



Queensland

South East Queensland Water (Restructuring) Regulation 2011

Explanatory Notes for SL 2011 No. 125

made under the

South East Queensland Water (Restructuring) Act 2007

General outline

Short title

South East Queensland Water (Restructuring) Regulation 2011

Authorising law

Sections 104, 105 and 109 of *the South East Queensland Water (Restructuring) Act 2007* (the SEQWR Act).

Policy objectives and the reasons for them

The objectives of the regulation are to:

- transfer all assets, liabilities, employees and instruments of the Queensland Manufactured Water Authority (trading as WaterSecure) to the Queensland Bulk Water Supply Authority (trading as Seqwater), so as to give effect to the merger of WaterSecure and Seqwater on 1 July 2011;
- dissolve WaterSecure as a 'new water entity' for the purposes of the SEQWR Act; and

- transfer all assets, liabilities and instruments associated with the Wyaralong Dam Project from Queensland Water Infrastructure Pty Ltd (QWI) to Seqwater on 1 July 2011.

In 2007, the Queensland Government began implementing a series of significant structural reforms to the South East Queensland (SEQ) urban water market. These reforms addressed a number of critical shortfalls in the urban water supply arrangements, and coincided with the establishment of the SEQ Water Grid.

The initial stage of the SEQ water reform program was given effect through the SEQWR Act. This Act established four statutory authorities to own and operate bulk water supply, transmission and production infrastructure in the region and to oversee the operation of the SEQ Water Grid. Seqwater was established to assume responsibility for the major bulk water storage and treatment assets across the region, while WaterSecure was established to own and operate the Gold Coast Desalination Plant and Western Corridor Recycled Water Scheme.

In late 2010, the Government announced a revised operating strategy for the manufactured water assets to reflect the substantial improvement in water security in SEQ. The Government also endorsed the further consolidation of the Water Grid industry structure through the establishment of a single supplier of bulk water into the Grid.

The merger of Seqwater and WaterSecure is to take effect from 1 July 2011.

To facilitate the merger, a new chapter 5 was inserted into the SEQWR Act in April 2011. The amendments established a new regulation-making power to facilitate restructures of certain State-owned water entities (referred to in the Act as 'relevant water entities') through the transfer of assets, liabilities, employees etc between entities. The amendments also contained a number of provisions to support transfers made under the new regulation-making power, including several provisions that will specifically apply to the merger of WaterSecure and Seqwater.

In addition to facilitating the merger of WaterSecure and Seqwater, the regulation will also transfer the Wyaralong Dam Project from QWI to Seqwater. The Wyaralong Dam Project is an emergency water supply measure under the *Water Regulation 2002*. The project has been delivered by QWI, one of the Government's special purpose vehicle (SPV) construction companies charged with the delivery of key Water Grid assets.

Consistent with the Government's policy for the longer-term ownership and operation of drought-response projects delivered by the SPV companies to be transferred to bulk water authorities upon completion, the assets, liabilities and instruments associated with the Wyaralong Dam Project are to be transferred to Seqwater.

Achievement of policy objectives

The regulation will achieve the objective of merging WaterSecure and Seqwater into a single entity by transferring WaterSecure's entire 'business' to Seqwater and then dissolving WaterSecure as a statutory authority in accordance with section 109 of the SEQWR Act. The regulation will also involve the transfer of the following three subsidiaries of WaterSecure:

- Western Corridor Recycled Water Pty Ltd (WCRW);
- South East Queensland (Gold Coast) Desalination Company Pty Ltd (SEQDC); and
- Australian Water Recycling Centre of Excellence Ltd (AWRCE).

Section 105 of the SEQWR Act enables a regulation to make provision about a number of matters relating to the restructure of a relevant water entity, including transferring assets, liabilities, instruments and employees to another relevant water entity. The regulation will facilitate the merger of WaterSecure and Seqwater by:

- transferring the shares and interest WaterSecure holds in its three subsidiaries to Seqwater;
- transferring all of the assets and liabilities of WaterSecure and two of its subsidiaries (WCRW and SEQDC) to Seqwater;
- providing that all of the instruments of WaterSecure and two of its subsidiaries (WCRW and SEQDC) are taken to apply to Seqwater;
- transferring all of WaterSecure's employees to Seqwater; and
- providing that Seqwater is to become the successor in law of WaterSecure, WCRW and SEQDC.

In addition, the regulation will also transfer to Seqwater certain easements and properties acquired and held by the Coordinator-General on behalf of WaterSecure.

These transfers will take place on 1 July 2011 in accordance with the Government's target date for the merger.

Following the transfer of all of its assets and liabilities to Seqwater, the regulation will dissolve WaterSecure as a statutory authority in accordance with section 109 of the SEQWR Act.

The regulation will also transfer the Wyaralong Dam Project from QWI to Seqwater. To ensure that only the assets, liabilities and instruments associated with the Wyaralong Dam Project are transferred to Seqwater, the regulation will transfer the specific part of QWI known as the "Wyaralong Dam Project Business Unit". To provide certainty over the assets, liabilities and instruments that will be transferred to Seqwater, the regulation makes reference to certain schedules held by Seqwater. These schedules list particular assets, liabilities and instruments that are identified as being either included or excluded from the transfer.

The regulation will also make provision for Seqwater to become the successor in law of QWI in relation to the Wyaralong Dam Project.

The date for the transfer of the Wyaralong Dam Project will be 1 July 2011.

Consistency with policy objectives of authorising law

The regulation is consistent with the policy objectives of chapter 5 of the SEQWR Act, which are to facilitate restructures of relevant water entities, whilst minimising the transaction costs associated with these restructures and ensuring a smooth transmission of business between entities.

The authorising law only allows a regulation to transfer, or otherwise deal with, assets, liabilities etc of relevant water entities (as defined under section 104 of the SEQWR Act). Each of the water entities that are subject to the regulation are listed, or prescribed by the regulation in accordance with section 104 of the SEQWR Act, as being a relevant water entity.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The regulation will dissolve WaterSecure as a new water entity in accordance with section 109 of the SEQWR Act. As WaterSecure is a statutory authority, the only alternative to dissolving WaterSecure by regulation would be to introduce specific legislative amendments to the SEQWR Act.

This option was not adopted as section 109 of the SEQWR Act was specifically introduced into the Act for the purpose of providing a flexible and efficient means to dissolve a new water entity in these circumstances (i.e. where all of the entity's assets and liabilities have been transferred to another entity or have otherwise been disposed of).

With respect to the transfer of assets, liabilities etc by regulation, an alternative would be for each of the entities to negotiate the transfers on commercial terms. However, this option was not adopted due to the greater length of time involved and the higher costs associated with commercially negotiated transfers.

Benefits and costs of implementation

Implementing the regulation is not expected to result in any significant cost for government. The regulation will facilitate the WaterSecure-Seqwater merger and the transfer of the Wyaralong Dam Project from QWI to Seqwater. Facilitating these transfers by regulation will avoid the higher transaction costs that would otherwise have been incurred if the transfers were negotiated commercially between the relevant parties.

Consistency with fundamental legislative principles

The regulation may raise some issues with regard to fundamental legislative principles (FLPs). These issues have been thoroughly considered.

The authorising law for the regulation (chapter 5 of the SEQWR Act) was introduced into the SEQWR Act for the purposes of facilitating restructures of relevant water entities in a manner which minimises the administrative costs and delays associated with these transactions.

To achieve these purposes, chapter 5 of the SEQWR Act contains a number of legislative provisions designed to support transfers made under a regulation, such as enabling the transfer of assets, liabilities, instruments

and employees without the consent of third parties and providing that a regulation has effect despite any other law or instrument.

The FLP issues associated with these provisions were justified to Parliament in the explanatory notes for the *Revenue and Other Legislation Amendment Bill 2011* (which inserted the authorising law into the SEQWR Act).

The provisions were justified on the basis that they are necessary to ensure that restructures can be completed in a timely and efficient manner, and to provide certainty to those affected by a regulation that transfers made under the regulation are legally valid.

As detailed in the explanatory notes to the SEQWR Act, it was intended that the authorising law would be used to give effect to the merger of WaterSecure and Seqwater, as well as to transfer particular water grid assets from the SPV companies to the bulk water authorities.

Accordingly, to the extent that the regulation raises these same FLP issues, this is justified on the basis that the transactions that the regulation will facilitate are consistent with the intended purpose and use of the authorising law.

Consultation

Treasury Department has consulted with Seqwater, WaterSecure, QWI, the Queensland Water Commission, the Queensland Audit Office, the Department of Environment and Resource Management, the Coordinator-General and the Department of the Premier and Cabinet in the development of this regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Treasury Department.