



Queensland

# South East Queensland Water (Restructuring) and Another Regulation Amendment Regulation (No. 1) 2012

## Explanatory Notes for SL 2012 No. 81

made under the

*South East Queensland Water (Restructuring) Act 2007*  
*State Development and Public Works Organisation Act 1971*

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## General outline

### Short title

*South East Queensland Water (Restructuring) and Another Regulation  
Amendment Regulation (No. 1) 2012.*

### Authorising law

Section 105 of the *South East Queensland Water (Restructuring) Act 2007* (“**SEQWR Act**”) and section 100 of the *State Development and Public Works Organisation Act 1971* (“**SDPWO Act**”)

### Policy objectives and the reasons for them

The objectives of the regulation are to:

- transfer the shares in Southern Regional Water Pipeline Company Pty Ltd (“**SRWP**”) from the State to the Queensland Bulk Water Transport Authority (“**LinkWater**”);

- transfer the Northern Pipeline Interconnector Stage 2 (“**NPI 2 project**”) from SRWP to LinkWater; and
- transfer any residual assets, instruments, liabilities and proceedings of SRWP to LinkWater.

SRWP is a company established under the *Corporations Act 2001* (Cth) (“**Corporations Act**”). It was established as a special purpose vehicle (SPV) company with the main object of delivering a series of pipelines connecting certain bulk water assets across the South East Queensland (SEQ) Water Grid.

LinkWater was established under section 6 of the SEQWR Act in 2008 to own and operate major bulk water pipelines in SEQ. Since its establishment, LinkWater has assumed ownership and operational responsibility for most of the pipelines being constructed by SRWP as each pipeline has reached practical completion. Earlier projects have been transferred to LinkWater by transfer notices made pursuant to section 67 of the SEQWR Act.

The NPI 2 project is the last of the major projects being constructed by SRWP. On reaching practical completion in June 2012, NPI 2 will be ready to be transferred to LinkWater. This transfer will be achieved by regulation made under section 105 of the SEQWR Act.

In line with the general principle that the SPV companies are to be wound up on completion of the projects for which they were constituted, it is intended that SRWP be deregistered as a company under the Corporations Act as early as practicable. To facilitate its deregistration, the shares in SRWP will be transferred from the State to LinkWater and any residual assets, rights and liabilities of SRWP transferred to LinkWater by regulation made under section 105 of the SEQWR Act.

To reflect the transfer of remaining SRWP project responsibilities to LinkWater, consequential amendments are also made to the *State Development and Public Works Organisation Regulation 2010*, in accordance with section 100 of the SDPWO Act.

## **Achievement of policy objectives**

Section 105 of the SEQWR Act enables a regulation to make provision about a number of matters necessary to the restructure of relevant water entities, including the transfer of assets, liabilities and legal proceedings that are being, or may be, taken by or against the relevant water entity. For

the purposes of section 105 of the SEQWR Act, relevant water entities include LinkWater, SRWP and the State. The regulation is the means by which all remaining assets, liabilities and instruments relating to the SRWP water infrastructure projects will be transferred to LinkWater.

Following the transfer of all outstanding matters, it is proposed that SRWP will be deregistered in accordance with the normal procedures under the Corporations Act. The regulation will achieve the objective of allowing deregistration of SRWP by assigning current and future claims and residual assets and liabilities of SRWP to LinkWater.

### **Consistency with policy objectives of authorising law**

As part of the structural reform of the South East Queensland bulk water industry in 2007–08, the SEQWR Act established three new water entities to own and operate the bulk water supply, transmission and treatment assets across the region. In line with the institutional arrangements put in place under that Act, the projects delivered by the SPV companies have been progressively transferred to the bulk water entities upon completion.

That the SPV companies have no enduring role in the ownership and operation of the assets is reflected in amendments to the SEQWR Act in April 2011 (Act No. 8 of 2011) which introduced a regulation-making power enabling the transfer of the remaining drought projects to the bulk water entities.

The regulation-making power facilitates the transfer of assets, liabilities and instruments relating to SRWP water infrastructure projects from SRWP and the Coordinator-General to LinkWater under section 105 of SEQWR Act on 1 July 2011. The transfer of such projects was contemplated in the explanatory notes to the *Revenue and Other Legislation Amendment Bill 2011* (the ROLA Bill).

Insofar as the regulation will accomplish the statutory novation of future and current claims against SRWP and address barriers to the timely deregistration of the company, the objectives of the regulation accord with the principles underlying the SEQWR Act.

Pursuant to section 100 of the SDPWO Act and in line with intention to deregister SRWP as early as practicable, the regulation also assigns LinkWater remaining SRWP project responsibilities under the *State Development and Public Works Organisation Regulation 2010*.

### **Inconsistency with policy objectives of other legislation**

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

### **Alternative ways of achieving policy objectives**

The regulation will assign LinkWater responsibility for current and future claims against SRWP, thereby allowing the satisfaction of conditions necessary to the deregistration of a company under the Corporations Act.

An alternative would be to allow any outstanding claims to proceed in line with normal legal processes. Given the greater length of time involved and the administrative burden associated with maintaining the company in the meantime, the regulation seeks to achieve the efficient transfer of SRWP's residual obligations and facilitate the wind-up of the company.

### **Benefits and costs of implementation**

Implementing the regulation is not expected to result in any cost to Government. To the extent that the regulation will allow the timely deregistration of SRWP, it will limit any unnecessary administrative costs associated with retaining the company pending the resolution of outstanding claims.

### **Consistency with fundamental legislative principles**

The regulation may raise some issues with regard to fundamental legislative principles. These issues have been thoroughly considered in the context of developing the authorising law for the regulation (Chapter 5 of the SEQWR Act).

The explanatory notes to the ROLA Bill acknowledged that the new sections 105 and 106 of the SEQWR Act may affect third party rights by allowing the transfer of assets, liabilities, instruments and legal proceedings (current or prospective) by regulation without their consent. However, these provisions do not override the substance of third party rights or enhance any rights being conferred on the relevant water entities.

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.

## **Consultation**

Queensland Treasury and Trade has consulted with LinkWater, SRWP and the Coordinator-General in the development of this regulation.

The Regulatory Review Branch (RRB) was also consulted regarding the need to prepare a Regulatory Assessment Statement (RAS).

RRB advised that the regulation is excluded from the RAS system on the grounds that the regulation is related to the internal administration of a statutory body. Accordingly, a RAS is not required.

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## ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Queensland Treasury and Trade.

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