



Queensland

Water Amendment Regulation (No. 4) 2006

Explanatory Notes for SL No. 133

made under the
Water Act 2000

General Outline

1 Short Title

Water Amendment Regulation (No. 4) 2006.

2 Objective of the legislation

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

- repeal amended water charges previously introduced by the *Water and Other Legislation Amendment Regulation (No.1) 2005*;
- reinstate (with some modification) the water charges that applied as at 31 December 2005; and
- prescribe transitional provisions.

3 Authorising law

Water Act 2000.

4 Reasons for the subordinate legislation

In 2005, the *Water and Other Legislation Amendment Regulation (No. 1) 2005* (the 2005 Amending Regulation) amended the Water Regulation to introduce amended water charges. The amended water charges commenced on 1 January 2006 (except for their application to local governments for which their commencement was 1 July 2006).

The Government subsequently announced its intention to suspend the implementation of the amended water charges. To give effect to this announcement, it is necessary to repeal the amended water charges and reinstate (with some modification) the water charges and other charges that applied prior to 1 January 2006. The reinstated charges will apply on and from 1 July 2006 except for the reinstated water licence fee which commences on 1 September 2006.

5 Consistency with authorising law

The regulation is consistent with the authorising law.

6 Achieving the Objectives

This amendment reinstates (with some modification) the water charges framework that applied as at 31 December 2005 by—

- reinstating section 14A of the Water Regulation, which provides for when a water licence fee is payable, with a new exemption for water licences for stock or domestic purposes (other than licences to take underground water from the Great Artesian Basin);
- reinstating section 59 of the Water Regulation, which applies where a minimum charge is mentioned in schedule 14 for a water management area;
- amending section 60 of the Water Regulation, which provides for the notice for payment of charges, to return to its position prior to the amendments made to it by the 2005 Amending Regulation;
- repealing part 8 (water charges) of the Water Regulation, as this is necessary to give effect to the suspension of the implementation of these amended water charges;
- prescribing transitional provisions for water charges accrued on 31 December 2005, water charges accrued under the previous part 8 and the commencement of the reinstated water charges from 1 July 2006;

- replacing schedule 14 (water charges) of the Water Regulation with the previous schedule 14 of water charges payable prior to the 2005 Amending Regulation, with adjustment for Consumer Price Index (CPI) increases and amended charges in the Bundaberg and Bowen groundwater management areas;
- repealing schedule 14A (particular water charges) of the Water Regulation, as this is necessary to give effect to the suspension of the implementation of these amended water charges;
- amending schedule 16 (Fees) to reinstate previous water licence fees, with adjustment for Consumer Price Index (CPI) increases; and
- making minor amendments to the schedule 17 (Dictionary).

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. Whilst some of the proposed amendments have retrospective operation, the provisions do not adversely affect the rights and liberties of individuals. They are beneficial to those who would, under the existing legislation, be liable to pay water charges. They also give greater certainty to water users dealing with land and water licence transfers.

9 Consultation

The Department of Natural Resources, Mines and Water (NRMW) has consulted with the Department of Premier and Cabinet and Queensland Treasury.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides for the short title of the subordinate legislation as the *Water Amendment Regulation (No. 4) 2006*.

Clause 2 Commencement

Clause 2 states that the provisions reinstating water and other charges that applied prior to 1 January 2006, commence on 1 July 2006 except for the reinstated water licence fee which commences on 1 September 2006. The remaining provisions will commence upon gazettal.

Clause 3 Regulation amended

Clause 3 states this regulation amends the Water Regulation.

Clause 4 Insertion of new s 14A (When water licence fee is payable)

Clause 4 inserts section 14A which specifies the circumstances under which a water licence fee is payable. In effect it reinstates the previous section 14A which was omitted by the 2005 Amending Regulation and adds the following other circumstances when water licence fees will be payable—

- ss.1037 and 1037A regarding the granting of a water licence to replace a transitional *Water Act 2000* authority held by a local government, an entity to which a special agreement Act applies and SEQ Water;
- s.1055 in relation to the amalgamation, subdivision and certain amendments of water licences; and
- s.1089 in relation to the granting of a water licence to replace a transitional *Water Act 2000* authority to take or interfere with water

held by a former water board, customer of a former water board or the chief executive.

The new section 14A also provides an additional exemption from the requirement to pay licence fees. Subsection 14A(2) states that a water licence fee is not payable for water licences to take water for stock or domestic purposes. However this exemption does not apply if the water licence is to take underground water for stock or domestic purposes from the Great Artesian Basin. In these cases, a water licence fee is payable.

Clause 5 Insertion of new s 59 (Minimum charge)

Clause 5 inserts section 59 which provides for a stated minimum charge to be payable each water year by holders of water licences in certain water management areas specified in Schedule 14. In effect it reinstates most of the previous section 59 which was omitted by the 2005 Amending Regulation. However subsection 59(3) has not been reinstated. This does not alter the practical effect of section 59 as subsection 59(2) will be relied upon to impose a minimum charge where (a) a person uses water but their usage charge is less than the minimum charge, or (b) a person does not use water and their usage charge is zero, also being less than the minimum charge.

Clause 6 Amendment of s 60 (Notice for payment of charges)

Clause 6 omits section 60(1) and replaces it with new section 60(1) which states the requirements for a notice levied by the chief executive requiring payment of charges. In effect it reinstates those parts of the previous section 60 omitted by the 2005 Amending Regulation.

Clause 7 Omission of pt 8 (Water charges)

Clause 7 omits pt 8, thereby repealing the amended water charges introduced by that part.

Clause 8 Insertion of new pt 9, div 8

Clause 8 inserts a new pt 9, div 8.

Division 8 Transitional provisions for Water Amendment Regulation (No. 4) 2006

Subdivision 1 Water charges accrued on 31 December 2005

Section 121 (Definition for div 1)

Provides definitions for the subdivision.

Sections 122–124

These sections apply to water users in water management areas where minimum charges apply. The amendments effected by the 2005 Amending Regulation did not take into account a transitional issue for the amended water charges – that in certain water management areas detailed in the repealed Schedule 14, billing often occurred over a water year (which did not necessarily equate to a calendar year) and, sometimes, billing involved application of a minimum charge which was intended to be applied in relation to the whole of that water year (not a part of that year).

By way of an example, for the Border Rivers groundwater management area, Schedule 14 detailed a minimum charge (\$99.50), which related to the water year period of 1 October to 30 September. The impact of having the water charges detailed in Schedule 14 cease on 31 December 2005, was that there was uncertainty surrounding how to bill for the period 1 October 2005 to 31 December 2005. It was not considered appropriate that a person should be billed the minimum charge of \$99.50, where their water charges accrued under the repealed regime did not reach that “minimum” figure by 31 December 2005, because the minimum charge had always been intended to relate to the entire water year period of 1 October to 30 September rather than just a part of the water year.

There are similar issues relating to how invoices should be generated for the—

- Bowen groundwater management area;
- Bundaberg groundwater management area;
- Burdekin River groundwater management area;
- Callide Valley groundwater management area;

- Condamine groundwater management area; and
- Cressbrook Creek water management area.

To deal with those issues, these sections specify, for the above water management areas, a minimum charge figure which has been adjusted for the proportion of the water year up to 31 December 2005.

Subdivision 2 Water charges under previous pt 8

Sections 125 and 126

These sections ensure that water users are not liable to pay the amended water charges which commenced on 1 January 2006 (or 1 July 2006 for local governments). Those charges are the water charges introduced by part 8, the water charges applied under the transitional section 112 and the water harvesting charge for the Dumaresq River water management area. The chief executive must refund any amended water charges that have already been paid.

Section 127

This section states that if, as part of a land transaction, an amount was paid on the assumption that the amended water charges were payable; that amount must be refunded, and if the amount paid is not refunded it is recoverable as a debt.

Subdivision 3 Water charges from 1 July 2006

Sections 128 and 129

Ordinarily, changes to water charges in Schedule 14 water management areas would only take effect on the commencement of the next water year (s 58(2) Water Regulation). However, it is intended that the reinstated water charges (adjusted for CPI) apply from 1 July 2006 and section 128 ensures that this occurs.

Most water management areas with a minimum charge referred to in Schedule 14 have a water year commencing on 1 July, so the above requirement is not an issue in terms of application of the minimum charge for billing purposes. However the Border Rivers and the Bowen

groundwater management areas' water years commence 1 October and 1 April respectively. Therefore section 128 specifies a minimum charge adjusted for the proportion of the water year remaining from the reinstatement of the water charges until the end of the water years in these two areas.

Clause 9 Replacement of sch 14 (Water charges)

Clause 9 replaces Schedule 14 with a new Schedule 14 which states the water charges that are payable for taking water in the stated water management areas. In effect it—

- reinstates (with adjustment for CPI increases) the previous Schedule 14 water charges omitted by the 2005 Amending Regulation, with some modifications—
 - the Bowen groundwater management area, where the part B charge has been reduced to \$4.00;
 - the Bundaberg groundwater management area where, for water in the Gooburrum and Woongarra districts, the part A charge has been reduced to \$3.00 and the part B charge reduced to \$1.00.

In addition, the new schedule also changes the date for the end of the Dumaresq water year to 30 June.

Clause 10 Omission of sch 14A (Particular water charges)

Clause 10 omits Schedule 14A, inserted by the 2005 Amending Regulation. This schedule set out amended water charges applicable to non-metered authorities.

Clause 11 Amendment of sch 16 (Fees)

Clause 11 inserts item 41, which sets out a water licence fee (as per s 1014(2)(a) *Water Act 2000*). In effect it reinstates the previous item 41 (with adjustment for CPI increases) which was omitted by the 2005 Amending Regulation.

Clause 12 Amendment of sch 17 (Dictionary)

Clause 12 removes definitions now unnecessary as a result of the current amendments.

ENDNOTES

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