how the volume of water taken, interfered with, or supplied, by the holder of a non-metered authority, required by the chief executive to report on the volume taken, interfered with, or supplied is decided for the purposes of section 85(1)(a). The volume used for calculating the water charge is the reported volume. For example, if a holder of a water licence for water harvesting is required to report to the chief executive on the volume of water taken during a water harvesting event, then that reported volume would be used to calculate the water charge.

Section 91 **Volume for s 83(3) and (4)—stated volume**

Section 91 details how the volume of water taken by the holder of a non-metered authority that, for a water allocation has a volumetric limit, or for a water licence has a nominal entitlement, is decided for the purposes of clause 85(1)(a). The volume used for calculating the water charge is 50% of the volumetric limit or nominal entitlement. For example, if a water licence has a nominal entitlement of 100ML, then the determined volume is 50ML.

Section 92 **Volume for s 83(3) and (4)—stated area**

Section 92 details how the volume of water taken by the holder of a non-metered authority that states an area that may be irrigated, is decided for the purposes of section 85(1)(a). The volume used for calculating the water charge is 4.5ML multiplied by the half the area stated on the authority. For example, if an area based water licence authorised water to be taken to irrigate 10 hectares, then the volume is 4.5ML multiplied by 5.

Section 93 Minimum charge

Section 93 provides for a minimum charge of \$100 to apply in those cases where the water charge calculated for authorisations under s83(4) (that is, unsupplemented authorisations), for a category 2 or category 3 taking of water only, using the methodologies under section 88 to 92 for determining the volume, is less than the minimum charge. However, if the chief executive is satisfied there is, for the whole of the charging period, no water available to be taken by the holder of an authority for a category 3 taking of water for irrigation, there will be no water charge. For example, no charge would apply if there are no watercourse flows during the entire charging period or the water level in an aquifer is reduced, for the entire charging period, to a level that the bore cannot tap the aquifer. The ‘no charge’ does not apply where, for example, the holder chooses not to take water or has no works installed for taking the water.’ However the ‘no charge’ does not apply to an authority to take groundwater in the Great Artesian Basin.

Division 3 Miscellaneous water charges

Division 3 sets out how the volume of water is decided for certain authorisations to take or interfere with water not captured under sections 88 to 92. In the case of these authorisations, the water charge is calculated by a different methodology or alternatively, a flat annual charge applies for certain authorisations.

Section 94 Water charge if rate or pump or pipe diameter stated

Section 94 details how the volume of water, taken or interfered with under a non-metered authority for a category 3 level of charging, is decided by reference to the rate at which the water may be taken or the pump size of the works through which the water under the non-metered authority is taken or is linked with a gravity diversion channel. In this case, the water charge is calculated using the table set

out in schedule 14A. For example, if the size of the pump, through which the water under a water licence or water allocation (not being a water licence that states a nominal entitlement) is 300mm, the water charge is an annual \$100.

Section 95 Water charges for other non-metered authorities

Section 95 details how the volume of water, taken or interfered with under a non-metered authority, is determined if not determined under the methodologies set out in sections 89 to 94. For example, this would apply to an unspecified authorisation with no allocation or area specified for the authorisation. If the non-metered authority is used for a category 2 level of charging – the water charge is \$500 annual charge or is used for a category 3 level of charging – the water charge is \$100 annual charge. However, if the chief executive is satisfied there is, for the whole of the charging period, no water available to be taken by the holder of a non-metered authority for a category 3 taking of water for irrigation, there will be no water charge. For example, no charge would apply if there are no watercourse flows during the entire charging period or the water level in an aquifer is reduced, for the entire charging period, to a level that the bore cannot tap the aquifer. The ‘no charge’ does not apply where, for example, the holder chooses not to take water or has no works installed for taking the water.’ However the ‘no charge’ does not apply to an authority to take groundwater in the Great Artesian Basin.

Section 96 Water charges for other authorities

Section 96 details what are the water charges for authorities to take or interfere with water to which clauses 87 to 95 do not apply as follows:

- A water licence to take stock and domestic purposes—an annual \$100. However if all the bores associated with the taking of water under the water licence are dry, the annual water charge for the period in which all the bores are dry, is not payable. This does not apply to a situation where water can not be tapped by the bore due to a functional issue or malfunction with the bore itself.

Rather the exemption applies where the water level in the aquifer is reduced to a level that the bore can not tap the aquifer.

- A water licence to interfere with water provided there is no taking of water also under the licence—an annual \$100. For example, a water licence for dewatering. However if the water licence for dewatering included also an amount of water that could be taken for authorised mining activities, the \$100 annual charge applies to the water licence as well as an additional charge for the volume of water taken.
- A water licence to take or interfere with water for use for hydro-electricity generation – an annual \$100. However if the water under the licence is also consumptively used, the \$100 annual charge applies to the water licence as well an additional charge for the volume of water taken.
- A water licence to take overland flow water—an annual \$100.
- A water licence to take re-lift water. The meaning of re-lift water is set out in subsection (3).

Division 4 Rebates and concessions

Section 97 Drought rebate

Section 96 provides for a drought rebate in relation to the water charge payable for a non-metered authority for a category 3 taking of water only but does not include a water licence to take groundwater within the Great Artesian Basin. The drought rebate is available if the chief executive is satisfied that the land where the water, the subject of the non-metered entitlement is taken, falls within one of the areas identified under this section. If the circumstances are satisfied, the drought rebate means the water charge payable is \$100 only.

However, if the chief executive is satisfied there is, for the whole of the charging period, no water available to be taken by the holder of a non-metered authority for a category 3 taking of water for irrigation, there will be no water charge. For example, no charge would apply if there are no watercourse flows during the entire charging period or the water level in an aquifer is reduced, for the entire charging period, to a

level that the bore cannot tap the aquifer. The ‘no charge’ does not apply where, for example, the holder chooses not to take water or has no works installed for taking the water.’ However the ‘no charge’ does not apply to an authority to take groundwater in the Great Artesian Basin.

Section 98 Pensioner concession

Section 98 provides for a pensioner concession in relation to the water charge payable for a water licence to take stock and domestic water under section 96(1)(a). A concession of 40% applies in the stated circumstances.

Clause 14 Replacement of pt 9, div 7

Clause 14 makes minor amendments as a result of renumbering of parts under this regulation and inserts division 7 of part 9 to provide for transitional provisions for this regulation.

Division 7 Transitional provisions for *Water and Other Legislation Amendment Regulation (No. 1) 2005*

Subdivision 1 Water charges

Section 112 Application of new water charges

Section 112 provides a number of transitional provisions for the application of water charges. Subsection (1) states that the water charge does not apply, despite the commencement of part 8, to a local government or apply to another entity in relation to water taken, interfered with, or supplied by a local government until 1 July 2006. Subsection (2) provides for a transitioning of the water charges

detailed in clause 96(1)(a) for stock and domestic water licences. Despite the commencement of this section, the water charge for clause 96(1)(a) for the first year is \$52.85 and for the following second year is \$76.43, with the water charge set out in clause 96(1)(a) then applying for subsequent years.

Subsections (3) and (4) provides for a transitioning of the water charges in relation to SEQ Water and a specified group of water licence holders for which SEQ Water is currently required to make water available to in accordance with its allocation. SEQ Water is liable to pay the water charges in accordance with section 83(3)(b). However for the period from 1 January 2006 (the commencement of the water charges) to the commencement of the identified Water Act provisions (which will have the effect of making the identified water licence holders customers of SEQ Water), SEQ Water is not liable to pay the water charges for the specified group of water licence holders. Rather the specified group of water licence holders will be liable to pay the water charge to the chief executive. From the period after the specified water licence holders become customers of SEQ Water (on the commencement of the identified Water Act provisions), SEQ Water will then be liable to pay the water charge for water taken or interfered with under the water licences.

Subdivision 2 Granting particular interim water allocations

Section 113 Purpose of sdiv 2

Section 113 states the purpose of subdivision 2 is to provide a process for the grant of interim water allocations (IWAs) in accordance with section 1014(2)(ga)(ii) of the Water Act. Section 1014(2)(ga)(ii) of the Water Act provides for a process for granting interim water allocations (IWAs) in relation to authorities to which the Three Moon Creek Irrigation Project Agreement for the Monto/Mulgildie Salinity Area (the Agreement), endorsed, in 1997, by the Minister administering the now repealed *Water Resources Act 1989*, applies. The grant of IWA in these circumstances is to give effect to the intention under the Agreement, entered into by the State and a number of water licence holders, to allow licence holders to take up an option

of being granted a water entitlement giving more reliability to address existing water quality issues in the groundwater area.

Section 114 Application of sdiv 2

Section 114 outlines whom the subdivision applies to for the purpose of identifying who may apply under section 115 for an IWA in accordance with this subdivision. A person may apply under this subdivision if the person satisfies the following requirements:

- holds a water licence to take underground water in the Monto Mulgildie Underground Water Area as described in the interim resource operations licence (IROL) for Three Moon Creek Water Supply Scheme; and
- either signed an agreement titled ‘Three Moon Creek Irrigation Project, The Agreement for the Monto/Mulgildie Salinity Area’ or is the successor in title to the owner who signed the Agreement.

An owner of land who meets the above prerequisites may also include an owner, or the successor in title to the owner, who was earlier granted an IWA for taking surface water in accordance with the Agreement. However as further detailed in section 115, such an owner of land may only apply for a groundwater IWA. It is not intended such a landowner can apply for additional surface water IWA as this is not within the intention of the Agreement.

Section 115 Application for interim water allocation

Section 115 provides for the making of an application for an IWA. The type of IWA that may be applied for may be either an IWA for taking watercourse water (referred to as surface water in this regulation) at a volume equal to 50% of the volume stated on the applicant's existing water licence or an IWA for taking groundwater at an equivalent volume to the volume stated on the applicant's water licence. Subsection (2) states that an owner of land who was earlier granted an IWA for surface water under the terms of the Agreement

(Existing IWA Applicant) is not eligible for making an application for an IWA for taking surface water. Subsection (3) sets out the requirements for making the application, including the time period in which the application must be made. It is necessary for an applicant, applying for a surface water IWA, if the applicant is not a riparian landowner, to satisfy the chief executive the applicant has the requisite access rights for the intervening land as set out under section 206(3)(b) of the Water Act. An applicant, applying for a groundwater IWA may only apply where the groundwater can be accessed from the applicant's land.

Section 116 Application for interim water allocation to take surface water

Section 116 details the requirements for making the application, including requirements in relation to a supply contract with the IROL holder, and the decision that may be made by the chief executive.

Section 117 Application for interim water allocation to take groundwater

Section 117 details the requirements the applicant for a groundwater IWA must comply with after making the application. The applicant is required, within two years after making the application, to carry out investigations about the quality and quantity of the groundwater and give a report, to the chief executive, about the results of the investigation, in the terms required by the chief executive. The two year investigation period may be extended by the chief executive under the terms in subsection (3).

Section 118 Deciding application for groundwater

Section 118 details the assessment to be made by the chief executive and the decision that may be made by the chief executive. Subsection

(1) states the chief executive must grant the IWA if the investigation undertaken by the applicant satisfies the 'quality' threshold criteria, that being the quality of the groundwater reveals a groundwater conductivity reading of less than 3000 micro-siemens per centimetre and the 'quantity' threshold criteria, that being the quantity of the groundwater reveals the applicant has access to take a volume equal to the volume authorised to be taken under the water licence.

Subsection (2) and (3) deal with the situation where criteria A is not satisfied. The chief executive notifies the applicant and the applicant has the choice to either change the application to a surface water IWA application or discontinue the original application. However if the applicant is an Existing IWA Applicant, the applicant must discontinue the original application and does not have the choice to change the application to a surface water IWA application.

Subsection (4) and (5) deal with the situation where criteria A is satisfied but not criteria B. The chief executive notifies the applicant and the applicant has the choice to either change the application to a surface water IWA application, change the application to a combination surface water and groundwater IWA application or discontinue the original application. However if the applicant is Existing IWA Applicant, the applicant must choose to either change the application to a combination surface water and groundwater IWA application or discontinue the original application. The Existing IWA Applicant does not have the choice to change the application to a surface water IWA application.

Subsection (6) details the decision to be made by the chief executive about a combination surface water and groundwater IWA application.

Subsection (10) provides that if the chief executive grants an IWA to an Existing IWA Applicant, the granted IWA amends the existing surface water IWA held by the applicant.

Section 119 When interim water allocation takes effect

Section 119 details when the IWA takes effect.

Section 120 **Amending interim resource
operations licence**

Section 120 provides for any necessary consequential amending of the relevant IROL after the grant of the IWA.

Clause 15 **Amendment of sch 6 (Water
authorities)**

Clause 15 details the new Lower Herbert Water Management Authority with its authority area shown on the administered plan AP 4064. The Lower Herbert Water Management Authority replaces the existing water authorities of Foresthome Drainage Board, Loder Creek Drainage Board, Mandam Drainage Board and Ripple Creek Drainage Board which are consequently dissolved. In addition, the existing administered plan for Glamorgan Vale Water Board and Myall Plains Water Authority is replaced with a new administered plan respectively to reflect changes in the water authority area. In relation to Glamorgan Vale Water Board, some additional land is added to the authority area. In relation to Myall Plains Water Authority, an error in the description of the water authority area is corrected.

Clause 16 **Amendment of sch 11 (Subartesian
areas)**

Clause 16 makes a minor amendment as a consequence of renumbered sections under this regulation.

Clause 17 **Amendment of sch 12 (Failure
impact rating)**

Clause 17 makes a minor amendment as a consequence of renumbered sections under this regulation.

Clause 18 **Amendment of sch 13 (Authority areas)**

Clause 18 makes a minor amendment as a consequence of renumbered sections under this regulation.

Clause 19 **Replacement of sch 14 (Water charges)**

Clause 19 replaces schedule 14. The introduction of the new water charges provided under the regulation replace the existing water charges applying to all the water management areas in schedule 14 except for the Dumaresq River water management area. The meter charge for the four listed water management areas continue to apply. Schedule 14A sets out the water charges applicable to the non-metered authority in section 93.

Clause 20 **Amendment of sch 15A (Metered entitlements)**

Clause 20 makes a minor amendment as a consequence of renumbered sections under this regulation.

Clause 21 **Amendment of sch 16 (Fees)**

Clause 21 omits the water licence fee detailed in item 41 as the introduction of the new water charges provided under regulation replaces this current water licence fee.

Clause 22 **Amendment of sch 17 (Dictionary)**

Clause 22 inserts a number of definitions for the regulation.

Part 3 Amendment of State Penalty Enforcement Regulation 2000

Clause 23 Regulation amended in pt 3

Clause 23 states this part amends the *State Penalties Enforcement Regulation 2000* (SPER).

Clause 24 Amendment of s 5 (Administering authority for particular nominated laws)

Clause 24 amends section 5(2)(g) of SPER to make the addition of the new infringement notice offences created under the Water Act. This means that the administering authority for an infringement notice offences against sections 389(3), 433(1), 822 and 824B(1) of the Water Act will not be the department or other agency that generally administers these provision.

Clause 25 Amendment of s 8A (Administering authority for Water Act 2000, s 389(3))

Clause 25 amends section 8A of SPER to specify the administering authority for particular infringement notice offences against the Water Act that are listed in schedule 5 of SPER. The amended section 8A will mean that an infringement notice offence or an infringement notice about offences under sections 389(3), 433(1), 822 or 824B(1) of the Water Act will be the local government that is a water service provider for that local government area. Not all of the infringement notice offences against the Water Act that are listed in schedule 5 of SPER have the local government (that is a water service provider for the area) prescribed as the administering authority.

Clause 26 Amendment of sch 5 (Other legislation)

Clause 26 amends schedule 5 of SPER in relation to the Water Act to include new infringement notice offences and the applicable infringement notice fines (penalty units), and to specify the authorised person for service of these infringement notices.

Under section 25 of the Water Act, the chief executive may publish a notice to limit water to be taken or interfered with under a water licence or taken under a permit or unsupplemented water allocation. The taking of water in contravention of such a notice will now also be an infringement notice offence and an authorised person appointed under section 739 (Appointment and qualifications of authorised officers) of the Water Act may serve an infringement notice upon the offender.

Section 389(3) of the Water Act is an existing infringement notice offence under SPER. The amendments will increase the infringement notice fine for a first offence and introduce new incremental infringement notice fines for repeat offences in order to strengthen the deterrent for the contravention of a notice for water restriction given by a water service provider under section 389(1) of the Water Act. Further, different infringement notice fines will apply to individuals and corporations, with higher penalty units being imposed for a contravention of section 389(3) by the later. An infringement notice for this offence may be served by an authorised officer appointed under section 1084 (Appointment) of the *Local Government Act 1993*.

Section 433(1) of the Water Act prohibits the taking of water from a fire fighting system or a service provider's hydrant without the permission of the service provider unless the water is taken for fire fighting purposes. Contravention of this section will now constitute an infringement notice offence, and the resulting infringement notice may be served by an authorised person appointed under section 1084 of the *Local Government Act 1993*.

Under section 822 of the Water Act, a person must not connect to or disconnect from a service provider's infrastructure without the written consent of the service provider. A breach of this section will now be an infringement notice offence under schedule 5 of SPER and the

resulting infringement notice may be served by an authorised person appointed under section 1084 of the *Local Government Act 1993*.

Section 824B(1) prohibits the taking of water from a service provider's infrastructure without the service provider's written approval. The inclusion of reference to section 824B(1) in schedule 5 of SPER makes a breach of section 824B(1) an infringement notice offence against the Water Act. The resulting infringement notice may be served by an authorised person appointed under section 1084 (Appointment) of the *Local Government Act 1993*.

The issue of an infringement notice for an infringement notice offence against the Water Act provides the service provider with an alternative enforcement procedure to instituting legal proceedings under the Water Act.

Once an infringement notice has been issued, for an infringement notice offence listed in SPER, legal proceedings may not be commenced under the Water Act unless the notice is withdrawn.

An administering authority may withdraw an infringement notice at any time before the fine is paid or otherwise discharged under the *State Penalties Enforcement Act 1999*.

After a notice has been lawfully withdrawn, proceedings for the offence may be initiated against any person (including the alleged offender) as if the notice had not been served on the alleged offender (as long as timeframes in the *Limitation of Actions Act 1974* are adhered to).

ENDNOTES

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