



Queensland

South East Queensland Water (Restructuring) and Other Legislation Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 240

made under the

South East Queensland Water (Restructuring) Act 2007
State Development and Public Works Organisation Act 1971
Statutory Bodies Financial Arrangements Act 1982
Superannuation (State Public Sector) Act 1990

General outline

Short title

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

Authorising law

Sections 105 and 109 of the *South East Queensland Water (Restructuring) Act 2007* (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 SEQ Water Grid Manager (SEQWGM) and the Queensland Bulk Water Transport Authority (trading as LinkWater) to the Queensland Bulk

Water Supply Authority (QBWSA) (currently trading as Seqwater), so as to give effect to the merger of the three entities on 1 January 2013;

- dissolve the SEQWGM and LinkWater as 'new water entities' for the purposes of the SEQWR Act;
- transfer certain State Government (Department of Energy and Water Supply) employees to QBWSA;
- transfer specified land tenure from the Coordinator-General to QBWSA;
- transfer the shares in South East Queensland Bulk Water Company Limited (SEQBWCo) from the State of Queensland to QBWSA; and
- apply the *Seqwater Enterprise Bargaining Certified Agreement 2002-2012* to relevant transferred employees from 1 January 2013.

During 2007 to 2008, significant structural changes were implemented in the South East Queensland (SEQ) bulk water industry involving the establishment of four State-owned bulk water entities under the SEQWR Act, including three asset-owning service providers:

- QBWSA to own and operate the dams, weirs and water treatment plants in SEQ;
- LinkWater to own and operate bulk water pipelines across SEQ; and
- the Queensland Manufactured Water Authority (formerly trading as WaterSecure) to own and operate the Tugun Desalination Plant and Western Corridor Recycled Water Scheme. WaterSecure was merged with QBWSA on 1 July 2011.

The SEQWR Act also established the SEQWGM as the monopoly purchaser of bulk water services and single seller of bulk water to SEQ councils and the distributor-retailer authorities.

With the completion of major infrastructure projects, and the transition to post-drought operating conditions and a more secure regional water supply environment, there is a clear need to redirect the focus of the sector from construction to cost-containment, including targeting duplication of functions across the industry.

As part of the Queensland Government's plan to reduce the cost of bulk water supply in SEQ, the Government has committed to rationalise the SEQ bulk water industry by the merger of the three SEQ bulk water entities into a single bulk water service provider.

The *South East Queensland Water (Restructuring) and Other Legislation Amendment Act 2012* (the Restructuring Amendment Act) amended the existing restructure framework under the SEQWR Act to facilitate the transfer of all of SEQWGM's and LinkWater's businesses to QBWSA and the dissolution of the SEQWGM and LinkWater.

The Restructuring Amendment Act also amended section 105 and inserted a new section 111 to deal with the rights of employees of the relevant bulk water entities. These amendments facilitate the transition of employees to QBWSA, and include an amendment to section 105 allowing the application of industrial instruments to a relevant water entity.

Achievement of policy objectives

The regulation will achieve the objective of merging LinkWater, the SEQWGM and QBWSA into a single entity by transferring the entire businesses of LinkWater and the SEQWGM into QBWSA and then dissolving the transferring entities as statutory authorities in accordance with section 109 of the SEQWR Act.

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 LinkWater, the SEQWGM and QBWSA by:

- transferring all of the assets and liabilities of LinkWater and the SEQWGM to QBWSA;
- providing that all of the instruments of LinkWater and the SEQWGM are taken to apply to QBWSA;
- transferring all of SEQWGM's and LinkWater's employees to QBWSA;
- providing that QBWSA is to become the successor in law of SEQWGM and LinkWater.

The regulation will also transfer to QBWSA certain land tenure acquired and held by the Coordinator-General for bulk water infrastructure projects, including the Northern Pipeline Interconnector Stage 2 delivered by Southern Regional Water Pipeline Company Pty Ltd and transferred to LinkWater on 30 June 2011.

To provide the requisite skills and expertise to fulfil additional planning functions conferred under the Restructuring Amendment Act, certain State Government (Department of Energy and Water Supply) employees will also be transferred to QBWSA.

Pursuant to new subsection 105(1)(m) of the SEQWR Act, the regulation provides that the *Seqwater Enterprise Bargaining Certified Agreement 2002-2012* (the Seqwater certified agreement) applies to certain employees transferred to QBWSA from 1 January 2013.

In addition, the regulation transfers to QBWSA the shares in, and assets and liabilities of, SEQBWCo, the transitional implementation vehicle established by the State Government for the purposes of overseeing critical merger implementation activities.

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). QBWSA, LinkWater and SEQWGM are defined to be relevant water entities in section 104 of the SEQWR Act. SEQBWCo was prescribed as a relevant water entity by the regulation in accordance with section 104 of the SEQWR Act. The State and the Coordinator-General are deemed to be relevant water entities pursuant to section 105(7) of the SEQWR Act.

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 the SEQWGM and LinkWater as new water entities in accordance with section 109 of the SEQWR Act. As each of the entities is a statutory authority, the only alternative to dissolving them 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 key objective of the regulation is to facilitate the merger of the South East Queensland bulk water entities and the dissolution of the SEQWGM and LinkWater. Facilitating the necessary transfers of assets, liabilities etc 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 its 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 introduced the authorising law into the SEQWR Act) and the South East Queensland Water (Restructuring) and Other Legislation Amendment Bill 2012 (which amended the SEQWR Act to facilitate the merger of the remaining bulk 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. In regard to the application of the Seqwater certified agreement to certain transferred employees of the merged entity, it is relevant to note that the provision does not take away any employee's existing or accrued rights such as existing leave entitlements or reduce their overall remuneration.

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

The regulation has been developed by Queensland Treasury and Trade following extensive consultation with LinkWater, SEQWGM, QBWSA, the Queensland Water Commission, SEQBWCo, the Queensland Audit Office, the Department of Energy and Water Supply and the Department of the Premier and Cabinet.

ENDNOTES

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